



# AI

## Is Already Here

What are you going to do about it?

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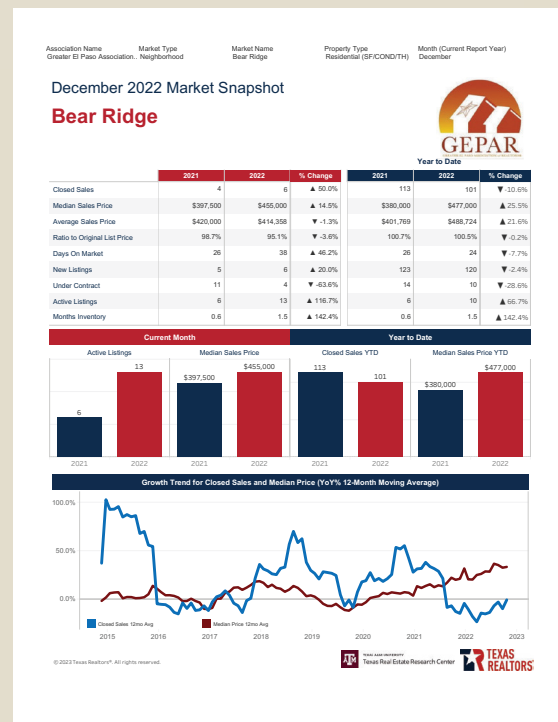
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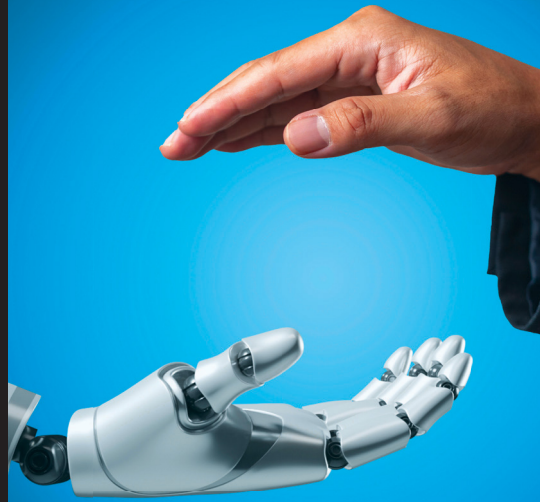
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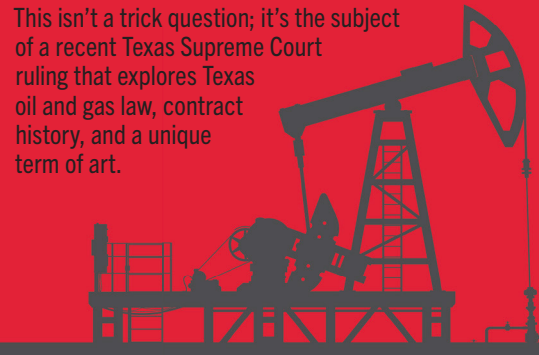
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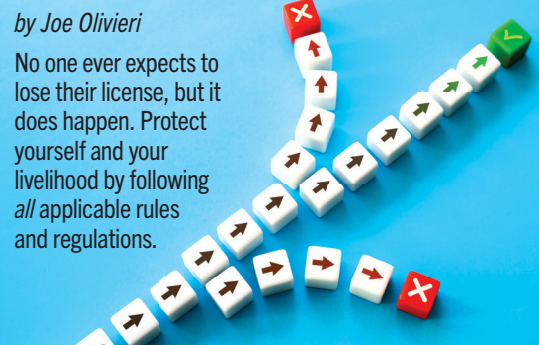
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by Joe Olivieri  
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*“If you don't sign up, you will be left out!”*

## Chairman's message

### COUNT ME IN—FOR WHAT?

You've likely seen emails and other communications recently with the headline *Count Me In!* It's the time of year when we ask you, our greatest asset, to sign up for our Texas REALTORS® committees. We need members like you from every part of the state, in all areas of expertise, with a desire to serve our association and help our members thrive. We have committees for everyone so you can be sure to find your key area.

