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June 2018 \$3.50

COMING SOON^{p. 24}

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by Marty Kramer

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COVER: Peshkova, Interior Design/Shutterstock.com

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compiled by Summer Mandell

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* Zillow, Consumer Housing Trends Report, 2016

3,866 OF YOU TOLD US WHAT YOU THINK

That's how many Texas REALTORS® took the 2018 member survey to let us know what you do, the association services you value most, and how we can better serve you. (Two lucky Texas REALTORS® won Amazon Echo devices for taking the survey.) The survey findings will help staff and REALTOR® leaders improve your membership experience. An example of your feedback in action was during recent Strategic Planning Committee meetings, where the REALTORS® who serve on that group discussed the association's 2019-2020 Strategic Plan. Thanks for your feedback, which helps us create the association's budget and provide services and products that meet Texas REALTORS®' needs



NEED HELP GETTING STARTED WITH RPR?

The REALTORS® Property Resource (RPR) app is a powerful tool for your real estate business ... except if you don't know how to use it. The next Texas-specific RPR webinar on July 11 will give you a basic overview of how to use RPR's data and tools to help attract, retain, and lead clients to the closing table. Register for this session and watch recordings from past workshops at blog.narrpr.com/tar.

Chairman

“ A Texas broker starts her day with a cup of coffee and this magazine. She learns new information about properties with *coming soon* status in the MLS (page 24), but wants clarification about a *coming soon* issue her agent asked about yesterday.



She leaves a message for the Texas REALTORS® Legal Hotline (at 800-873-9155), and then logs on to texasrealestate.com to access zipForm, which she uses to complete a new *Residential Real Estate Listing Agreement-Exclusive Right to Sell* (TAR 1101). Data she pulled from the Texas REALTORS® MarketViewer helped her land this new listing. (Learn more about MarketViewer on page 20.)

A few hours later, an attorney from the Legal Hotline returns her call and answers her *coming soon* question.

On her way to lead her brokerage's weekly meeting, she stops by Office Depot/OfficeMax to pick up a print job and pays half the regular price by using her Texas REALTORS® discount card. (Get your card at texasrealestate.com/card.)

During the meeting, she passes around copies of an article with tips for gaining leads (page 20 of the May issue.) She discusses the *coming soon* information, then she tells her agents about an easy way to protect their income and keep their industry healthy: vote for the TREPAC-supported candidates they can easily find on texasrealtorssupport.com.

Before ending the meeting, she encourages those agents who don't have their GRI designation to look at the dates for the upcoming GRI: Real Estate Brokerage course being offered as a Texas REALTORS® broadcast class.

Stories like this one play out for REALTORS® across Texas every day. This is just the tip of the iceberg of member benefits you receive as a Texas REALTOR®. You may not even be aware of some of the ways you have benefitted from your membership, like when association funds and efforts defeated an onerous sign ordinance in your area ... or the precedent-setting court victory that lessens the chances of *any* Texas REALTOR® facing a frivolous lawsuit related to the Deceptive Trade Practices Act.

If you want to learn more about what the association provides to you, go to texasrealestate.com/benefits ... or just come talk to me or any other member of the Leadership Team. You can always reach out to me at chairmancolumn@texasrealtors.com. Better yet—come visit with us in person at the Texas REALTORS® Conference and Trade Expo from September 7 to 10 in San Antonio. I hope to see you there. ”

—Kaki Lybbert

REALTOR® feedback

YOUR COMMENTS ON THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT, NICKNAMES, AND REFERRAL FEES

The Foreign Investment in Real Property Tax Act (FIRPTA) requires buyers in certain transactions involving foreign sellers to withhold funds for federal taxes. In response to a legal FAQ about an agent's potential liability if a seller falsely certifies he's not foreign, members recognized the need for education on FIRPTA and opined about who should be responsible for determining its application.

Raul Giorgi wrote that "perhaps a promulgated form" is in order, adding that agents may find it awkward to ask about a seller's status. **Lilly Hughes** and **Andres De Pina** agreed that more education would be helpful.

Texas REALTORS® can send suggestions for new forms or changes to existing forms created by the association to forms@texasrealtors.com.

Others argued that someone else should ask about foreign seller status under FIRPTA. In the same way the *General Information and Notice to Buyers and Sellers* (TAR 1506) states that brokers and agents aren't attorneys or inspectors, **Doris Snipp** wrote, maybe IRS agent and immigration officer should be added to that list. **Jolie Williams** wrote that she appreciated the issue being brought up and only learned about it herself after a title company withheld funds on behalf of her buyer to satisfy the law.

The Texas Real Estate Commission serves license holders of many races and ethnic origins, pointed out **Adesegun Abayomi Owolabi** on a blog post about using nicknames in advertising. "What happens with my middle name?" he asked, noting it shortens to Yomi, or his first name, which can go by Ade or Segun. "Do these names require registration because they're not anglicized?"

Would you feel silly sending someone a \$50 gift card if they sent a \$1 million referral your way? That's what **Tommy Pennington** wrote about the current \$50 non-cash gift limit set by TREC for what you can pay an unlicensed person for a referral. "This won't even allow me to send a couple out for a nice dinner," **Randy Waterman** wrote. Maybe it's time for the limit to be updated, suggested Pennington.

GET A GRANT FOR YOUR WORKFORCE-HOUSING EFFORTS



If you host events or are otherwise involved in efforts to promote workforce housing, you may qualify for a grant from the Texas Association of REALTORS® Housing Opportunity Foundation (TARHOF).

TARHOF is a charitable organization that provides financial support to individuals, firms, and organizations that encourage workforce housing and homeownership in Texas. The types of activities TARHOF funds include seminars, education, research, speaking engagements, and other programs.

Applying for a grant is quick and easy; just fill in contact information and answer five questions about your workforce-housing programming.

Learn more about grants from the Texas Association of REALTORS® Housing Opportunity Foundation and access the online application by visiting texasrealestate.com/tarhof.

Looking for more commercial real estate info? Make sure your NAR member record includes a commercial real estate specialty in at least one of the four available spots for your fields of business. Doing so will ensure you get emails and other information targeted to your interests. The Texas Association of REALTORS® also uses this information to send commercial information to members.

To update your member record, log in to nar.realtor, click *My Account* (upper-right corner) and select *Manage Account*. On the *My Account* page, look under the *Update Other NAR Accounts* heading and select *Change your member data profile (NRDS)*. Scroll down the page with your membership info to the primary and secondary fields of business. You can see what specialties are currently listed in your member record and make changes or additions.

