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November 2017

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THE ONES YOU
ALREADY HAVE

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53%

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INSIGHTS

Chairman

“WE WANT MEMBERS TO COME FORWARD AND HELP US AS WE GROW THIS ASSOCIATION SO IT’S MORE INCLUSIVE AND DIVERSE.”

—2017 TAR Chairman
Vicki Fullerton



Photo: Jackie Miner of Quik Pics Portrait Studios

THIS HAS BEEN A YEAR OF CHANGE FOR THE TEXAS ASSOCIATION OF REALTORS®. One change is the magazine you’re reading right now. The newly redesigned *Texas REALTOR®* reflects our overall goal to offer meaningful, valuable services for more than 100,000 TAR members.

We have also created new ways to recognize and encourage involvement. The Spirit of TREPAC Award was recently given to 10 individuals to acknowledge their excellence in advancing the goals of TREPAC at the local level. And for the first time, TAR recognized our rising stars with the Texas REALTORS® to Watch Award, given to 11 members under 40 who have demonstrated excellence in leadership, community involvement, and productivity. TAR is embracing the resurgence of the Young Professionals Network, looking for ways to foster diversity of all kinds, and working to make sure every Texas REALTOR® knows *you belong here.*

This isn’t a top-down association. We’re listening to you. For change to happen the way it did with the magazine, you need to participate,

whether that is by surveys, comments, meetings, or new members getting involved. That’s why editorial staffers spent almost a year getting your feedback to update and refresh one of your most valued member benefits.

We don’t want sheep. We don’t want members agreeing with us all the time. We want diverse opinions. We want members pitching in with a wealth of different experiences. We want members to come forward and help us as we grow this association so it’s more inclusive and diverse.

Change is going to happen, and I want us to be involved with it rather than have it happen to us. Please join us and be a participant in our efforts.

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The magazine you’re reading right now is a result of nearly a year’s worth of feedback from online surveys and in-person discussions with Texas REALTORS® like you. Although there are more than 100,000 Texas REALTORS® with unique needs and ideas, there is still common feedback we heard from nearly everyone we talked to. Here’s how the redesigned *Texas REALTOR®* addresses your top requests.

More information. We’re here to help you succeed in your real estate business, so we’re giving you nearly twice as many articles with useful tips and takeaways that will help you build your business, increase your knowledge, and position you as a relevant resource for consumers.

Shorter items. We know you’re busy, so even when you only have a few minutes to spend with the magazine, you can find plenty of short, informative articles and quickly get back to work. (And for those who like longer, in-depth articles: Don’t worry! We kept them.)

Clearer layout. Looking for something in particular? It’s easier than ever to find departments you love, like legal and ethics, with new bold headings that let you know the type of information you’ll find on the next pages.

Something to share. You told us you love sharing articles with consumers, and Share this, on page 31, is for you to rip out, make copies of, or download from texasrealestate.com/magazine and share with anyone you want.

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THREE APPOINTED TO TEXAS REAL ESTATE COMMISSION

GOVERNOR GREG ABBOTT has appointed two broker members to the Texas Real Estate Commission for terms set to expire on January 31, 2023. Jan Fite Miller of Kemp (top photo), is the executive vice president of Century 21 Judge Fite Company. DeLora Wilkinson of Cypress (middle photo), is a broker and will also serve on the board of the Houston Association of REALTORS® in 2018.



Commissioners serve as the policy-making body for TREC, with six broker members and three members of the general public making up the full commission. A public member also was appointed recently: Micheal Williams (bottom photo) of Colleyville is the president of 3i Contracting LLC and a member of the Association of General Contractors.



The new commissioners will serve six-year terms, starting with their first meeting this month.

WINNERS ANNOUNCED FOR INAUGURAL SPIRIT OF TREPAC AWARD

Ten Texas REALTORS® who've gone above and beyond for TREPAC in the past year were recognized with the Spirit of TREPAC Award during the TREPAC/Governmental Affairs Orientation & Board Officers Leadership Conference in Austin last month.

This is the first Spirit of TREPAC Award, which was created to recognize excellence at the local level in participation, articulation, or communication about TREPAC. Nominations are made by local associations, TAR field representatives, or TREPAC trustees and Political Involvement Council members.

The 2017 winners include:

- Winn Sikes, Lubbock
- Scott Allison, San Angelo
- Michelle Sherwood, Williamson County
- Susan Rodriguez, San Antonio
- Kim Howell, San Antonio
- Nick Cantu, Greater McAllen
- Chris Duff, Corpus Christi
- Mike Mengden, Houston
- Ruby Johnson, Austin
- Susan Horton, Austin



Pictured, left to right: Chris Duff (Corpus Christi), Nick Cantu (Greater McAllen), 2017 TREPAC Chairman Martha Dent, Michelle Sherwood (Williamson County), and Mike Mengden (Houston).



National Association of REALTORS® CEO Bob Goldberg visited the Texas Association of REALTORS® office in September to meet with TAR and about a dozen association executives from local REALTOR® associations in Texas.

It was Goldberg's first meeting with a state association where local boards were represented since he took over as CEO of NAR in August. "It's important to hear what our members have to say and what the people who work with our members have to say. We have to continually find ways to reach members," Goldberg said.

YOUR THOUGHTS ON PASSWORDS, EMAILS, AND DISCLOSURES

THE LATEST EXPERT OPINION

on passwords is that complexity doesn't necessarily equal security. A password such as applepoetrysalute is just as safe as P@ssw0rd! but much easier to remember.

On the *Advice for Texas REALTORS®* blog, **Soapy Sudbury** pointed out that password requirements for many websites haven't been updated to reflect this new guidance. "You have to use what they want, rather than what you can remember," Sudbury says.

The new guidance from the U.S. Department of Commerce National Institute of Standards and Technology also states that passwords only need to be updated when there is a breach. **Rick DeVoss** suggested that Multiple Listing Services update their password requirements. "I'd be willing to bet that changing my password every few months has never kept anyone from getting into the system if they wanted to," he says.

Responding to a post about emails and text messages being targets during real estate lawsuits, **Candy Cargill** says "saving my emails has saved my rear end a few times." Deleted emails can also be targets during litigation, **Michael Dougan** says. "In some cases, if the plaintiff's attorney wants to, the deleted emails and texts can be retrieved by court order," he says. "It just depends on how much time and money the plaintiff wants to spend."

When we noted that the Texas Property Code doesn't require sellers to disclose deaths on their property that resulted from natural causes, suicide, or an accident unrelated to the property's condition, **Pauly Tamez** responded that it's still best to disclose any death on a property upfront. "If you don't, the neighbors will," he says.

TAR LEADERSHIP TEAM SELECTS VOLUNTEER LEADERS

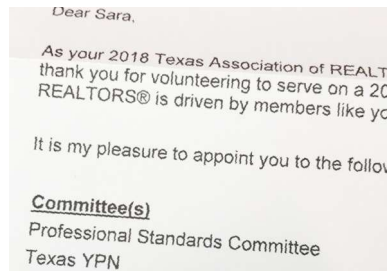


Photo: woohookai/instagram

The 2018 TAR Leadership Team—Chairman Kaki Lybbert, Chairman-elect Tray Bates, Secretary/Treasurer Cindi Bulla, Immediate Past Chairman Vicki Fullerton, and President/CEO Travis Kessler—spent an entire weekend poring over applications to choose the next year's slate of volunteer leaders. Members of TAR's 20 committees guide the association's decisions on topics such as budget and finance, housing initiatives, public policy, risk reduction, and strategic planning. Those who were selected received a letter (pictured) informing them of their committee appointments. Everyone who applied was appointed to at least one 2018 TAR committee.

MORE THAN \$3 MILLION IN HARVEY RELIEF DISTRIBUTED

The Texas REALTORS® Relief Fund has provided more than \$3.1 million in assistance to those who've been affected by Hurricane Harvey. Thanks to support from NAR's Relief Foundation, state and local associations, and individual donations, TAR staff members have been able to process more than 3,500 applications from across the state. Thank you to everyone who has contributed to the Texas REALTORS® Relief Fund and ongoing rebuilding efforts in Houston and along the Gulf Coast.