**Policy Committees.** For our members who want to offer your expertise and voice to our legislative priorities for the 2025 legislative session, we have four policy committees where we need your expertise: Business Issues, Infrastructure, Taxation, and Land Use.

**Political Committees.** The Texas REALTORS® Issues PAC (TRIP) was formerly known as our Issues Mobilization Committee. TRIP helps local associations combat or support local governmental issues that may help or harm private property rights by providing tools and resources—including funding! The Political Involvement Committee (PIC) helps drive our grassroots engagement for elections and helps local associations elect REALTOR®-friendly candidates or win ballot measures. The TREPAC trustees assist with raising and distributing funds to state and local candidates identified by local associations as those who support property rights. The selection of members to serve on political committees starts with support from their local associations and progresses through an application and interview process. This process is very competitive!

**Specialization Committees.** If you specialize in commercial, property management, or global real estate, there is a committee for you. We also have our MLS and Technology Committee for tech-minded members to guide us into the future. The Professional Development Committee is for those who teach or are engaged in education at their local board.

**Enhancement Committees.** Our Member Benefits Committee reviews new and existing member benefits to enhance our mem-

bers' return on their dues dollars. They bring us many useful tools year after year! Our Diversity Committee focuses on how Texas REALTORS® can create a culture of inclusiveness in everything we do in the delivery of our products, programs, and services, along with providing tools and resources needed for fair-housing education and enforcement. Our Young Professionals Network Committee brings people together and strengthens professionalism among our younger members, experienced members who want to stay current, and new members starting a second career.

**Housing Opportunities Committees.** We have two committees dedicated to creating ideas and programs for housing affordability and opportunity. The Housing Initiatives Committee is the think tank for these programs, while the Texas REALTORS® Housing Opportunity Foundation raises and disperses funds to create housing opportunities in Texas.

**Expertise Committees.** These committees, which require a significant level of previous involvement, guide our association forward and safeguard our resources. The Strategic Planning Committee reviews and drafts a new strategic plan in even years. The Budget & Finance Committee oversees our finances and crafts a budget to effectively execute our strategic plan. Members of the Professional Standards Committee review ethics and arbitration complaints and conduct hearings.

As you can see, there is a committee for everyone. We truly hope you will offer your expertise to Texas REALTORS®. The deadline to volunteer is June 30. We do our best to place everyone who applies on a committee. The one thing that we can promise you is that if you don't sign up, you will be left out! Go to [texasrealestate.com/countmein](https://texasrealestate.com/countmein) today to volunteer.

**Marcus Phipps**

## TEXAS TO THE WORLD: INVEST HERE!

The SelectUSA Investment Summit is considered the year's most important opportunity for attracting foreign direct investment. State delegates fielded a Texas-sized level of interest during the three-day event.

Paula McDonald, Th.D, Vice Chairman of the Texas REALTORS® Commercial Committee, joined Team Texas in National Harbor, Maryland, for the May summit. “We were just bombarded with so many people who wanted to bring business to Texas,” she says. “We had more people at our booth than anyone.”

McDonald, the 2020 Granbury Association of REALTORS® president, spoke with investors from a variety of industries, including technology, robotics, microchips, import/export, and manufacturing. “It was almost like speed dating for economic development,” she jokes.

Location feasibility was a top concern: Where in Texas could they find the resources they needed? “They asked about schools and housing,” McDonald says. “Some needed ports. Others needed warehouses. Their needs were very diverse.”

Investors left their contact information with Team Texas representatives, who will connect them with economic developers around the state.

McDonald left the summit optimistic about the state's prospects. “We have so many people who want to bring viable businesses and billions of dollars to Texas,” she says. “In my mind, the sky is not falling economically. We are a desirable place for them to bring their businesses. Very exciting things are happening here.”



Paula McDonald, Vice Chairman of the Texas REALTORS® Commercial Committee, and Adam Palmer, NAR Manager of Economic Development and Commercial Outreach, attend the SelectUSA Investment Summit in National Harbor, Maryland.