VISIT YOUR SECTION OF TEXASREALESTATE.COM

No matter your real estate role or specialty, your member website has a page for you. Go to texasrealestate.com/members/ specialties to access the Commercial, Property Management, Farm and Ranch, Brokers and Managers, Affordable Housing, Global, and Young Professionals Network sections. You'll find webinars, education, committees, videos, and other resources relevant to your specialty.





ROCKSTAR TEXAS REALTORS® WANTED

Applications are being accepted at texasrealestate.com/ypnaward for the 2nd annual REALTORS® to Watch award, which recognizes REALTORS® under 40 who have gone above and beyond in leadership, community involvement, and everything else that makes a well-rounded young professional successful in real estate. Last year, 11 Texas REALTORS® were honored as the inaugural class. Who will it be this year?

What comes with the award?

- Recognition during the 2018 Texas REALTORS® Conference in San Antonio from September 7 to 10
- Recognition at REBar Camp Texas on September 28 in Austin—an exciting education and networking event hosted by Texas YPN—plus hotel accommodations
- Mentions in *Texas REALTOR*® magazine and on Texas Association of REALTORS® social media channels
- Inclusion in a statewide press release.

Any active Texas REALTOR® under the age of 40 as of August 1, 2018 can apply for the 2nd annual REALTORS® to Watch award. Applications are open until July 15, but don't wait—apply now at texasrealestate.com/ypnaward.

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Email editor@texasrealtors.com with a brief explanation of your article idea and why it's a good fit for our readers.

BUSINESS



ARE YOUR LISTINGS FOR LOCALS ONLY?

You want to emphasize the best qualities of your listings, and that includes nearby amenities. But don't assume everyone who reads your listing knows that "Short walk to Pleasant Town Park!" is a benefit to the property. Out-of-town buyers especially may have never heard of local attractions like that park and don't know why they're mentioned as a selling point.

When writing about nearby amenities, think how you'd explain them to someone new to the area. Providing more details about those amenities can also illustrate a lifestyle prospective buyers may enjoy if they purchased the property.

For the park, try, "You're just a two-minute journey from the neighborhood's hottest destination, Pleasant Town Park! Swim in the park's free pool, play tennis, or simply relax with a book in the shaded picnic area."

Those extra details can help your seller's home stand out while also attracting prospective buyers who may have otherwise overlooked your listing.

HOW HOMEBUYING HABITS ARE CHANGING



Nearly all first-time buyers say technology will play a role in researching (98%), getting a mortgage (94%), and negotiating and buying a home (92%), according to the *2018 Bank of America Homebuyer Insight Report*. The report also shows:

- 52% of respondents would or have already applied for a mortgage via a mobile device or online
- Of those who would not apply for a mortgage digitally, 62% would rather work with a person, and 41% have privacy concerns
- First-time buyers in Austin and Dallas-Fort Worth are more likely (60% and 51%, respectively) to share their home purchase on social media than nationally (43%).

ATTRACT PROSPECTS WITH POWERFUL LANDING PAGES

Your marketing efforts encourage people to contact you—don't make it hard for them. Build an attractive landing page with the sole purpose of collecting contact information from leads. When done well, landing pages will convert someone's interest in your services into a useful lead. Here are tips to help your landing page boost your business.

Don't use your homepage

Take a look at your website's homepage and count the things it's trying to accomplish: introducing you and your business, featuring your listings, promoting your community, offering market information, and maybe more. Users on a homepage are encouraged to explore and gather information, not provide their contact information on a form.

Be consistent with your message and design

If the marketing emails and ads that link to your landing page promote you as Your Smithtown Agent, your landing page better say Your Smithtown Agent. Similarly, if those emails and ads have a blue background and feature your headshot, the landing page should

contain those elements and mimic the design of the ads and emails. Matching your message and design lets a user know that he arrived at the correct place—he made a "good" click.

Focus on your call for action

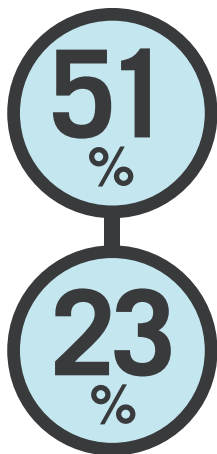
A landing page should be clean and simple, with prominent boxes for entering a name, email address, and phone number. Repeat your marketing message on the page but avoid the clutter of additional, unnecessary copy or graphics. Someone who's clicked to reach your landing page is likely receptive to your message and ready to provide his or her contact information.

Consider a page separate from your website

Directing leads to a dedicated Contact Us page on your site is an option. Or, if you use an email marketing program or customer relationship management (CRM) software, you can create landing pages in those programs for your email marketing messages. Customize your page to match your marketing using the program's templates, and the page will feed lead data directly to your email list.

Research

Texas homebuyers say these are "very useful" features on websites where they search for properties:



51% of Texas REALTORS® who specialize in property management manage at least 100 properties.

23% of Texas REALTORS® own at least one commercial investment property.

Sources: 2017 Profile of Texas Homebuyers and Sellers; 2017 Profile of Texas REALTORS®



10 TEXAS CITIES NAMED AS "125 BEST PLACES TO LIVE IN THE USA"

U.S. News & World Report's annual "Best Places to Live" rankings mix public data and user opinions to create a list of metro areas that score highly in quality of life, job market, value, and desirability. The 2018 list includes several Texas metro areas, and crowns Austin as the #1 Best Place to Live. You can find more details about the ranking and each city at realestate.usnews.com/places/rankings/best-places-to-live. Here are the other Texas cities that made the list.

- | | |
|-----------------------------|-------------------------------|
| BROWNSVILLE: #121 | KILLEEN: #90 |
| McALLEN: #115 | HOUSTON: #26 |
| BEAUMONT: #113 | DALLAS-FORT WORTH: #18 |
| CORPUS CHRISTI: #106 | SAN ANTONIO: #14 |
| EL PASO: #105 | AUSTIN: #1 |

ASIAN AMERICANS ARE A GROWING PART OF U.S.

Asian Americans, Native Hawaiians, and other Pacific Islanders together make up the fastest growing ethnic group nationwide. According to the Pew Research Center, the U.S. Asian population grew 72% between 2000 and 2015. And the South experienced the fastest growth of any U.S. region, with Texas now ranking third among states for its Asian-American population.

In its *2017-18 State of Asia America Report*, the Asian Real Estate Association of America compiles the statistics above and others for a snapshot of the U.S. Asian population.

Since 2010, Asian Americans have been the most active ethnic minority group in the mortgage market—in terms of applications and dollar volume, according to the report.