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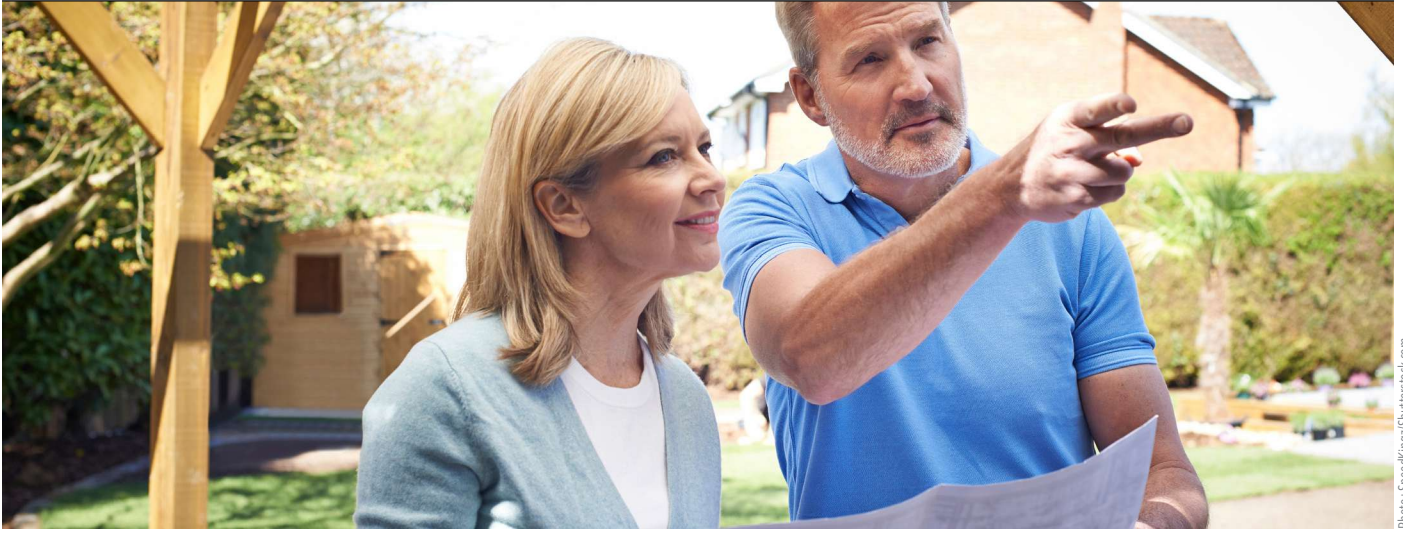


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WHAT TO EXPECT WITH APPRAISALS AFTER HARVEY

"MAKE SURE YOUR CLIENT KNOWS that the appraisal process after a disaster takes a little extra research," says Candy Cooke, an appraiser and instructor for the course Appraisal Basics. Cooke says an appraiser may have to answer different questions in areas impacted by a natural disaster. For instance, if the house didn't flood, is it worth more because of that?

"You could be in the middle of a transaction and your house may not be affected at all, but your client has to obtain recertification from the appraiser," says Cooke.

Cooke also says appraisers need to know specific details about home flooding. "One house could have four feet of water and the house next door may have only two inches. Those are two totally different things," Cooke says. "Appraisers also want to see what sellers are planning and what kind of renovations they're doing."

Cooke advises sharing with the appraiser photos of the property prior to damage, if available.

11 DOCUMENTS TO SHARE WITH AN APPRAISER

This handy checklist created by instructor Candy Cooke includes information you may want to share with appraisers.

- 1. Complete executed contract including all addenda and amendments.** The lender does not always send all documents to the appraiser.
- 2. Copy of previous survey.** The *T-47 Residential Real Property Affidavit* (TAR 1907) does not have to be included. The survey provides lots of information for the appraiser including flood hazard area and encroachments.
- 3. List of improvements provided by the homeowner.**
- 4. Information about multiple offers.** It is up to the sellers how much they want to disclose. They can give copies of all offers or just bits and pieces.
- 5. Blueprints.** If the property is unique, large, or difficult to measure, plans will help the appraiser.
- 6. A list of recent sales and listings** in the neighborhood that you have deemed similar.
- 7. Information about any off-market sales or pocket listings.**
- 8. Information about comparable properties that may have issues.** If you know of something that is wrong or not disclosed in the MLS, write it on the comp and provide to the appraiser.
- 9. Your CMA.**
- 10. Information about what other properties the buyer viewed.** This takes cooperation with the listing and buyer agents.
- 11. Information about the neighborhood.** This can be a link to neighborhood info.

Tech

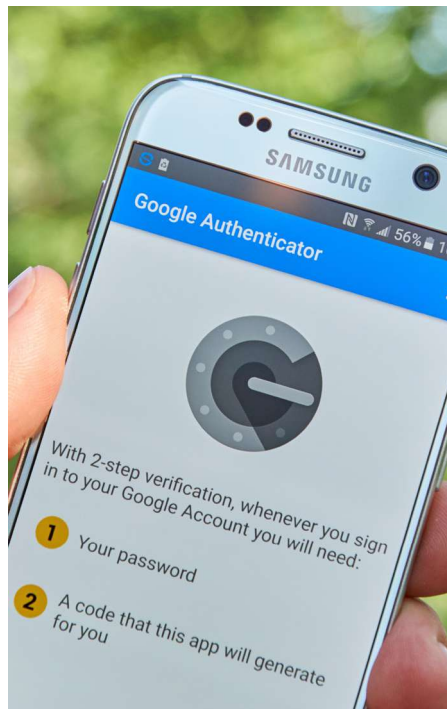
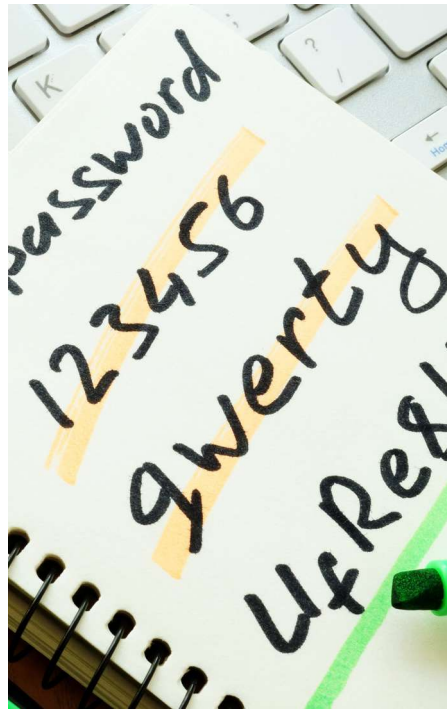
YOUR PASSWORDS MAY NOT NEED TO BE SO COMPLICATED

THE PERSON WHO 14 YEARS AGO RECOMMENDED that a secure password include uppercase and lowercase letters, numbers, and special characters now regrets providing that guidance.

The former manager of the U.S. National Institute of Standards and Technology says that complexity makes it harder for people to memorize their passwords but doesn't necessarily make passwords more secure.

What makes a strong password?

Updated guidance from the institute notes that password length is the main factor for strength, because short passwords are more susceptible to being cracked. As more websites adopt usage of the new NIST recommendations, you can start using a long string of words you can remember and forget about random capitalization, numbers, and characters. The institute also recommends updating passwords only after a breach, like when hackers hit your bank or favorite online shop.



TURN ON THIS TWO-STEP SECURITY FEATURE

KEEP YOUR ONLINE ACCOUNTS SAFE even if your password has been compromised by turning on two-factor authentication for every account or service that offers it.

Two-factor authentication adds an extra layer of protection by requiring a second code or action to be taken, in addition to your password, to log into an account. You may be familiar with the process from banking or email accounts, but the feature is becoming increasingly popular with a broader range of online services and websites.

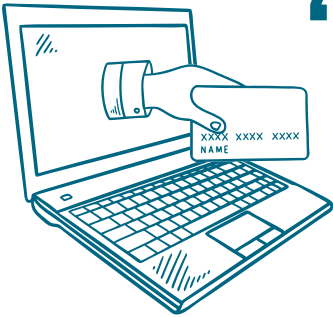
That's important because data hacks that reveal old passwords or personal information have become more common, and phishing attacks that attempt to lure you into unwittingly giving up your password often target those in the real estate industry.

Not every service that offers two-factor authentication makes it easy to find. You may have to contact support or search for the name of the service and "two-factor authentication" to learn if it's offered, but it's worth checking to make sure all your accounts are as secure as possible.

MOST BURGLARIES TAKE PLACE BETWEEN 10 A.M. AND 3 P.M., and a typical burglary lasts 10 minutes, according to security firm ADT, which recently analyzed data

on burglaries in the U.S. (adt.com/burglary-odds-across-america). Homeowners can reduce the odds of being a target by locking doors and windows, using an alarm system, leaving a light

on, not leaving a spare key outside, not posting on social media when on vacation, and getting friendly with neighbors who can act as an extra set of eyes and ears when you're not at home.



“CYBERCRIME AND WIRE FRAUD ARE THE NUMBER-ONE THREAT TO THE REAL ESTATE INDUSTRY. WE SEE THREATS EVERY DAY. ... WE HAVE TO LEARN TO USE THE PHONE AGAIN. IF SOMETHING LOOKS ODD, DON'T CLICK ON IT. CALL THE PERSON.”

–Ronnie Matthews, chairman and principal, Great American Title Company, during a recent cyber fraud webinar hosted by the TAR Legal Staff

THE KEY TO STANDING OUT ON SOCIAL MEDIA

Social media best practices can guide your online activity, but ultimately, showcasing the personal traits that win you repeat clients and referrals is the best way to earn a more valuable, engaged audience on Facebook, Twitter, and other channels.