The Texas booth was a popular destination for foreign investors, says McDonald.

Photos courtesy of Paula McDonald



## TEXAS REALTORS® AND AREA CELEBRATE ASIAN AMERICANS IN REAL ESTATE

On May 9, more than 500 Asian American and Pacific Islander (AAPI) members attended the 2023 Texas Asian Day at the Capitol in Austin, co-hosted by the Asian Real Estate Association of America (AREAA) and the AREAA Houston chapter. The group's trip to Austin included a meeting at the Texas REALTORS® building with Governmental Affairs staff to discuss legislation affecting the AAPI community.



## TWO TEXAS REALTORS® TO ASSUME LEADERSHIP POSITIONS AT NAR IN 2024



**MARVIN JOLLY** of Plano will serve as Region 10 Vice President, which includes Texas and Louisiana. In this role, Jolly, who was 2021 Texas REALTORS® Chairman, will serve on the Executive Board, act as an NAR spokesperson, attend conferences in the region, and chair the regional caucuses held at NAR's two annual meetings.



**BROOKE HUNT** of Flower Mound will be NAR's Member Engagement Liaison, a role that was created in 2023. Hunt, who was 2009 Texas REALTORS® Chairman, will serve as a conduit for communication between the Leadership Team and the leadership, strategic planning, and communities of interest committees. She will also help those committees operate effectively and help identify future committee leaders.

## PUT THE MATTRESS MONEY TO REST

Why documenting assets is essential in the real estate transaction.

If your buyer clients are planning to finance the purchase of their home, they must document the assets they bring to the transaction.

This is to prove to the lender that they have the money to pay closing costs on the day the loan funds and cover their financial obligations, says Matt Kiker, Vice President of the Texas Mortgage Bankers Association.

It's not enough for your buyer clients to have the money; the money needs to be deposited in a financial institution or otherwise traceable.

"The main reason is that, if the money comes out of thin air, we don't know where it came from," he says, adding the money could have been obtained through illegal means.

Two common examples of this are so-called mattress money and gifts.

Mattress money refers to funds without any kind of documentation—as if it were cash that was stored in a mattress, Kiker explains. Mattress money cannot be used for a downpayment or to pay other expenses associated with the transaction. There is an allowance for some FHA programs that will allow for "cash on hand" to be deposited into a financial institution before closing; however, the borrower would need to meet the requirements of a cash-on-hand borrower.

Any financial gifts your buyer client receives must be documented as part of the buyer's assets. This is typically done through a gift letter from the donor, and in most cases, proof of the donor's funding source, he says.

Mortgage professionals only need to see enough of your clients' finances to prove they can afford what they're trying to buy and have any cash reserves that may be required for the loan program. Side businesses with separate taxable income need not factor into the real estate transaction, although side businesses with a loss may need to be factored in on government-insured loans.

Much of the financial review process can be done electronically these days, Kiker says.

"We can see how much they have in the bank and look at the other documentation," he says. "If we see something about the deposits that isn't consistent, we would need to get that documented. If an unusual deposit shows up and we don't know why, we ask."

In 2020, 31% of Texas households had one or more members working from home at least once a week. That year, 92% of Texas households had at least one member at home for one weekday per week.