However, the homeownership rate is still six percentage points below the national average and 15 points below non-Hispanic whites. The report attributes this to factors such as language barriers, credit scoring issues, and a tendency to live in multigenerational households.

Asian Americans, Native Hawaiians, and other Pacific Islanders now represent \$78 billion in buying power in Texas, third among U.S. states for buying-power growth from 2010-2017. With global investment in U.S. real estate projected to increase, the report also highlights the importance of foreign sales originating from Asia and Oceania, which account for 39% of foreign sales in Texas.

2 WAYS TO GENERATE LEADS FROM OPEN HOUSES

In 2016, 10% of first-time buyers in Texas first met their agent when visiting an open house, according to the *2017 Texas Homebuyers and Sellers Report*. That is twice as many as first-timers nationwide.

If you're among the 50% of Texas agents using open houses to attract potential buyers, you may also have opportunities to generate leads. (Remember to confirm a prospect isn't already another agent's client.)

Trade information

Maybe you're already providing fliers with your name and contact information for any visitor to take. Try displaying only one copy of the most enticing reports you think people would like to review, like market or neighborhood



reports from REALTORS® Property Resource (RPR). Offer to email or text these displayed reports or more customized data rather than have prospects take your only copy.

Welcome gawkers

It might be discouraging when some open-house visitors are just curious neighbors, but instead of discounting them, get their attention. You already know they're interested in what neighbors' homes are selling for, so use the RPR app to pull up comparable property information or other stats that will help them feel in the know. Then, offer to send them an RPR Mini Property Report for their own home or a more comprehensive Market Activity Report.

LIMITED ENGLISH PROFICIENCY IS A BARRIER TO HOMEOWNERSHIP

New research from the Urban Institute finds that neighborhoods with high levels of residents with limited English proficiency have lower homeownership rates than other neighborhoods.

Neighborhoods with the fewest residents with limited English proficiency had a median homeownership rate of 74% in 2016, according to the research. In neighborhoods with the highest levels of limited-English-proficient residents, the median rate of homeownership was 64%—a gap of 10 percentage points. After controlling for factors that influence homeownership, such as income, age, and race, the gap was 5 percentage points.

According to the research, more than 2 million people in Texas have limited English proficiency, coming in second only to California with 3.8 million. The researchers from the Urban Institute say there may be an opportunity to increase homeownership and serve this population by expanding the availability of accessible Spanish-language materials and employing more Spanish-speaking professionals in industries such as mortgage lending.

The association provides Spanish translations of many of the most popular forms for real estate transactions at texasrealestate.com/realtorforms, which you can provide to clients for informational purposes. But remind your clients that they must sign the English-language versions.

Tech tip

WHY YOU MIGHT WANT TO SEND EMAIL ON SUNDAY

An analysis by email-software firm Yesware of 368 million messages sent by sales professionals showed that emails delivered on Sunday saw the highest number of replies per sent message.

This confirmed Yesware's previous study of 500,000 emails that found Sunday had the least amount of inbox competition (i.e., the fewest emails being sent). According to the initial study, open and reply rates are highest during the weekend, while the new study found Friday had the lowest ratio of replies to sent messages.

To grab prospects' and clients' attention when there's the least amount of inbox competition, you can use a tool that allows you to schedule emails from a personal account or invest in email marketing software that sends to a list on your behalf.





FINALLY

say yes to success.

Spend more time closing leads than chasing them.

We'll get your career growing with our targeted, end-to-end lead generation system.

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*Google Analytics, January 2017

LEGAL & ETHICS



7 TIPS ON HOW TO AVOID THE MOST COMMON TREC VIOLATIONS

by TREC Standards and Enforcement staff

Texas Real Estate Commission's Standards and Enforcement Services is frequently asked about common violations and how to stay out of trouble. The agency regularly disciplines license holders for violations in the following areas. Here's what you should know to avoid trouble.

Supervise your sales agents. It is not a defense to broker supervision (Rule 535.2) to say you don't supervise your sales agents. In other words, saying, "I didn't know about it," is sometimes more of an admission than a defense.

Register assumed business names and team names before using them in advertisements. Brokers register these names by using TREC's *Notice Of Assumed Business Name (DBA) For A Broker's License* (TREC DBA-3) and *Notice of Team Name for a Broker's License* (TREC TN-0). The broker must also notify TREC not later than the 10th day after the date the broker or sales agent stops using the assumed business or team name.

Be sure you have a separate license for a separate legal entity like an LLC or a corporation; registering doesn't work for that. A legal entity such as an LLC or a corporation that conducts real estate brokerage must have a separate broker's license—this includes the entity's

receipt of payment of a commission or other compensation. It isn't enough that you have an individual license, and "registering" a separate legal entity with TREC doesn't work, either. (That only works for an assumed name.)

Cooperate with an investigation. Not responding to a TREC investigator's request for an interview or documents is usually a violation.

Tell TREC in writing within 30 days of final entry of your felony or fraud conviction, guilty plea, or nolo contendere plea. Failure to comply with this results in a penalty.

Be careful about conducting property management. Make sure you are well-trained and supervised in this area. Over 10% of the agency's real estate brokerage complaints relate to property management. A broker is responsible for any property management activity by the broker's sponsored sales agent that requires a real estate license.

Be nice. Customer service works wonders. Once TREC has a complaint, it may notice something the customer or client didn't even complain about. The best defense is that the agency never hears about the issue because you already took care of it.

TREC enforcement and disciplinary actions are available on at trec.texas.gov/apps/disciplinary-actions.

PROPOSED FORMS AND CHANGES TO AD RULES AT TREC'S MAY MEETING

The Texas Real Estate Commission met on May 7, and here's a summary of actions relevant to Texas REALTORS®:

- Proposed new *Release of Earnest Money* form (different from TAR's current form)
- Re-proposed changes to the *Notice of Buyer's Termination of Contract*
- Re-proposed new *Notice of Seller's Termination of Contract*
- Proposed removing the prohibition of using the term *realty* as part of team names
- Proposed an exception to advertising rules for directional signs (e.g., open-house signs with arrows)

View the meeting materials, which includes a draft of the proposed new form and redline versions of existing forms, at trec.texas.gov/apps/meetings.

These proposals can be found by searching for "Texas Real Estate Commission" at treatlo.rs/texasregister. The public comment period ends later this month. The earliest these changes could be adopted is at TREC's August meeting.



ARE LANDOWNERS LIABLE FOR TRESPASSERS' INJURIES?

by Tiffany Dowell Lashmet



Under Texas law, landowners owe different duties to different categories of persons on their property. From a liability perspective, so long as a landowner meets the required duty for the category of person on the property, he or she is not liable for the person's injury.