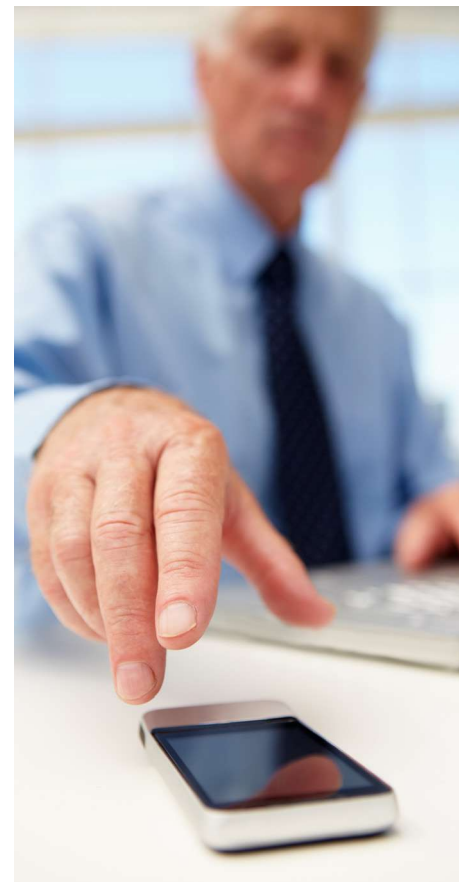
Simply put: Be social.

Here are three ways to increase your social engagement: **1.** Put your personality on display by writing posts that reflect the energy and tone you bring to in-person meetings. **2.** Post less about yourself and more about your value to clients (for example, details of your marketing successes or snippets of the type of market research you provide). **3.** Engage visitors in two-way conversations whenever you can.

YOUR SMARTPHONE MAY BE DISTRACTING YOU EVEN WHEN IT'S OFF

Maybe you silence your smartphone or turn it face down when you want to concentrate on an important task. But if the phone is in your line of sight, it's still reducing your power to focus and process information, according to a study from the University of Texas.

Researchers found that even turning your phone off won't do the trick. The study of almost 800 participants showed that people whose phones were in another room significantly outperformed those with phones in front of them and slightly outperformed people with their phones in a pocket or bag.



ARE YOU A MILITARY SERVICE MEMBER OR VETERAN, OR A SPOUSE OF ONE? You could save hundreds of dollars on the Texas Real Estate Commission's base application and examination fees for a broker, sales agent, or inspector license. TREC will waive these fees if:

- Your military service, training, or education substantially meets the requirements for a license

- You hold a current license issued by another jurisdiction whose licensing requirements are equivalent to the requirements for this license in Texas; or
- You held this license in Texas within the last five years.

Learn more at trec.texas.gov/trec-benefits-veterans.

Affordability

TEXAS HOME PRICES RISING FASTER THAN INCOMES



THE AFFORDABILITY OF TEXAS HOMES dropped for the fifth straight year in 2016, according to the Texas Housing Affordability Index (THAI) computed by the Real Estate Center at Texas A&M University.

While median home prices in Texas have risen significantly during that time span, gains in the median family income have been moderate.

The THAI is the ratio of median family income to the income required to qualify for a mortgage. A higher THAI number indicates a more-affordable area than a lower THAI number.

The THAI across Texas in 2016 was 1.66 compared

to 1.51 for the entire U.S. The most affordable Texas market was Palestine at 2.85, followed by Wichita Falls (2.78) and Paris (2.51).

Austin-Round Rock was the least affordable area at 1.54, with Dallas-Plano-Irving (1.58) and Kerrville (1.61) also at the less-affordable end of the list. Among the five largest Texas markets, Fort Worth-Arlington was the most affordable with an index of 1.99.

Though homes have been becoming less affordable in recent years, the THAI indicates that housing in the state is still more affordable than it was from 2006 to 2008.

Numbers

HOMEOWNERS SELL FOR LESS WITHOUT A REALTOR®

5.02% to 7.26%



A study by Collateral Analytics Research of millions of home sales in 11 states including Texas concluded that FSBOs sold for a lower average price per square foot than MLS sales, depending on the area and time frame.

OLDER BUYERS WANT SHORTER LOANS

15 Years

The majority of Baby Boomers prefer a 15-year mortgage, while most Millennial and Generation X homebuyers want 30-year loans, according to the online Mortgages in America Survey. Unsurprisingly, a majority of all generations surveyed said they would prefer a 10% downpayment rather than 15%, 20%, or 30% downpayments.

LOT SIZES ARE SHRINKING

14%



Median lot sizes for new single-family detached spec-built homes in the South (including Texas) have gotten smaller since 2009, according to the U.S. Census Bureau. The median of 8,648 square feet is nearly the same as the nationwide median but far smaller than the Northeast, with a median of 13,178 square feet.

HOW DO YOU COMPARE TO OTHER COMMERCIAL REAL ESTATE PROFESSIONALS?

NAR recently surveyed 1,926 members with an interest in commercial real estate. Here's what they said about their experience and business activities.



Median experience



8 transactions

Median number of commercial transactions in 2016. One quarter of members had 1 to 4 transactions, and 27% of members had at least 20 transactions



\$3,269,200

Median sales transaction volume, up from \$1,058,300 in 2011

\$543,500

Median dollar value of a single sales transaction

\$220,000

Median dollar value of a lease transaction

\$120,800

Median income from real estate activities



of NAR commercial members are male

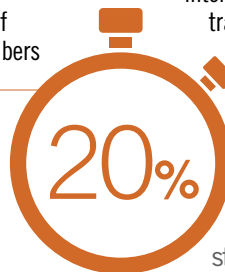
60 years old

Median age of commercial members

33%

Had at least one international commercial transaction in 2016

Work less than 40 hours per week



CCIM Most widely held designation (21% of NAR commercial members)

View the full report at nar.realtor/research-and-statistics/research-reports/commercial-member-profile.

Market data

CONDO AND TOWNHOME SALES ARE UP

THE NUMBER OF CONDOS SOLD IN TEXAS from August 2016 to July 2017 increased 8.6% over the previous year, while townhome sales went up 5.1%. TAR's 2017 *Texas Condominium Sales Report* looked at the four largest Texas metros, which accounted for more than 80% of all condo and townhome sales statewide. Here are other highlights of the report.

\$179,900 Median condo sales price

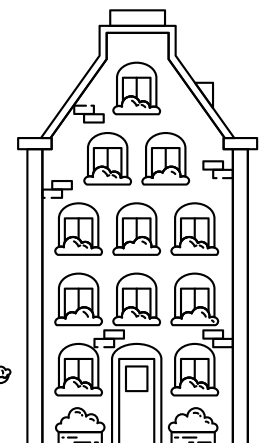
\$226,675 Median townhome sales price

AVERAGE CONDO PRICE PER SQUARE FOOT

\$251 Austin
\$181 Dallas-Fort Worth
\$138 Houston
\$138 San Antonio

AVERAGE DAYS ON MARKET FOR CONDOS

40 Dallas-Fort Worth
52 Austin
58 Houston
78 San Antonio



WHAT HOMEBUYERS REGRET

Half wish they had done at least one thing differently.

IF PEOPLE COULD REVISIT THEIR HOMEBUYING DECISIONS, 13% would opt for a larger house, 14% would do more research on mortgage lending, and 20% would save more money before buying.

These results from a survey conducted by Harris Poll for online personal-finance website NerdWallet showed that Baby Boomers had fewer regrets than Millennials and Gen Xers. The survey also reported that 41% of buyers said they were not aware of all the lending options available to them during their buying process.

Forty-two percent of survey respondents considered the homebuying process stressful, while 32% said their real estate agent made the homebuying process easy.

Another poll about regrets conducted by Trulia showed about half of people have regrets about their most recent housing decision. Among renters, 41% regretted deciding to rent rather than buying a home. One-third of renters felt more positive about owning a home than they did five years ago, while one quarter say they were more negative about homeownership.

This poll also reported 33% of homeowners who wished they had bought a larger home, while 9% believed they should have purchased a smaller property. Twelve percent of homeowners felt they should have done more remodeling when they bought their current home.

Thirteen percent of parents of children under 18 wished they had bought a house in a neighborhood with better schools compared to 1% of homeowners without children under 18.



Photo & Image - Shutterstock/Shutterstock.com

Marketing

NEXTDOR ROLLS OUT SPONSORED ZIP CODES

Nextdoor, a popular social media platform for people to share information within their neighborhoods, has been testing a new real estate section and selling sponsorships to real estate agents. The first 10 test markets include Austin, Dallas/Fort Worth, and Houston, and the company plans to expand to other markets if the demand is there.

The company says that one to four agents can sponsor each ZIP code depending on the number of Nextdoor members and demand. Other opportunities for agents include a free local page and paid branded listings.

HOW PROSPECTS MIGHT CONTACT YOU

A Google study found that 61% of mobile users will call a business when they're ready to purchase and are even more likely to call when making a high-value purchase. Plus, advertising and marketing firm BIA/Kelsey estimates that calls to businesses will exceed 169 billion per year by 2020, and a report by the firm found that these calls are 10 to 15 times more likely to generate a sale or follow-up activity than a digital form.

The takeaway? Don't overlook the importance of providing your phone number and being responsive to inbound calls.



LEGAL & ETHICS



Photo: ilkercekk/Shutterstock.com

TAR WINS CASE TO PROTECT REALTORS® FROM FRIVOLOUS PATENT CLAIMS

A PATENT OWNED BY UBER TECHNOLOGIES INC., that had been used to bring patent-infringement lawsuits against Texas real estate firms has been invalidated, thanks to legal efforts by the Texas Association of REALTORS®.

The Patent Trial and Appeal Board agreed with TAR's argument that the patent in question—a method of displaying points of interest on a digital map, such as homes for sale and restaurants—covered claims that are unpatentable.