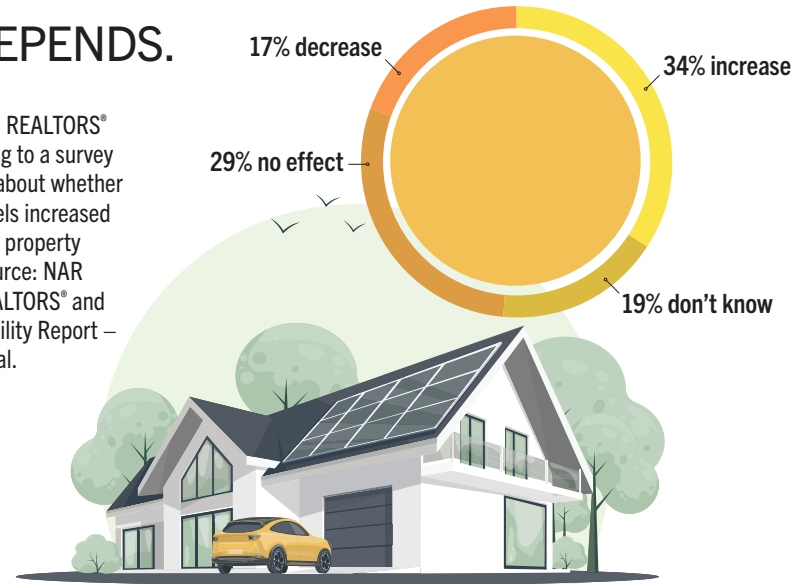
Circumstances—and buyer preferences—evolve, but your clients may still be curious about pandemic-era amenities that were priorities, such as home offices, backyard gathering areas, and flexible living spaces. Spend time getting to know your clients' must-haves and nice-to-haves to help them find the home of their dreams.

Source: U.S. Energy Information Administration, 2020 RECS Survey Data

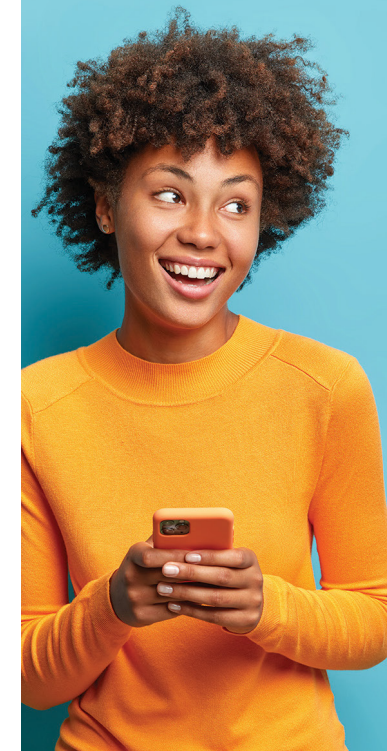
## DO SOLAR PANELS INCREASE THE PERCEIVED VALUE OF A PROPERTY?

IT DEPENDS.

Data from REALTORS® responding to a survey question about whether solar panels increased perceived property value. Source: NAR 2023 REALTORS® and Sustainability Report – Residential.



## ONE BUTTON SAVES YOU HOURS



If you enjoy tweaking photos and marketing designs, you're familiar with this drill: increase contrast, boost saturation, pull headline down, change font, change font again, change font a third time, revert to first font, decrease contrast. Even if it's fun, are the results worth your time?

Many apps offer a one-touch way to improve images and design. The results can rival your manual efforts. Here are a few to try:

**Phone photos** – Most phones include a one-touch option to enhance photos. For iPhones, go to the photo editing screen and select the icon with the magic wand. Android models vary by manufacturer, and most also have the ability to improve a picture with a single tap.

**Canva** – The Magic Design feature (in beta testing at press time) is available at [canva.com/magic-design](https://www.canva.com/magic-design). Select one or more images, then choose the type of output you desire—a specific social media platform, invitation, flier, etc. Canva creates layouts with text and other elements that you can use as is or continue to modify.

**Instagram** – In addition to the suite of available filters, Instagram has a magic wand called Lux that you'll find at the top of Edit screen. Lux mainly adjusts exposure and contrast, which you can combine with a filter effect.

Many other apps include similar shortcuts—even advanced software like Adobe Photoshop and Adobe Lightroom. If you're unsure if the tech tool you use has quick-fix options, an internet search will reveal any that are available.

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# LEGAL & ETHICS



## DON'T FORGET ERRORS & OMISSIONS COVERAGE FOR PROPERTY MANAGEMENT

Property management companies know they need general liability insurance to cover common scenarios like personal injuries and property damage. But they should also carry errors and omissions insurance for the paid services they provide, says Mark Turner, Vice President of Sales and Marketing for CRES, a Gallagher Company. CRES is a Texas REALTORS® risk management partner.