Anyone who enters a landowner's property without permission falls under the category of trespasser. Under Texas law, this category receives the least protection, and the only duty a landowner owes to a trespasser is to avoid intentionally injuring that person or acting with "gross negligence."

Think of intentional injury in this way: If someone comes on your property without permission and falls into a hole, you would not be liable. But if you knowingly push someone into the hole, you may have a problem.

Texas statute defines "gross negligence" as an act or omission that:

- When viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- Of which the actor has actual,

subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Put another way, a defendant must know and not care about a property's extremely high risk of serious injury. "Gross negligence" requires a high level of proof for a plaintiff to succeed on a claim against a landowner.

One legal example in Texas is *State v. Shumake*: In that case, a young girl was tubing in a state park and drowned after she was sucked into a hidden man-made culvert. Her family was able to prove the state park was aware of the culvert, knew other persons had recently nearly drowned there, and did nothing to remedy the danger or provide warning. The Texas Supreme Court concluded this satisfied the heightened standard for liability.

As long as landowners don't act with gross negligence or intentionally harm a trespasser on their land, they

will likely not be held liable. However, not being liable and not getting sued are two separate things.

Although a landowner may be able to win a lawsuit filed by an injured trespasser, the legal costs to do so would likely be borne by the landowner. Because of this, it's a good idea for landowners to carry a liability insurance policy. The necessary coverage depends on the level of risk involved with the property.

For example, a landowner with a ranch in the middle of nowhere might need less insurance coverage than a landowner who operates a popular pick-your-own pumpkin farm. Landowners should speak with an insurance agent to determine the right level of coverage for their operation.

TIFFANY DOWELL LASHMET is assistant professor and extension specialist with the Texas A&M AgriLife Extension. She specializes in agricultural law and blogs about legal issues related to Texas land at agrillife.org/texasaglaw.

WHAT YOU NEED TO DISCLOSE ABOUT IN-HOUSE COMMISSION RATES

Standard of Practice 3-4 of the Code of Ethics states that listing brokers must disclose if a different commission rate (also known as dual or variable rate commission) will be paid for offers coming from within the listing broker's firm versus offers from other cooperating brokers. This disclosure is required even if a buyer's agent doesn't ask for such information.

However, disclosing exactly what the

different commission rates are for in-house offers and offers from cooperating brokers is only required if the buyer's agent asks. A buyer's agent is then required to inform the buyer of the differential rate before she submits an offer so she can take it into account.

The listing broker does not need the seller's approval to disclose the existence of a dual or variable rate commission agreement, or if the buyer's agent asks, the rates themselves.

LEGAL & ETHICS

HOW TO MEET THE NEW EARNEST-MONEY DEADLINE

The *One to Four Family Residential Contract (Resale)* (TAR 1601, TREC 20-14) now has a strict three-day deadline to deliver earnest money. Unlike other deadlines in the contract, though, if the deadline falls on a weekend or legal holiday, the deadline is extended to the next business day. Here are three scenarios that show how to determine the earnest money deadline.



EXAMPLE 1 No weekends or holidays fall on the third day

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Contract effective date	Day 1	Day 2	Day 3 Earnest money must be delivered by end of the day.			

EXAMPLE 2 Weekend and legal holiday fall on third day

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			Contract effective date	Day 1	Day 2	Deadline for earnest money extended to next business day.
Deadline for earnest money extended to next business day.	Legal holiday Deadline for earnest money extended to next business day.	Day 3 Earnest money must be delivered by end of the day.				

EXAMPLE 3 Legal holidays and weekend days not on Days 1 and 2 do not extend the deadline

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				Contract effective date	Day 1 Legal holiday Since this is not Day 3, this legal holiday still counts as Day 1	Day 2 Since this is not Day 3, this Saturday still counts as Day 2
Deadline for earnest money extended to next business day.	Day 3 Earnest money must be delivered by end of the day.					

LEGAL & ETHICS

Q

I started working with a client before learning she was locked with an affinity group or relocation company. Do I have to pay a referral fee to the relocation company?

A

No. If you do not have an agreement with the affinity group or relocation company, there is no legal obligation to pay the referral fee. However, this may put your client in a difficult position because in most of these relationships the employee will lose her benefits if she does not follow the rules. If you insist on not paying a referral fee, the client will have to pay more to work with you because of the loss of benefits. Many real estate agents have adopted a policy to ask potential clients up front if they have any agreements with other service providers to avoid surprises later.

Worldwide ERC offers resources outlining procedures to facilitate dispute resolution relating to after-the-fact referral fees. Find these resources at worldwideerc.org/interchange.

Contract closeup

ASSISTANCE ANIMALS IN RENTAL PROPERTY?



If you're a property manager, your landlord probably has a pet policy. But how should a landlord handle a reasonable accommodation request for an assistance animal?

Take a look at *General Information for Landlord Regarding Assistance Animals* (TAR 2226). It explains fair-housing requirements, definitions of relevant terms, and rules and exceptions related to assistance animals.

It enables you to provide this information to your landlord clients without positioning yourself as an expert in such matters—a huge benefit to you. Or, if you're the landlord, it answers many questions about properly handling such a situation.

This form and the other 135 available exclusively to Texas REALTORS® are part of the many benefits to your membership. Download *General Information for Landlord Regarding Assistance Animals* and all your forms at texasrealestate.com/realtorforms.

Your forms

The *Bed Bug Addendum* (TAR 2013) is a new form created for the exclusive use of Texas REALTORS®. Property managers can use it with the existing *Residential Lease* (TAR 2001) to set forth policies and a tenant's responsibilities if bed bugs are discovered on the property. The addendum covers the condition of the property and the tenant's personal belongings, the notice required of a tenant should bed bugs be suspected, what the tenant must do if the presence of bed bugs is confirmed, and the tenant's liability and indemnification of the landlord.

Along with this new addendum, your Texas REALTOR® membership gives you exclusive access to 136 forms unavailable to nonmember license holders. Find your forms at texasrealestate.com/realtorforms.



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How to SELL YOUR BROKERAGE

AFTER YEARS BUILDING A SUCCESSFUL BROKERAGE, YOU'RE READY TO MOVE ON. How do you sell your firm to fund your retirement or next business endeavor? Chuck Harvey, president of the International Business Exchange in Austin, answers common questions about selling small businesses to help you get the most for your brokerage.

interview by Ward Lowe

Texas REALTOR®: What are potential buyers looking for in a real estate brokerage?