A previous owner of the patent, POI Search Solutions, had sued two real estate firms in Texas in 2015 for infringement. POI Search Solutions was

unsuccessful in getting a monetary settlement from either firm and settled for zero dollars with one firm and withdrew its claim against the other.

"We have seen patent-assertion entities—sometimes called patent trolls—go after REALTORS® with frivolous claims of patent infringement," says TAR Vice President of Legal Affairs Lori Levy. "TAR has taken an aggressive stance against the patent-troll problem to protect our members, and this was a huge win in that battle."

Forms & Contracts

If your listing agreement with a client terminates, Paragraph 5E, Protection Period, of the **Residential Real Estate Listing Agreement – Exclusive Right to Sell (TAR 1101)** outlines under what conditions you would still receive compensation for the sale of that property.

Section 1 of the paragraph deals with the length of the protection period.

Section 2 describes the written notice required to ensure that certain buyers would trigger compensation to you if they were to purchase the property during that period.

Section 3 covers when the protection period would not apply, namely if the seller agrees to sell the property using another broker who is a Texas REALTOR® and pays that broker a fee for the sale.

Commercial transactions can be lengthy and complex. Provide a timeline for performance dates to your clients with the **Commercial Contract Critical Date List (TAR 1942)**. This TAR form lists many key deadlines for a commercial transaction, such as the seller's delivery of UCC search and the expiration of the feasibility period. Each deadline references the paragraphs in which these deadlines are written in the TAR commercial contracts.

It's all in the name: The **Seller's Disclosure Notice** is for sellers—not you—to complete and disclose information about their property. If you know that the seller's disclosure is not correct, talk to your clients. Explain that Texas law requires you, as a real estate license holder, to disclose any significant defect you are aware of about the property.

Also, if something changes after the seller's disclosure notice is completed, such as flooding from Harvey, sellers are required to disclose that new information.

LEGAL & ETHICS

I submitted my buyer-client's offer to the listing broker of a property, but the listing broker told me to work directly with the seller. Doesn't the listing broker have a legal obligation to present the offer to his client, advise him, negotiate on his behalf, and so on?



SECTION 1101.557 OF THE REAL ESTATE LICENSE ACT contains provisions that impose requirements regarding client communications and negotiations that a broker must follow when representing a party. The Act prohibits a broker from negotiating or attempting to negotiate directly with a party represented by another broker. The provisions also state that a broker ...

1. Must inform his client if he receives material information related to the transaction, including the receipt of an offer
2. Must answer his client's questions and present any offers to or from his client.

These requirements exist even

for brokers who provide limited services. A broker cannot avoid these requirements by removing himself from negotiations.

AT NO TIME MAY YOU CROSS THE BOUNDARY INTO NEGOTIATIONS WITH THAT BROKER'S REPRESENTED CLIENT.

However, there are certain circumstances in which you *may* deliver an offer directly to a seller represented by another broker without violating the Real Estate License Act. You must have the other broker's

consent to the delivery, and you must send the broker a copy of the offer.

If the other broker isn't fulfilling the minimum requirements, there's not much you can do in the short term. You have a fiduciary duty to look after your client's best interests. However, you may not interfere with the other broker's agency relationship or do anything to prevent the transaction from closing. Continue to make every effort to contact the other broker to discuss your concerns. You should also keep a record of your communications with the other broker.

If you believe the other broker violated these minimum requirements, you can file a complaint with the Texas Real Estate Commission.

Legal Hotline

800-873-9155

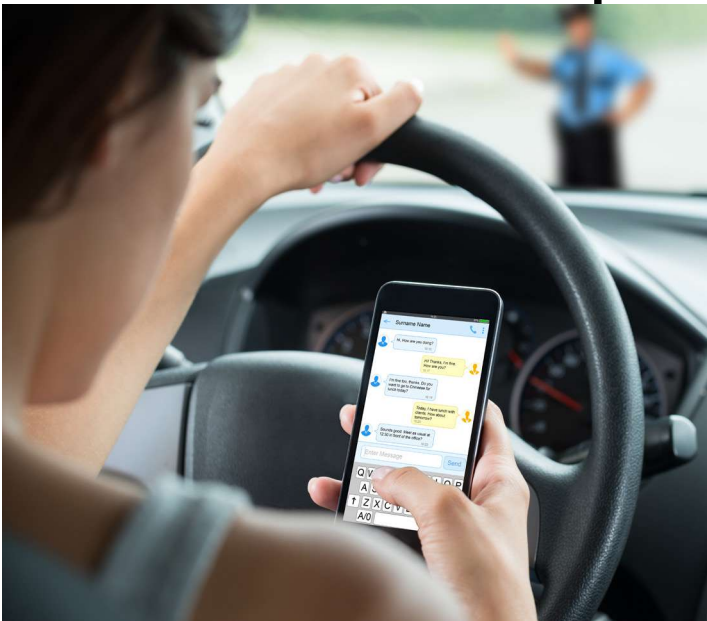
We get calls from members who are buying or selling their own property and want to know what to disclose to the other party. In this situation, both TREC rules and the NAR Code of Ethics require you to disclose in writing your status as a real estate license holder or REALTOR®. This disclosure must be done prior to the signing of any contract. If you're using the TREC contracts for the transaction, you can make this disclosure in Paragraph 4, License Holder Disclosure.

—Abby Lee, senior associate counsel



DRIVE NOW, TEXT LATER

New Texas law prohibits texting while driving



YOU ARE NO LONGER ALLOWED to use your smartphone to read, write, or send messages while driving in Texas. Violators of this law, which went into effect in September, face a misdemeanor charge and a fine of \$25 to \$99, with penalties of up to \$200 for repeat offenders.

Are there exceptions?

If your vehicle is stopped, you can text and email. And while you're driving, you can use your device for navigating, summoning emergency help, checking traffic and road conditions, and playing music.

What about talking on a phone?

The new law doesn't prohibit talking on a hand-held phone (i.e., without Bluetooth) while driving. Therefore, talking on a hand-held phone remains legal unless your local ordinances prohibit or restrict such activity.

Photos: fotogostoeber, Andrey_Popov, LifetimeStock/Shutterstock.com

Brokers

GET AN ENCYCLOPEDIA OF BROKERAGE MANAGEMENT

The National Association of REALTORS® has a comprehensive guide on running a brokerage, mitigating legal risks, and training your agents. The latest version of *Real Estate Brokerage Essentials: Navigating Legal Risks and Managing a Successful Brokerage* has new content that covers drones, medical marijuana, REALTOR® safety, and more. REALTORS® can purchase the book for a discounted price at store.realtor.org/product/book/real-estate-brokerage-essentials.

Ethics

TREC MAY NO LONGER REQUIRE THIS, BUT ARTICLE 12 DOES

The Texas Real Estate Commission no longer requires you to include the term *broker*, *agent*, or a similar designation or term in your advertisements. But before you buy new yard signs and business cards, keep in mind that Article 12 of the Code of Ethics still requires you to make your status as a real estate professional readily apparent in your advertising.

How can you do that? Keep using terms like *broker* and *agent*. Or choose a new term that better fits your business, and put that next to your name on advertisements. *Property manager*, *appraiser*, *commercial broker*, and *buyer's agent* are examples of terms that identify you as a real estate professional and should comply with Article 12.

Legal tools

DID YOU GET A DTPA DEMAND LETTER? HERE'S WHAT TO DO NOW

In 2011, the Texas Association of REALTORS® helped pass legislation to exempt most brokerage activities from the Deceptive Trade Practices Act. If you receive a DTPA demand letter, go to TAR's online form and pick from five paragraphs that make up the vast majority of claims filed against Texas REALTORS®. The online form is only for the use of TAR members and is available at texasrealestate.com/for-texas-realtors/risk-reduction-tools.

Farm & Ranch

LANDOWNERS LEASING PROPERTY FOR HUNTING MUST GET A LICENSE

by **Tiffany Dowell Lashmet**

UNDER TEXAS LAW, a landowner leasing private property for hunting in return for any type of compensation is required to obtain a hunting lease license from the Texas Parks and Wildlife Department (TPWD). This license is separate from the one a hunter must possess.

This rule has been on the books for years, and game wardens across Texas will likely be checking to determine if landowner lease licenses have been obtained. Penalties for failing to comply with this requirement can include a Class C misdemeanor conviction and up to a \$500 fine.

There are three types of licenses for landowners to choose from.

Hunting lease license

This license is for an individual landowner. Costs vary depending on the acreage. Purchase one anywhere a hunting or fishing license is sold or at txfgsales.com. Landowners who own properties that are non-contiguous must obtain separate licenses for each property. If, however, the property is contiguous, only one license is required.

Hunting cooperative lease license

If a group of landowners wants to form a hunting cooperative, they must have a written agreement, including their names and the total number of acres owned by each landowner. This document should be attached to the hunting cooperative lease license application. Costs vary depending on the acreage plus \$5 per participating

landowner. This license must be obtained at a TPWD office.

Wildlife management association area hunting license

To be eligible for this license, two or more land tracts contiguous or proximate to one another have to be designated as a wildlife management association by the TPWD. The department grants this designation after determining that the

This can be achieved in a number of ways, including:

- Giving a copy to hunters for them to carry
- Keeping a copy to produce on request
- Posting on a fence post or gate
- Leaving a copy at a bunkhouse or lodge.