E&O for property management is different from the coverage brokerages carry for real estate sales, Turner explains. It is intended to address specific situations, such as fair-housing discrimination, habitability, and property mismanagement.

Some common E&O claims against property management companies allege discrimination or failure to maintain the premises. Claims related to assistance animals are another major category.

Some jurisdictions are enacting additional tenant protections for tenants with criminal histories or those using housing-choice vouchers. Property managers and leasing agents need to know the laws and ordinances. "There

are law firms out there fishing for these issues," he notes. "They'll call, email, or reach out to basically test you to see if you are complying with the law." If not, you can expect a letter or even a lawsuit.

Don't assume your broker's E&O coverage protects you if you manage your own properties. Typically, brokerages won't allow their agents to perform property management on their own properties. If named in an agent's claim, a brokerage may defend itself by saying it did not authorize the independent contractor's activities on properties owned and managed by the agent.

If you decide to manage your own properties, make sure you are appropriately insured. Many agents buy and own properties as investments. Only a few companies offer policies for them.

"Property management is seeing an increased number of claims," Turner says. "Rents are going up, and tenants have higher expectations as to maintenance and service than they may have had in the past and more laws and ordinances are being enacted to protect tenants."

Photos & Images © Drazan, © pristonleh - stock.adobe.com



## LEGAL & ETHICS

### YOUR RESPONSIBILITY IS SHOWING

You aren't just annoying sellers when you do not follow their instructions for showing their property. You may be violating the NAR Code of Ethics.

Standard of Practice 1-16 says REALTORS® "shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller."

Common complaints include agents leaving doors unlocked, accessing the property without an appointment, and allowing buyers unaccompanied access to the property.

Don't let convenience or the end goal of selling the property distract you from your obligations to sellers. Following sellers' instructions leads to greater trust and satisfaction with your services—and may keep you from having to deal with an ethics complaint.

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# Business Unusual

**REALTORS® share creative strategies they bring to their work.**



**How can you stand out from the other talented and hard-working agents in your market? These agents and brokers decided to do things a little differently.**

*Texas REALTOR®* magazine asked: “How do you use creativity/innovation in your real estate business?” Members wrote in to describe how they put their own spin on the real estate business.

Each was unafraid to challenge the way things are usually done. Their risks paid off with happier clients and more professional success. As you read their stories, ask yourself: “Where could I innovate in my own business?”

## Unique Marketing A UNICORN IN THE MARKET

In Bridge City, Brandi Leatherwood is known as a unicorn, not because she is so unique—although she is—but because the B&L Realty Group Team Leader wears an inflatable unicorn costume to closings.

“It started as a surprise for one client, then others started asking me to wear it, and it just became my brand,” she says. “Everyone thought it was funny and made closing day so much fun. Title companies love when I wear the suits; it breaks up the monotony of their days.”

Some agents consider her unprofessional for being different, Leatherwood says. “But it’s made me successful in my career, so I wouldn’t change a thing. Do what makes you happy and be who you are! There are enough people out there who will love you even if others don’t.”

## FINDING A PERFECT MATCH

Kyle Davis emphasizes his wedding industry experience in his marketing. The Carrollton-based agent with Crawford and Company, REALTORS®, pitches himself as the agent for newlyweds, and he participates in bridal expos.

“This approach has allowed me to stand out in an industry full of seasoned veterans,” he says. “Any time I introduce myself to a wedding-related business, the feedback has been great.” The people he meets don’t assume he could use his previous job experience until they hear about his branding and business model.

While Davis specializes in newlyweds, he makes sure to tell everyone he welcomes all potential clients who want to buy and sell homes.

“Don’t be afraid to be different,” Davis advises. “When folks are getting married, the odds are good that someone is either buying or selling a home. I want to be who they think of first.”

## Innovative Processes PROGRAMMED TO SUCCEED

Why risk missing important dates in the real estate transaction when the computer can track them for you? Over the past two years, Brad Crumpecker developed an Excel workbook that tracks the dates and performance deadlines of the six main TREC contracts and related addenda.