Chuck Harvey: Many real estate brokerages aren't attractive investments. A big reason is that the success of many of the businesses rests with the owner. Potential buyers worry that if that owner is out of the picture, the business will suffer.

So, buyers are looking for transferrable assets and firms that depend on the success of the agents rather than on the owner.

That means owners should be able to demonstrate successful and transferrable methods for attracting agents, training agents, and retaining agents. For residential firms, there should be in place mar-

keting processes to find and secure listings and to find and attract homebuyers.

Also, potential buyers want to see a brand they can leverage. That includes a history of success and maybe a niche where they can continue to focus the firm's efforts. A business that's been helping buyers find vacation homes in an area for 30 years is more attractive than a brokerage that's been doing a little bit of everything for 30 years.

You mentioned residential brokerages. What about commercial?

There's a big difference between commercial and residential firms. Commercial firms offer a more traditional business model for prospect gen-

eration, customer leverage, and customer retention. An owner will still want to demonstrate the firm's marketing engine, but, again, it's more about how the commercial practitioners build relationships and develop the brand—tasks similar to businesses outside real estate.

If someone's ready to sell a brokerage, where does he or she start?

It's important to note that selling a firm isn't a quick process. Depending on the structure of the business and the health of the firm, it could take years to be in a position to sell the business.

That said, here are the big-picture items to have in order:

- Make sure your financial records

“Don’t forget, it will be hard to leave behind your business. You’ve worked hard to make it successful and have made commitments to those who work with you.”

—Chuck Harvey

many of those professionals succumb to when selling their own brokerage.

What things don’t people consider when selling a real estate brokerage?

You want potential buyers to be bound to confidentiality before they learn the specifics of the brokerage for sale because you—the broker seller your firm—want to control the message. You want your agents and employees to learn of the sale from you, so you can answer questions.

Also, selling your brokerage is a big time commitment. You must prepare sales presentations, find potential buyers, answer the buyers’ questions, negotiate a letter of intent and purchase agreement, and manage due diligence. I estimate that it takes 500 to 1,000 man-hours to complete a transaction.

These deals are large and complex. It helps to have an experienced professional guiding both sides through the process—much as you guide your clients through complicated real estate transactions.

And, don’t forget, it will be hard to leave behind your business. You’ve worked hard to make it successful and have made commitments to those who work with you. All of this effort and these relationships make the emotional component of selling the brokerage quite profound. I have seen many tears shed at the closing table. I had one client tell me, “On Tuesday, I was making all of the decisions. On Wednesday, I felt like a ghost in the hallway.”

How does someone find a buyer?

Like most sales transactions, these types of deals often happen due to personal connections.

Potential buyers could come from within your organization—maybe an agent who’s getting her broker’s license or a broker-associate ready for more responsibility. Discuss it with these people, not as a formal offer but a conversation about the opportunity.

If you don’t have any takers in your firm, expand your net. Create a list of other area brokers and, based on your knowledge of their operations, rank them in order of likely interest in your business. Reach out to friends in the business community who aren’t in real estate.

You can also present the oppor-



Photo: Dima Sidelin/Shutterstock.com

are complete, clear, and timely.

- Document all of your business processes.
- Put together at least three years of consistent financial performance.
- Distance yourself from the day-to-day management of your firm.
- Develop a five-year strategic plan.

What are common mistakes you see from people selling their businesses?

Acting on impulse. Someone asks, “Have you considered selling your brokerage?” and you’re suddenly planning what to do with the proceeds from the sale. Unless

you’ve already taken steps toward a sale and the inquiry is sincere, one flirtation isn’t enough to drive your future.

Another mistake—this one from people who’ve already taken steps to sell—is allowing their brokerage to falter. You have to maintain your success. Seasonal fluctuations from real estate brokerages are expected but otherwise allowing the business to fall off while you concentrate on the sale or your next endeavor will hurt your return.

And even though real estate professionals counsel their clients to keep emotions out of a transaction, it’s a pitfall that

ADVERTISEMENT

tunity to buy your firm on business exchange marketplaces.

Do you have any tips on vetting potential buyers?

Most small-business owners share two main concerns: getting paid and preserving their legacy.

To verify that buyers can pay you, ask them to describe their financial resources, to detail how they will finance the transaction, and to list their sources of capital.

Predicting how people will treat your business once you're no longer involved is trickier. You hope they'll build on what you've done, but there are no guarantees. You can do some background checks and ask for references. However, preserving your legacy is subjective, so you'll have to rely on your intuition. What do you think based on the negotiations and discussions of your five-year strategic plan?

Where can someone get help with the process?

The best place to start is with advisors who know your brokerage and you already trust—your attorney, CPA, or banker. You can also contact business brokers and merger/acquisitions consultants in your community.

Remember that buyers are most interested in future cash flow. The more secure the future cash flow seems, the more likely buyers will buy. The more clearly a buyer can see growth opportunities, the more likely buyers will pay more for the business.

WARD LOWE is associate director of communications for the association.

INTERNATIONAL BUSINESS

EXCHANGE (IBEX) has been helping owners and executives sell businesses since 1979. The eight-person IBEX team collectively has more than a century of corporate leadership at Fortune 500 and middle-market companies, and has executed hundreds of buy- and sell-side transactions as both corporate executives and third-party advisers. IBEX is a member of the International Business Brokers Association, M&A Source, and the Texas Association of Business Brokers.



In commemorating 50 years of the FAIR HOUSING ACT in April, the National Association of REALTORS® recognized the important role REALTORS® play in helping promote fair and equitable housing for all.

June marks National Homeownership Month and comes at a particularly fortunate time when first time homebuyers are looking to you to help guide them to their next community.

Encourage your new homebuyers to enroll in the Texas Department of Housing and Community Affairs' ("TDHCA") Texas Homebuyer U ("TXHBU"), a convenient online course designed to educate buyers on the pre- and post- purchase of a home, as well as information on their fair housing rights (you're welcome to sign up too!).

TXHBU is provided free of charge and will satisfy the homebuyer education requirement for TDHCA's My First Texas Home Program ("MFTH"). The MFTH Program is brought to you by TDHCA, and offers competitive low-interest rate home loans, and down payment and closing cost assistance for qualified buyers.

**LEARN MORE AT MyFirstTexasHome.com
OR 800-792-1119**

Dig into the data

MarketViewer—a new, exclusive Texas REALTORS® member benefit—puts comprehensive real estate data at your fingertips. Visit texasrealestate.com/marketviewer to access this tool.

In business, media, marketing, sports, politics, entertainment, and nearly every other facet of our lives, our world increasingly relies on data.