So long as the license can be produced upon request of the game warden,



land is inhabited by wildlife and that observing the wildlife and collecting information will serve the purpose of wildlife management. A landowner must agree to release certain information about the wildlife to the TPWD. Fees vary depending on acreage plus \$6 per participating landowner.

What should a landowner do with a hunting lease license?

According to the law, the license must be “displayed on the hunting lease.”

this requirement is met. If posting the information in a public area, landowners may want to black out social security numbers and other personal information. For more information, go to tpwd.texas.gov/business/licenses/public/recreational or contact your local game warden.

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 agriflife.org/texasaglaw.

Q

I represented a residential tenant, and I would like a copy of the TAR *Residential Lease* the tenant signed. The landlord's agent refused to give me a copy, stating that the lease had personally identifying information he was not able to share with me. As the tenant's agent, am I entitled to receive a copy of the lease agreement?

A

The TAR *Residential Lease* does not contain personal identifying information that would prohibit the landlord's agent from providing a copy, so the landlord's agent may not use this as a justification. However, nothing requires the landlord or the landlord's agent to give you one.

You were right to ask the landlord's agent first for a copy of the lease agreement. Because he refused, you could ask the tenant directly, because the landlord is required to give the tenant a copy if the tenant requests one. (Chapter 1101.652 (b)(28) of the Real Estate License Act allows TREC to take disciplinary action against a broker or salesperson who refuses to provide a copy of a document related to a transaction to a person who signed the document.)

Note that a commercial tenant also has a right to receive a copy of a lease from the landlord's broker if the tenant signed the contract.

An agency relationship between a broker and a client can legally exist without a written document. However, there are four good reasons why a broker-client relationship should be in writing, whether it's with a buyer, seller, landlord, or tenant.

1. A broker cannot sue for a commission unless there is a written agreement signed by the party agreeing to pay that commission.
2. If office policy permits a broker to act as an intermediary (the broker has a broker-client relationship with both the seller and the buyer in the same transaction), then the broker must obtain the written consent of each party and it must state who will pay the broker. The TAR buyer's representation agreements and listing agreements include the necessary written consents and other statutory requirements for a broker to act as an intermediary.
3. Written agreements between a broker and his client help ensure that all parties have mutually agreed on the terms of representation.
4. Article 9 of the Code of Ethics requires that REALTORS®, for the protection of all parties, assure whenever possible that all agreements related to real estate transactions are in writing.



Photos: AndreyIG, fizkes/Shutterstock.com

FIND MORE LEADS

GENERATING LEADS CAN CONJURE IMAGES OF COLD CALLING AND DOOR KNOCKING, BUT THOSE AREN'T THE ONLY WAYS TO FIND NEW BUSINESS. START BRAINSTORMING YOUR OWN LEAD-GENERATION PLAYBOOK WITH THESE STRATEGIES.

by Michael Schrantz



Photo: Masson/Shutterstock.com

13 lead-generation actions to try today

- 1 Offer free advice.** Answer questions from consumers on your blog or social media accounts. Go live on Facebook to explain common homebuying or selling myths and answer questions posted in the comments.
- 2 Regularly prospect your sphere.** Check in with your professional and personal contacts on a rolling basis. Ask questions, listen, but don't sell unless they signal that they'd be receptive.
- 3 Throw a party** and tell clients to bring a friend. You could also host a housewarming party for sellers and make contacts with their friends and neighbors.
- 4 Use real estate business letter templates** from NAR at nar.realtor/library/real-estate-business-letter-templates.
- 5 Use RPR reports in lead-generation forms.** The REALTORS® Property Resource (RPR) app allows you to create and email tailored market reports from your phone.
- 6 Get a mortgage calculator for your website.** Have it created for your target market and collect contact information from users.
- 7 Earn press coverage.** Reach out to local real estate reporters and make yourself available as a source. You can also volunteer to be a regular real estate columnist.
- 8 Host an educational event.** Try holding a first-time buyer seminar or presentation with tips on home staging.
- 9 Organize a giveaway.**
- 10 Create free downloads.** Require consumers to enter their contact information in exchange for a free download with tips useful to prospects, such as buying and selling property in your market.
- 11 Expand your charity work** or take up new hobbies with social or group aspects.
- 12 Make connections with other professionals,** such as divorce or probate attorneys.
- 13 Contact rental owners** to ask if they are considering acquiring more properties.

DON'T SOLICIT OTHER BROKERS' CLIENTS

When implementing your lead-generation strategy, keep in mind that NAR's Code of Ethics prohibits you from soliciting a prospective client if she already has an exclusive representation agreement for the services offered with another REALTOR®.

For a listing agreement, this means you are generally prohibited from soliciting a listing that is currently listed exclusively with someone else. Exceptions under the Code include

- general announcements, such as mailers based on geographic area, that don't target sellers who currently have an exclusive listing agreement with another broker
- situations where the seller—rather than you—initiated a discussion about the listing, in which case you could discuss the terms upon which you might enter into a listing that starts after the seller's current listing expires.

NO MORE COLD LEADS

How agents, teams, and brokerages use inside sales agents to keep leads warm and move them toward a transaction.

Not every lead you capture will be ready to buy or list with you today, but neglect it and there's no guarantee that lead will be there later. With a focus on keeping leads warm and moving toward a transaction, inside sales agents have become increasingly popular in real estate for their ability to maximize the potential of every lead generated.

"Inside sales agents are typically staff-paid salaries—and they're in the office all day," Tim Heyl, the Austin-based leader for The Heyl Group, writes in an email. "Their role is to generate leads only."

Inside sales agents make cold calls, respond to inbound leads, follow up with leads in the system, and eventually convert leads into appointments for other agents. According to a survey from real estate consulting firm Real Trends, 46% of real estate teams use inside sales agents.

After starting The Heyl Group in 2010 and cold calling for four to 10 hours each workday, Heyl hired his first inside sales agent in 2012: a part-time agent who worked on a hourly basis. His inside sales team eventually grew into Phone Animal,

a company that provides remote inside sales support for real estate teams and mortgage lenders.

“Agents have lots of things on their plates and only get paid when deals close, so they constantly gravitate to getting current business closed instead of generating new business for later,” Heyl writes. “Inside sales agents help you maintain consistency in your growth.”

Agents or teams without the resources to hire full-time inside-sales staff can explore part-time arrangements or use technology solutions or remote services.

Technology solutions include software that makes it more efficient for you to maintain your own leads, like programs that collect leads from paid and organic sources. Many of these solutions organize leads and track conversations. Remote services and virtual assistants can perform some lead-management tasks for you: cold-calling, screening, following up with prospective campaigns, and running campaigns to nurture leads in your database. Choosing the savings and flexibility of a virtual assistant over a licensed inside sales agent will mean there are tasks and conversations you still must handle yourself.

Daniel Ramsey, CEO of MyOutDesk, a real estate-specific virtual assistant service, says the virtual assistants his company provides can free up time agents are spending on administrative tasks so they can focus on prospecting. Virtual assistants can also perform the tasks of an inside sales agent on the salesperson’s behalf, such as calling prospects about events, keeping in touch with a salesperson’s sphere of influence, handling inbound calls, or responding to emails.

Ramsey says his company caters to large- and medium-size teams and agents who are growing their business, starting to prospect, might have already hired an assistant, and are focused on increasing the number of transactions they close per year.

“We’re the easy button to leverage things off of their in-house staff and keep them focused on licensed activity,” Ramsey says.

For agents or teams who aren’t interested in or ready to build their own in-house team of inside sales agents, remote services can be a good way to invest in creating a consistent pipeline of sellers, according to Heyl.

“Of course, they can have more control when building in house, and I always encourage ultimately building in house,” Heyl writes.

“However, success is sequential, not simultaneous. You can’t do everything at once, and there are other roles and systems that agents need to get right first on the road to building a great business.” ❖

MICHAEL SCHRANTZ is social media editor for the Texas Association of REALTORS®.

AN ONLINE SEARCH WILL YIELD DOZENS OF VIRTUAL-ASSISTANT AND LEAD FOLLOW-UP SERVICES. HERE ARE FIVE THAT CATER TO REAL ESTATE

- Phone Animal: Generates leads and uses team of inside sales agents to qualify and nurture leads before delivering them to the agent.
- Follow Up Boss: Collects leads from many sources and provides an interface for tracking your communication with them.
- FiveStreet: Consolidates leads from different sources, links to your email account, and can provide email and text-message auto responses to new leads.
- TaskBullet: Provides virtual assistants that handle tasks such as marketing, administrative support, following up with clients, managing your calendar, and responding to emails.
- MyOutDesk: A real estate-specific virtual assistant service that can call leads, screen and qualify them, regularly follow up, and run automated content campaigns to keep them engaged.



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IS YOUR SELLERS' SURVEILLANCE PUTTING THEM AT RISK?