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As a Texas REALTOR®, you have exclusive access to a new online tool with some of the most comprehensive, accurate real estate data available. The MarketViewer portal enables you to view key statistics for geographical boundaries you choose.



by Marty Kramer

MarketViewer Quick Start Guide

Visit texasrealestate.com/marketviewer.

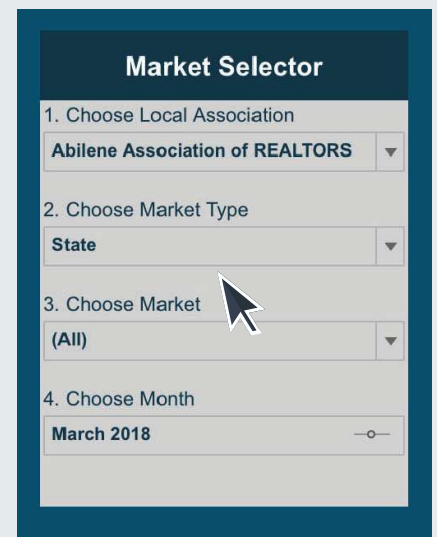
Log in with your texasrealestate.com password.

- 1) Under *Market Selector* on the left side of the dashboard, choose your local association from the first dropdown menu.

Make sure to hover

You can quickly gain deeper insights into market data by placing your mouse over individual pieces of data on the dashboard. (On tablets, tap the data). You will see additional statistics such as trends over time, further breakouts of data, and percentage increases or decreases from previous reporting periods.

For example, if you place your mouse over a month's median price, a chart will pop up that shows the monthly median price trend line from January 2015 through the current month. You may have to let your cursor hover over the data point for a second or two or click the data point to view the additional information.



What information is available?

When you access the MarketViewer dashboard at texasrealestate.com/marketviewer, you will see monthly residential sales statistics for the state. You can change the three market selection fields to view other geographical areas, down to individual neighborhoods in many cases.

The initial screen displays median price, closed sales, active listings, days on market, days to close, months inventory, and the price distribution of residential sales. But that's just the tip of the iceberg of information available from MarketViewer's tens of millions of data points.

Other available geographical boundaries include county, metropolitan area, city, ZIP code, school district, neighborhood, state and federal political districts, and city council districts, where available.

You also can view the statistics compiled on a quarterly or annual basis. Most data in MarketViewer is available back to January 2015.

Create your own infographics to share

You can download an image or PDF of any screen in MarketViewer by selecting the "Download" link near the bottom-right corner of the page.

You can also generate attractive and easily sharable infographics to send via email, post to Facebook or Twitter, or add to your other communications and marketing materials. To create an infographic, click *Menu* at the top-left corner of the dashboard, then select "Infographic Generator." Select the parameters for the data you want, then choose the type of file you would like to download.

Data for rentals, development, and more

In addition to residential sales, you can find metrics on apartment rents and vacancies (provided by Reis, Inc.), new construction stats (provided by Metrostudy), and historical mortgage-rate information (provided by Freddie Mac). Access these categories by clicking *Menu* in the top-left corner of MarketViewer.

Why this data is more accurate than other sources

The accuracy of the data in MarketViewer is unparalleled. Since the underlying data comes directly from local MLSs across Texas, it represents actual sales. Many real estate data sources rely heavily on

- 2) Choose the market type you want to view from the second dropdown menu.
- 3) Choose the individual market from the options in the third dropdown menu.
- 4) If you want to view data from previous months, use the *Choose Month* option.

Uncover additional information by placing your cursor over each individual piece of data (on tablets, tap the data).

Find more MarketViewer features by clicking *Menu* in the top-left corner of the dashboard:

- Comprehensive market reports
- Apartment stats
- New construction data
- Mortgage rate history
- Infographic generator.

continued on page 26

imprecise inputs such as estimates, algorithms, or tax appraisals.

Data experts at the Real Estate Center at Texas A&M University use several “data scrubbing” routines to correct problems common in other real estate data sources. Home sales are analyzed for anomalies—such as a house with four bedrooms and zero bathrooms, or a property listed at \$470,000 that reportedly sold for \$4,700,000. Correcting errors like these produces more-accurate results.

The Real Estate Center also ensures that MarketViewer data isn’t skewed by a single sale being counted multiple times. In some data sources, a sale may be recorded two or more times if the property has been entered into multiple MLSs. To ensure that each sale is only tallied once, properties reflected in MarketViewer data are categorized by a precise geo-location—the exact latitude and longitude of a piece of real estate. If multiple sales appear in the data from the exact same geo-location, that sale is only counted one time.

MLS reports typically include only properties that were entered into that MLS. However, reports in MarketViewer reflect all property sales that occur within a geographical boundary regardless of which MLS the listings came from.

Due to these efforts to create the best, most reliable data, it’s possible that MarketViewer statistics may not match statistics from your own MLS, even when comparing the same time period.

Where did MarketViewer come from?

In 2015, the Texas Association of REALTORS® launched the Texas REALTOR® Data Relevance Project, a partnership that included local REALTOR® associations and their MLSs. The project was made possible through a research agreement with the Real Estate Center at Texas A&M University. The Data Relevance Project has provided local REALTOR® associations access to comprehensive local data that the association can share with members and with local media. Many local REALTOR® associations have been using Data Relevance Project data and infographics in press releases, in member communications, and on Facebook, Twitter, and other social media channels.

The MarketViewer dashboard launched in April 2018 to give local associations—and, for the first time, individual Texas REALTORS®—an easy-to-use online tool to harness the powerful data and analytics of the Texas REALTOR® Data Relevance Project.

MarketViewer helps Texas REALTORS® quickly understand market statistics in a vast array of geographic areas across the state. With this information, local associations and individual

members can position Texas REALTORS® as the authoritative voice of Texas real estate.

MarketViewer is intended to enhance data that REALTORS® receive from MLSs, not replace it. The larger, more in-depth local dataset that MarketViewer provides helps Texas REALTORS® set accurate expectations among buyers and sellers and helps you and your clients make better decisions in our data-driven world.

MARTY KRAMER is editor-in-chief for Texas REALTOR®.

MarketViewer FAQs

Can I share MarketViewer information with prospects, clients, appraisers, and others?

Yes, you can download screenshots and generate infographics from MarketViewer to share with anyone. However, you cannot give other people direct access to MarketViewer, since it is an exclusive member benefit for Texas REALTORS®.

When is new data released?

New market analytics are available to Texas REALTORS® approximately 30 days after the end of the month.

How do I know what the boundaries are for a particular geographical selection?