Technology makes it easy for homeowners to order toilet paper with a voice command, but there are legal considerations when listings have devices that can record audio or video.

by Wes Bearden

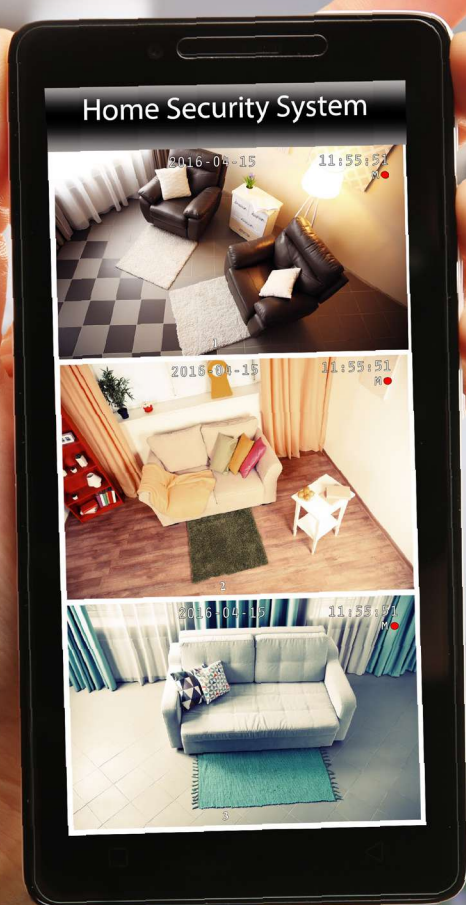


Photo & Image: Africa Studio, Italyan/Shutterstock.com

Selling a home can be frustrating to homeowners. They're asked to allow strangers into their home. They may never receive feedback and are left to wonder, "Why didn't that last buyer bite?" What do anxious sellers do? They get an extra set of ears.

Many homeowners have installed security cameras and smart-home devices. These installations can be an ultra high-tech security system or a simple baby monitor, and they all can be abused.

A number of notable cases have emerged where sellers listened to a potential buyer's showing. Sometimes it's to gain advantage in negotiations, while other times it's simply to better stage the property. So, can a seller covertly record or monitor a buyer's showing?

The rules in Texas

Both the Federal Electronic Communications Privacy Act (ECPA) and Section 16.02 of the Texas Penal Code prohibit audio recordings without the consent of at least one individual who is part of the conversation. The Texas rule, commonly referred to as the one-party rule, requires at least one party to consent to recording conversations.

What that rule allows is any individual to covertly—and legally—record his own conversations with a broker, neighbor, or other party. Whenever you speak, it's best to follow the old saying: Say what you mean and mean what you say. The other person in the conversation may be recording every word.

Why a seller cannot record audio of a showing

Texas law does not allow audio recording or audio monitoring of conversations that you are not a part of. If the seller is not present and participating in the showing, he cannot record it. Even though the conversation happens inside a seller's home, he is prohibited from recording any conversations that he is not a part of.

Buyers have an expectation of privacy that their conversations during a showing are only between the parties participating in those discussions.

But what about video?

Many homes today have security cameras installed that record video. Some have audio recording, similar to a baby monitor, and some without.

The ECPA does not prohibit video recording. In fact, silent video—like from security cameras—is generally allowed as long as it isn't in an area where an individual would have a reasonable expectation of privacy. For instance, silent bathroom video recording is not allowed. But silent video recording of the foyer, kid's playroom, exterior of a home, and a garage are likely permitted.

Is your listing breaking the law?

Most professional alarm and security camera installers are familiar with the law. Normally, they install video cameras without audio and are leery to place inside cameras in any location other than a foyer.

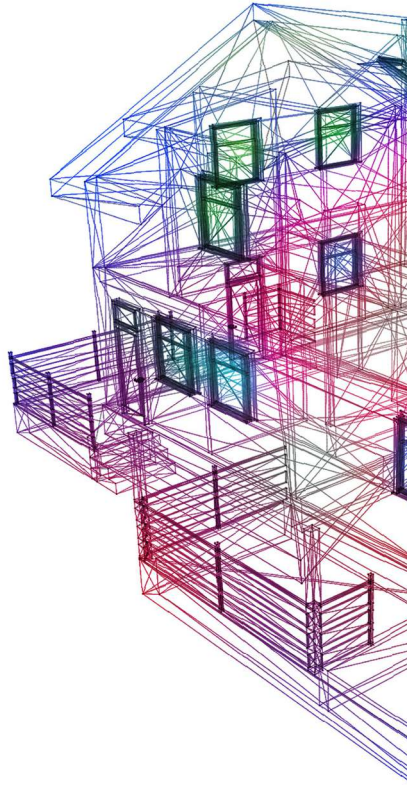
However, when your seller is a do-it-yourselfer, you may want to ask questions. Have sellers tell you what the system will record. If audio is recorded, the seller may have a problem. If it is silent video, have sellers show you where the cameras are located. Make sure they aren't video recording in a private area, such as a bathroom. Courts have traditionally upheld individual privacy rights over the property rights in a residential home. Consider limiting the use of cameras to the exterior of the residence.

Violating state and federal recording laws can involve criminal penalties. In addition, Texas, like many states, recognizes several types of common law invasion of privacy claims. At its essence, invasion of privacy protects a person against unreasonable intrusion upon his seclusion, solitude, or private affairs. Even though recording may be in the seller's house, courts have found that a visiting party can have a valid claim when the homeowner overreaches.

Illegal recording is a felony offense in Texas, and anyone who has been recorded in violation of the law can bring a civil suit to recover \$10,000 for each occurrence, actual damages in excess of \$10,000, punitive damages, attorney's fees, and court costs.

Help your sellers avoid criminal or civil liability by encouraging them to concentrate on feedback given with consent and leave the mics and hidden cameras out. ♦

WES BEARDEN is an attorney and CEO of Bearden Investigative Agency with offices in Dallas, Houston, Fort Worth, and New Orleans.



HELP YOUR BUYERS BE SMART ABOUT SURVEILLANCE

- Don't discuss confidential negotiations within a home.
- Be careful about over-enthusiasm of particular features in a residence.
- Realize that most video recordings are legal. You and your client's body language and gestures sometimes tell more than you think.
- If talking on the telephone, make sure that the owner's neighbors can't overhear your conversations. Neighbors are often nosier than the owner.
- If you are really worried that someone is playing unfair, turn on a faucet. The audio tones from running water create white noise that masks voice tones and makes it difficult for microphones to do their job.

Don't be too paranoid. Be security smart, but don't let it ruin your real purpose to be at the house.

**If a seller is not present
and participating in
the showing, he cannot
record audio ... even if
the conversation happens
inside the seller's home.**

IN THEIR OWN WORDS

WHERE WE STAND

The personal impact of Hurricane Harvey on Texas REALTORS®, their families, and friends and clients can't be distilled into a number or report. It's passed, word-by-word, through text messages sent while rain came down, phone conversations once service is restored, emails when connection is found, and tearful retellings in the weeks and months after.

Each story can alternatively add context, elicit sympathy, and impress. The retellings say something about the scope of the storm

but also how we're coping, moving on, and looking ahead. The Texas REALTORS® telling their stories here represent just two of many, but their experiences likely echo those of others, adding to a collective sense of where we stand after Hurricane Harvey.



Photo (right): Cristina Castro Clark / Pinky Promise Photography

Jeanette Winfrey (above left) and her family were rescued from three different locations trying to evacuate from Harvey.

Melody Barlow (above right) was at the hospital with her partner, who was involved in a serious biking accident, when the storm began. Both Texas REALTORS® are in the process of rebuilding their homes and businesses.

Jeanette Winfrey, of Vidor, agent with American Real Estate in Beaumont

“We had to have someone come get us in a big pickup truck to take us to my daughter's house, which never floods. They took us within two blocks of the home then they couldn't go any farther. My grandsons had to come back with a boat and pick us up.

At that time, the water was halfway up

my daughter's driveway. The next morning, water was at the porch and rising fast. We had to take a boat to where other people with trucks could take us to a place to stay.

Our pets were with us and we went to the elementary school to spend the night. At daylight the next morning, water was up to the parking lot.

Three helicopters landed in the parking lot. They had been doing other rescues and saw the water rising. The seats

in the helicopter had to be rearranged to fit everyone. We couldn't bring a change of clothes. Our granddaughter, who was just turning 2, only had a diaper bag.

We got across the river to Beaumont where there was no flooding, but the water system had failed so shelters were closed to new people. A friend picked us up and we stayed a night with them. In the meantime, my daughter's father-in-law drove 10 hours from Austin to get us. We got to Austin with nothing but the clothes on our back.

Everybody was reaching out to everybody else. You see people's true characters. People in Austin bought shoes for my grandsons. They had been out trying to save people in boats. Their shoes had been wet for a week. We didn't have a car seat for my granddaughter. Someone gave us an extra car seat.

It was hard not knowing what my house looked like. When we got back to our house, the water only got into part of it. Any other time I would've been devastated. Now, it looks minimal. The whole town is like a bomb went off. Streets and streets of destruction. Piles of what everybody owns.

It's scary to be told you have to leave everything. From the helicopter, I looked out not knowing what was going to happen. I could barely see rooftops in neighborhoods that just don't flood.

I was reaching out to clients the whole time, checking on the ones I thought might have been in areas that flooded. It felt so good that past clients checked on me.

Your first question to people is did the water get anything? One of my clients lost her house and her husband. He was ill and died after the evacuation. You just sit and hug them and cry with them. It's all you can do. There's nothing you can say that makes it better. You're trying to help them start their life over.

Some people can afford to move now, but it's going to come in droves when insurance starts coming in. They're including us in the conversation to advise them on whether to rebuild or walk away. That's a hard call. You're standing there looking at their life in a pile on the side of the road. It's put a whole new perspective on everything I do.

I've been meeting with appraisers and inspectors. How do I tell clients a value and be fair to both sides? I'm trying to figure out the best way to answer these people's questions.

We have a classification in the MLS

called 'flooded and Harvey gutted.' There's people I know of where it's not worth fixing their home. They just have to walk away. It's going to impact our market for years. Do we know if anybody is ever going to want to live in some of these places again? We'll wait and see. In my small community, very few people aren't coming back.

Thank God it's over. We're all together. We're happy. We're healthy. We get to start over. ””

Melody Barlow, of Cypress, broker associate at Realty ONE Group Lone Star in Houston

“ On August 15, my real estate and life partner, Jamie, was in a bicycling accident sustaining head trauma, a concussion, and a broken left arm in three places. Her surgery was August 25, the day it started raining. The hospital was being evacuated and we were among the last five people to leave the building that evening. We made it home safely, but by Monday morning, we could see water starting to come in on the south side of our house. I was still having to lift Jamie out of bed. We were rescued by boat Monday afternoon with our two dogs, cat, and parrot.

We went back Wednesday in a high truck and barely got through the door before smelling the old water. I built that house in 1998 and never had water come in. We were able to pull the carpet in the three rooms that had water damage and got two industrial dehumidifiers.

A flooring guy came. He only did a third of the job, put down the wrong floor, and glued a glueless product. Then he disappeared. I paid him half upfront. He won't answer his phone or texts. I'm frustrated and have been working on finding another flooring company that can remove the finished part and start over.

On the business side, all of my listings stayed dry. I try to put things in perspective. One of my classmates from the 2014 Texas REALTORS® Leadership Program lost her vehicle and house.

Another suffered a considerable amount of damage to her home. We've been living in half of our house since August 30.

We've had nightmares with medical insurance issues for Jamie, and trying

to get her physical therapy approved. I'm doing everything for our business and home. Work was already stressful and busy before her bicycling accident. The accident and hurricane compounded the stress.

It all feels really daunting at times. I'm usually the one offering to help. It's been difficult to be the one reaching out for help.

A lot of times I feel like I'm putting out the worst fire all the time. I feel like I don't close a lot of circles. I feel like I skip around a lot, and have a hard time concentrating. I try to write lists and prioritize them. Luckily, referrals are still coming in, even though it's somewhat slow. I'm trying to be responsive to them, but it's hard sometimes. My memory has been really poor, I guess from the amount of stress over the last two months. It's like I've been in "The Twilight Zone." It's shock, I guess. That's usually not me. I'm typically laser-focused 90% of the time. I'm trying to balance getting things done. But I'm stuck at the point I am until the floors are finished and the rooms can be put back together. It's kind of a mini-vacation to come to the office. I can work here and I don't have to look at all that mess.

I didn't have Internet access for around 10 days. As soon as the Internet came back and I could get into my CRM, I sent out a blast to past clients. Things have been a bit quiet. I say everyone was in Harvey shock, dealing with their own issues and helping others.

My brokerage sent out an email about available counseling resources. I typically don't allow myself to do those things as long as there are client issues in front of me. I take care of clients before I take care of myself. People have told me that I need to take some time out, but maybe I'm hard-headed.

If I could put the house back together ... if I could get that done that would be amazing ... I could deal with things better.

I'm hoping there's light at the end of the tunnel. I hope I can start 2018 with all of this behind me. ”” ❖

HOW BEST TO APPROACH CLIENTS AND CONSUMERS AFFECTED BY HARVEY

by Michael Schrantz

THERE ARE BEST PRACTICES YOU CAN FOLLOW WHEN INTERACTING WITH MEMBERS OF THE PUBLIC WHO'VE JUST GONE THROUGH A NATURAL DISASTER.

Only weeks removed from Hurricane Harvey, some Texas REALTORS® in areas affected by the storm were already back at work meeting with clients, making presentations, showing homes, and helping out in their communities. But no matter where you live, your work can put you in front of Texans deeply affected by Harvey.

If you've never received training on how to interact with people reeling from a natural disaster, this could be a daunting position to be in, but there are best practices you can keep in mind when reaching out to clients or others who've suffered because of Harvey.

Dean Sparks, the disaster mental health lead for the American Red Cross relief operation in Texas, says people who've been through disasters often feel physically unsafe and uncertain about their future. "You've got to try and figure out how to make people feel safe," he says.

One way to do that is to know what resources are available in your community, according to Jennifer First, mental health program manager for the Disaster and Community Crisis Center at the University of Missouri. That could be where to find physical shelter, mental health resources, assistance programs,

or even community support.

"When you're talking to people, think about *How can I promote safety? How can I promote comfort? How can I connect them to resources that will help them in the long term?*" First says.

"Help them feel like they've got some kind of control," Sparks says, even if it's something as simple as asking whether they'd like to drink water or iced tea. They may need guidance or help focusing, he says, but let them be the manager of their situation. "We need to empower them to make the decisions about their own life," Sparks says.

Strategies that don't work

Avoid mentioning silver linings, trying to look for a bright side, telling them to calm down, or saying it'll get better soon, according to First. Don't denigrate how they feel affected by the disaster, don't tell them how they should feel, and don't make promises you can't keep, Sparks says.

"Follow that person's lead," First says. Empathize with them—*That sounds really hard*—then check if they have people they can talk to, and if not, what kind of support or relationship would make them feel comfortable.

Create community connections

"What helps a lot of people are things like social connections," First says. "These kind of events are experienced collectively. Research shows that seeking out connections and searching out other people is one of the strongest predictors for recovery."

That support could take the form of community events like dinners or one-on-one connections.

"I'm seeing 'Houston Strong' all over the place," Sparks says. "When you've got that kind of community support, that's good. It helps in the recovery."

People tend to band together in the immediate aftermath of a disaster, First says, but it's important to continue to reach out to people once the initial period winds down and people go back to dealing with the individual effects.

Recovery is an individual process, First says. For some, participating in physical labor, feeding people, or other altruistic activities could be helpful. Inviting people you've developed a rapport with to do things can make them feel like a part of something.

Sparks says that when he assesses people for recovery he looks for whether they're eating right, sleeping adequately, getting back to their routine, and not isolating themselves.

During the first couple weeks after a disaster is when you see a lot of the reactions, according to First. "In the mental health world, we stress that those are normal given what's happened," she says. "If those reactions hang on past a few weeks and they're interfering with a person's daily life ... that's when it could potentially be a mental health problem."

But we're still early in the recovery process, Sparks says.

Trying to get back to that normal state and routine is important, First says. But sometimes people who are busy put mental health on the back burner and issues can hang on. "Then they may need additional support," she says, but a large part of the population will eventually return to their normal functioning state.

"Most people are pretty resilient," Sparks says. ❖

MICHAEL SCHRANTZ is the social media editor for the Texas Association of REALTORS®.



“Help them feel like they’ve got some kind of control, even if that’s, ‘Do you want to drink water or ice tea.’”

—Dean Sparks, disaster mental health lead for the American Red Cross relief operation in Texas

MENTAL HEALTH TRAINING AVAILABLE FOR THE PUBLIC

In addition to resources for parents who need strategies for relating to their children, the National Child Traumatic Stress Network offers training for non-mental health professionals who want to better help those who’ve experienced a natural disaster or another traumatic event:

- Psychological First Aid walks participants through how to respond to people who’ve just been through a disaster
- Skills for Psychological Recovery is centered around skills that survivors of traumatic events can use to manage stress and better cope with adversity.

More information on these trainings is at nctsn.org.

Photo: fizkes/Shutterstock.com



NAVIGATING SELLER'S DISCLOSURE AFTER HARVEY

by Charles Porter, Ph.D.,
and Gary L. Pate

In the aftermath of Harvey, many are wondering about the duties of disclosure real estate agents owe to buyers and sellers.

The Texas Real Estate License Act (Chapter 1101, Texas Occupations Code) lists a number of ways in which real estate agents' behavior could result in suspension or revocation of licensure. Among others, Sections 1101.652 (b) (1-4) are germane to agents' behavior related to the disclosure of flooding. Specifically, agents are required to disclose to a potential buyer "a significant defect, including a latent structural defect, known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property."

As to flooding of real property, there is no doubt this condition is a *significant defect* that must be disclosed to a potential buyer if *actually known* to the agent. Although the License Act only requires disclosure of what is *actually known*, it is possible a court could impose a broader standard of "ought to have known" on license holders. As a fiduciary, license holders must represent the interest of their clients and perform services with the necessary levels of integrity and competency. After Hurricane Harvey flooding in Houston and the massive publicity worldwide, it seems improbable that any real estate

agent in the southeast Texas area did not know about the event. An agent's fiduciary duty may require a license holder to investigate for their clients whether a property in the Houston area actually flooded.

Do's and don'ts for disclosure about flooding

Do ask questions about flooding events. You may need to contact FEMA or local authorities to dig deeper into the flooding event and what, if anything, governmental authorities had done to remedy future flooding. TREC rules also indicate that if an agent doesn't ask these kinds of questions, the agent could be guilty of an act of omission if the agent chooses not to make further inquiries.