Access the Geography Viewer by clicking *Menu* at the top-left of the dashboard.

Why isn't the neighborhood or city council district I'm looking for listed?

Some geographic boundaries are unavailable if they have not been provided by the information sources used by MarketViewer.

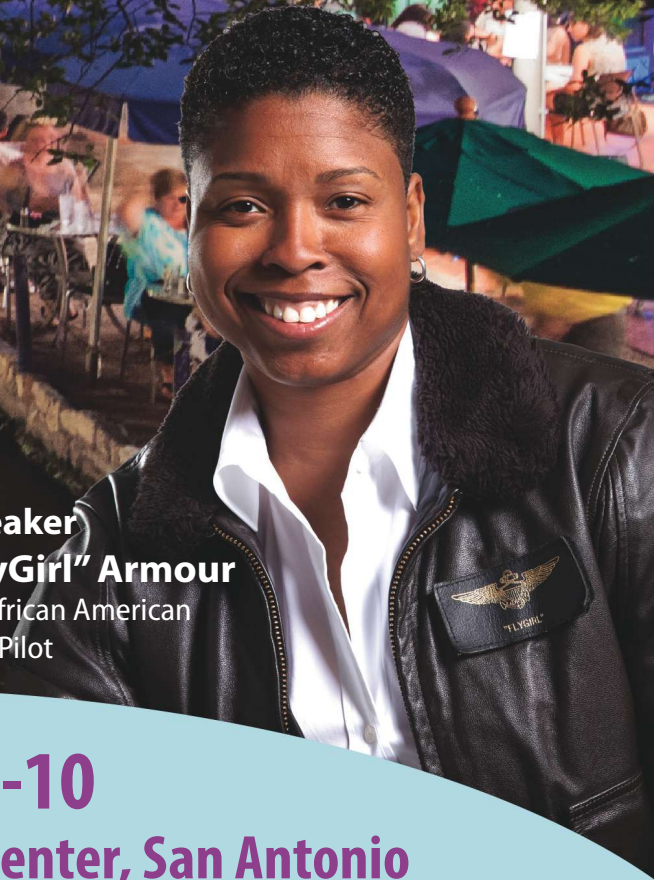
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COMING SOON in an MLS near you?

Coming soon is a listing option in certain MLSs in Texas, but questions remain about its purpose and appropriate uses.

compiled by Summer Mandell



Photo & Images: Peshkova, Interior Design/Shutterstock.com

**WHAT IF YOUR
MLS DOESN'T
HAVE A
COMING SOON
OPTION?**

Check with your MLS about how it treats off-market listings. Most MLSs have adopted the model rule for off-market listings. This occurs when the seller refuses to permit the listing to be disseminated to the participants, but it is still filed with the MLS.

Certain multiple listing services in Texas have recently added an option for brokers to list properties as *coming soon*. Typically, this status means the seller isn't ready to list the property as *active* and needs time to make updates, repairs, address legal issues, and so forth. The benefit to listing brokers is that they're able to gain exposure for their listings prior to *active* status.

Selecting the *coming soon* status in the MLS is easily done in a few clicks, but many Texas REALTORS® have questions about its effect in their day-to-day practice of real estate.

The following questions and answers offer clarification about *coming soon* MLS status. But remember, always check your MLS's rules to ensure you're in compliance.

Can the broker decide whether a listing can be marked as *coming soon*?

No. The decision to list a property as *coming soon* should be the sellers'. Otherwise, a listing broker may be at risk of violating the Code of Ethics, breaching fiduciary duties outlined in TREC rule 531.1, and possibly violating fair housing laws. TREC advertising rules may also apply. *Coming soon* status is not intended to give the listing broker a competitive advantage or avoid listing a property on the market.

Can a broker list property in the MLS as *coming soon* without a listing agreement?

No. The MLS rules require a broker to have a signed listing agreement or certification before submitting a property to the MLS, even if it's not ready to show.

Keep in mind that the listing broker is acting on behalf of the seller and needs to make sure all decisions are made to benefit the seller. The listing broker cannot put his self-interest above the seller's.

How long can a property be listed as *coming soon* in the MLS?

It depends on your MLS rules. Some MLSs define a specific timeframe, such as 14 days, while others have no limit. There can also be rules about what happens if the listing's *coming soon* status is not changed before the deadline to update it to *active*. For example, one MLS automatically changes the listing to off-market status and has restrictions on when the listing can be resubmitted as *coming soon*.

Can a listing broker show a *coming soon* home to one agent but not others?

Yes, but only if the seller directs the listing broker to allow the showing. Otherwise, a property listed as *coming soon* should not be open to showings. Also, be careful to

avoid any practices that violate—or may appear to violate—fair housing rules, such as restricting individuals belonging to protected classes from viewing the property.

If the seller allows one agent to show the property, does that mean she has to allow all agents?

No. A seller is not obligated to allow other showings even if she has let one agent show the property. However, if the home is ready to show, it's a good idea to change the status in the MLS to *active*. Be sure to check with your MLS rules as well.

Can a *coming soon* property go under contract before going active in the MLS?

Yes. If the seller wishes to sell the property before the listing goes active, it is her right to do so. However, MLS rules may still require that the sale be reported to the MLS.

Can a listing broker charge a fee to a buyer's broker to view a *coming soon* listing?

Only if directed to do so by the seller. Remember that a broker represents the interest of the client and should not place the broker's personal interest above the client's.

SUMMER MANDELL is managing editor for Texas REALTOR®.

THREE REASONS WHY THE SELLER SHOULD DECIDE WHETHER A PROPERTY IS *COMING SOON*

A seller should be the one who decides whether a property will be listed as *coming soon*; otherwise, a decision by a listing broker can raise red flags. Here's why.

- Texas Real Estate Commission rules require brokers to represent the interest of the client and not place the broker's personal interest above the client's.
- Article 1 of the Code of Ethics requires REALTORS® to pledge themselves to protect and promote the best interest of their clients.
- Article 3 of the Code of Ethics requires REALTORS® to cooperate with other brokers, except when cooperation is not in the client's best interest. Standard of Practice 3-10 further provides that the duty to cooperate relates to the obligation to share information on listed property and make it available to other brokers for showing to a prospective purchaser when it is in the best interests of sellers.

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WHAT YOU SHOULD KNOW ABOUT EARNEST MONEY

An important part of the homebuying process that you may never have heard of could help you land the home of your dreams. Here's an explanation of how earnest money works in a real estate transaction.

WHAT IS EARNEST MONEY?