Do advise clients to inquire about the flood zone. Buyer's agents should have their clients determine if the property is situated in a flood zone and to check on the availability of flood insurance. You may want to provide this information to your buyers in writing.

Don't offer legal or engineering advice. This is only appropriate if you hold licenses in those professions. Tell your client to instead seek the assistance of an attorney, civil engineer, or other appropriate professional so he or she can understand the risks involved in a property that has flooded or could flood in the future.

Do carefully consider what you disclose. In the event a homeowner whose property flooded seeks legal action against you for flood-related disclosures, attorneys will question

- What did you actually know about prior flooding of the property in question or about the property's location inside a FEMA-designated flood zone?
- What did you tell potential buyers or sellers of your actual knowledge?
- When did you tell potential buyers or sellers of your actual knowledge of the property's flooding issues?

Will there be court rulings in future lawsuits involving real estate agents in the aftermath of Hurricane Harvey's flooding that clarify the duties agents owe clients and customers? Perhaps, but there is no doubt you already must disclose your actual knowledge about flooding events to any purchaser. ❖

DR. CHARLES PORTER is an author, teacher, Texas real estate broker, and testifying water rights and real estate expert named in over 600 cases. He is a visiting professor in the College of Arts and Humanities-University Studies at St. Edward's University in Austin.

GARY L. PATE is a partner with Martin, Disiere, Jefferson & Wisdom, L.L.P. in Houston and is co-chair of the commercial and residential real estate section of the firm.

The seller's disclosure notice is not the real estate agent's disclosure but the *seller's* disclosure. While you may provide the form and answer questions about it, you should not complete the form for a seller. Stress to sellers the importance of answering the questions honestly and thoroughly. It is hard to imagine a seller harmed by over-disclosure.

Members of the Texas Association of REALTORS® have exclusive access to the *Seller's Disclosure Notice* (TAR 1406), which has options to disclose information about a property's flooding history, including whether there has been flooding and if there is present flood insurance coverage.

SHARE THIS

Help clients better understand real estate transactions by giving them this information. Download a PDF of this page at texasrealestate.com/magazine.

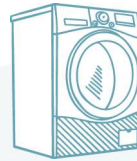
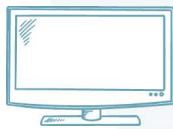
WHAT'S INCLUDED IN THE SALE OF A HOUSE?

Contracts commonly used in Texas home sales state that the house, fixtures, improvements, and accessories are part of the sale. Here are examples of what stays and goes.



GOES WITH THE SELLER

- Table lamp
- Television
- Potted plant
- Bed
- Couch
- Dining room table
- Area rug
- Lawn mower
- Hammock
- Patio grill*
- Bookcase*
- Washer and dryer*
- Paintings and decorations



*There may be exceptions

Certain items stay or go depending on whether they're permanently installed and built-in. Freestanding clothes washers and dryers go with the seller, but built-in units would likely stay. A grill on wheels on the patio leaves, but one that's encased in stone as part of outdoor kitchen stays put. Three factors determine if something is permanently installed and built-in:

- How is the item attached? Will the property be damaged by its removal?
- Is the item customized or standard for the property?
- Was the installation intended to be permanent or temporary?

STAYS WITH THE PROPERTY

- Stove
- Wall-to-wall carpeting
- Ceiling fan
- Television wall mount
- Chandelier
- Window shutters
- Smoke detectors
- Curtains/drapes and rods
- Blinds and window shades
- Garage door opener
- Shrubby and landscaping
- Window air-conditioning unit



SELLERS

If you want to exclude items from the sale—a dining room chandelier, for example—the contract includes a place for that. Have your Texas REALTOR® help you properly document your intent.

BUYERS

You can request items that aren't included in the contract stay behind. Do you want the patio furniture? Your REALTOR® will use a different form, *Non-Realty Items Addendum*, to put your request in writing.

If you're uncertain about an item, ask your REALTOR®.

TAKE 5

FIVE BENEFITS OF SAYING NO

YOU ELIMINATE AMBIGUITY.

1

Society discourages the word *no*. Avoiding it is a way to avoid conflict, but it's also a way to imply things you don't mean. For example, don't say, "Let me check my calendar and call you back," when you mean "I don't have time to meet you."

YOU SHOW YOU'RE NOT A YES-MAN.

2

Unless people know they can count on you to say no when needed, how can they believe your yes? Your clients count on you for sound professional advice, not agreement.

YOU BETTER PRIORITIZE YOUR TIME.

3

Saying yes to someone requesting your time steals that time from another task or interaction that could be producing income or enriching your life. Commit only to those things that are important to you, and say no to the rest.

YOU MAKE CLEAR YOUR DISAGREEMENT.

4

In real estate, we are required to disagree when a client is omitting certain facts. If you do not say "no" to voice your disagreement, it can be perceived as agreement.

THE CUSTOMER ISN'T ALWAYS RIGHT. And Mickey Lackey, broker/owner at Key City Realty in Abilene and instructor at KeySkills Real Estate Training, believes that being able to say no when appropriate is an important skill that not everyone has.

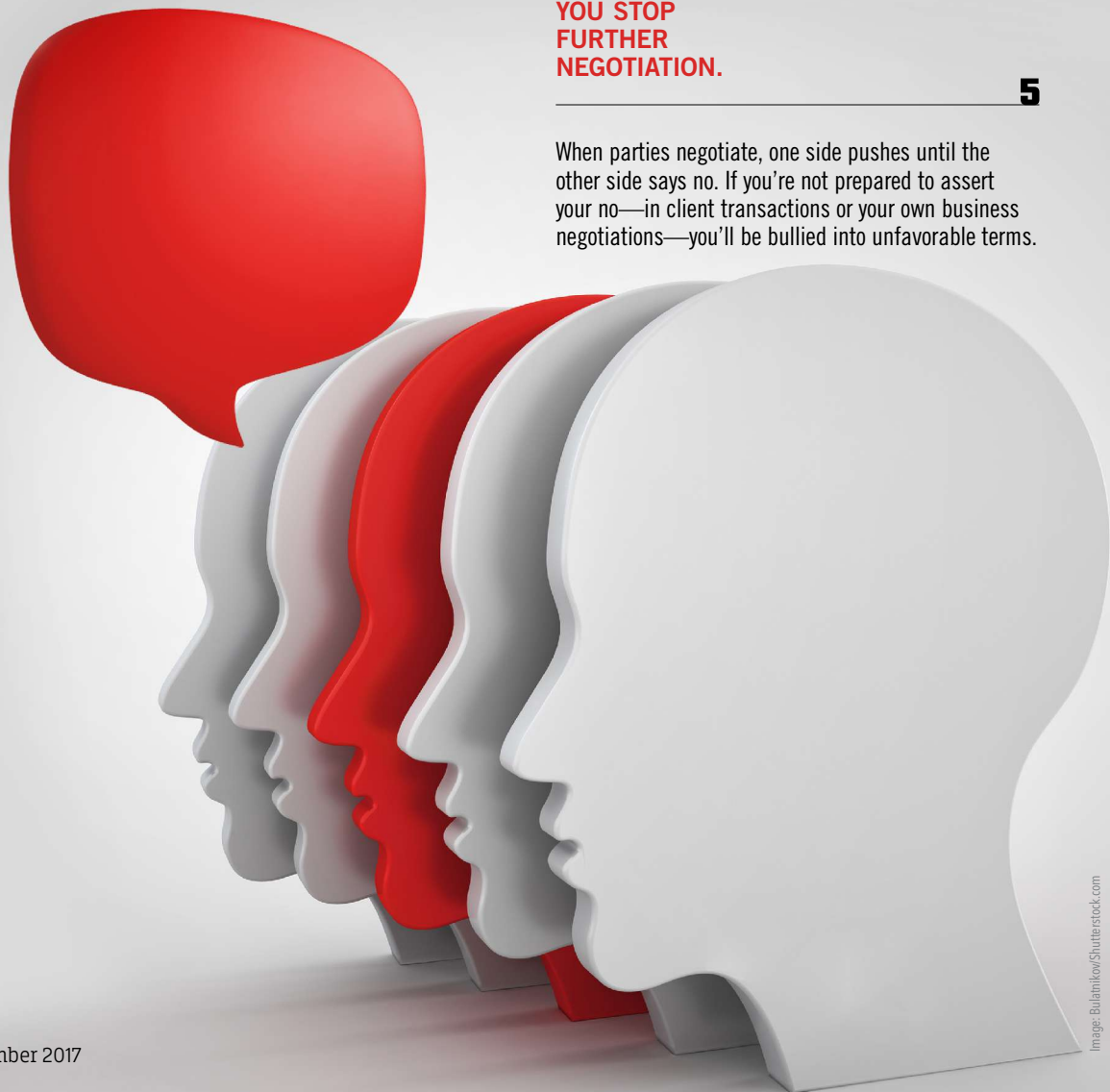
Her class Dare to Disagree shows you the positive effects of saying no and how and when to do it without alienating people. Here are her reasons that you should learn to say no when appropriate.

Contact Mickey Lackey at 325-665-5939 or mickey_lackey@hotmail.com.

YOU STOP FURTHER NEGOTIATION.

5

When parties negotiate, one side pushes until the other side says no. If you're not prepared to assert your no—in client transactions or your own business negotiations—you'll be bullied into unfavorable terms.



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