Earnest money is an amount agreed to in the real estate contract that you will pay soon after entering into a contract as a show of "good faith" that you intend to purchase the property. If the deal closes, the earnest money is typically credited toward your downpayment and other costs of buying the home.

HOW MUCH EARNEST MONEY IS ENOUGH?

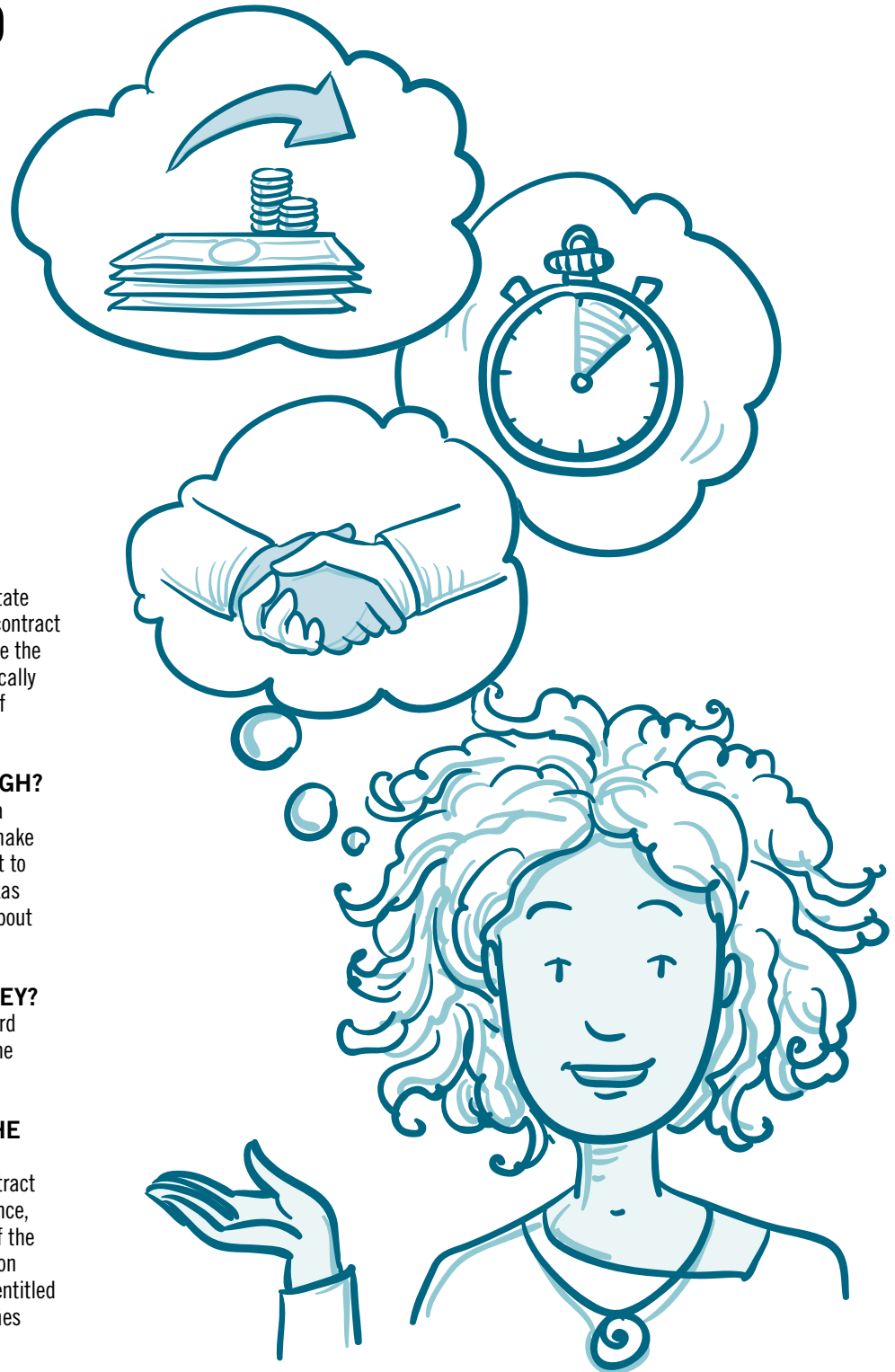
Choosing the right amount can show a seller you're a serious buyer. A larger deposit might be one way to make your offer stand out among other offers, but you want to choose an amount you are comfortable with. Your Texas REALTOR® can help you make an informed decision about how much earnest money to include with your offer.

WHO HOLDS ONTO THE EARNEST MONEY?

It usually goes to an escrow agent—an impartial third party such as a title company—who holds it until the transaction closes.

WHO GETS THE EARNEST MONEY IF THE TRANSACTION DOESN'T CLOSE?

If the transaction doesn't close, the terms of the contract determine who receives the earnest money. For instance, the earnest money is typically returned to the buyer if the buyer exercises his right to terminate during the option period. If the buyer and seller can't agree on who is entitled to the earnest money, things can get messy, sometimes even ending up in court.



A Texas REALTOR® can help you navigate your next home purchase and help you better understand earnest money.

TAKE 5

WIN MORE MULTIPLE-OFFER SCENARIOS

In a competitive market, buyers are looking for any strategy that could give them an edge when it comes time to make an offer on a property. Use these tips to help your clients win more multiple-offer scenarios.

OFFER A LARGER OPTION FEE.

This shows your client is serious, and a large option fee is another financial incentive to buyers.

SEE IF THE LENDER CAN CONTACT THE LISTING AGENT.

If your client would like, having the lender contact the seller's agent can offer additional assurance that the sale will close.

CONSIDER A PERSONAL LETTER.

A letter from your clients explaining why they are right for the property can offer an emotional pull if done correctly. However, some listing agents warn their sellers against reading personal letters because of the potential for fair housing-related claims.

*** REMEMBER THAT LISTING AGENTS ARE ONLY REQUIRED TO DISCLOSE IF THERE ARE MULTIPLE OFFERS WHEN THEY HAVE THE SELLER'S APPROVAL TO DO SO, PER STANDARD OF PRACTICE 1-15 OF THE CODE OF ETHICS.**

ASK ABOUT VARIABLE COMMISSION RATES.

If the listing broker discloses a dual or variable commission arrangement (or it's listed in the MLS), ask what the rates are, taking the difference into account when helping your client craft the strongest offer. The Code of Ethics requires you to inform your buyer of the rates if you know.

***NOTE:** Read more about what disclosure is required for dual or variable commission arrangements on page 13.*

PAY FOR THE EXTRAS.

If offering more isn't an option, consider paying for items such as title policies, surveys, or residential service contracts.



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