“I have built algorithms that emulate the language of the contracts,” says the Robinson Clay Team Lead for Keller Williams Dallas Midtown. “It creates a timeline for all the critical dates.”

Crumpecker generates reports he sends to clients after key deadlines or important changes.

“It keeps us on track to be sure nothing is slipping through the cracks,” Crumpecker adds. “If the agent on the other side misses something, we know it right away. Our clients appreciate seeing the contract progress and how things can change with each milestone. I have demonstrated it to other agents and brokers. No one has seen anything like it.”

## LOW INVENTORY? NO PROBLEM

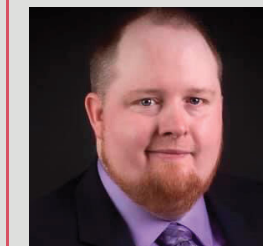
Back when interest rates were low and inventory was even lower, Cindy de la Garza came up with a successful strategy for her buyer clients by focusing on properties that had been on the market for at least two weeks. She could tell many of



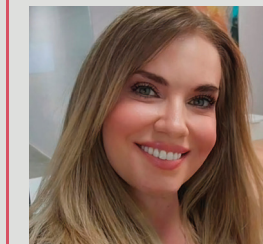
Georgette Bisteni Adam



Brad Crumpecker



Kyle Davis



Cindy de la Garza



Brandi Leatherwood



Bill Penak

these properties were overpriced.

“I was then able to negotiate a fair sale price for my client, who did not get caught up in a multiple-offer situation and therefore did not overpay for the property,” says the Broker/Owner of DLG Realty Advisors in Dallas. “My clients were thrilled with my creative approach.”

De la Garza says it was challenging to negotiate with sellers who weren’t ready to drop their prices.

“After negotiating back and forth, it is always nice to have a meeting of the minds and eventually get the property under contract for your client, and most importantly, at a fair price,” she says. “Always adapt to the current market by thinking outside the box.”

## Memorable Customer Service ALWAYS BE SHOWING

When Bill and Gay Penak founded Penak Group Realty in Kerrville roughly two years ago, they promised to be present at every property showing. “The clients love the idea and feel more secure at having their property listed for sale,” Bill Penak says.

They got plenty of pushback from other agents who wanted to see properties on their terms, as well as their own agents, who thought there wasn’t enough time for that kind of commitment. Penak understands these concerns, but his firm is rarely unable to accommodate a request. “It may not work for everyone, but it certainly has worked for us,” he says.

Penak says being there in person lets him highlight home features and quickly answer questions. He also finds this to be an opportunity to network with local agents. “Our sales results speak for themselves, and the number of referrals we receive from our clients speaks volumes about our different way of doing business,” he adds.

## SUCCESS BY DESIGN

Georgette Bisteni Adam likes to bring her own flair to the process of buying and selling real estate. While she often applies what she learned from earning her master’s degree in business and marketing, she also relies on her creativity to design closing presents for clients.

The San Antonio-based agent with Central Metro Realty once gave her buyer clients a stone with an image of their new home engraved on it. She drew the picture and sent it to an engraver. “They loved it,” Bisteni Adam says. “It is something they will keep forever.” The engraving matched the clients’ farm style decor. It was a time-consuming project, but well worth the effort, she says.

“We all have talents. We just need to use them to better serve our clients and customers,” she says. “It makes our lives more meaningful and joyful to combine all of our gifts from the real estate professional and the artist we all have inside.” ★



# WHEN 1/2 OF 1/8 DOES NOT EQUAL 1/16

by Tiffany Dowell Lashmet

THE TEXAS SUPREME COURT RECENTLY ISSUED A RULING IN *VAN DYKE V. THE NAVIGATOR GROUP*, AN INTERESTING CASE INVOLVING THE USE OF DOUBLE FRACTIONS IN HISTORIC OIL AND GAS DOCUMENTS. AS THE COURT NOTED TO OPEN ITS OPINION, “ONLY IN A LEGAL CONTEXT COULD THE FORMULA ‘ONE-HALF OF ONE-EIGHTH’ MEAN ANYTHING OTHER THAN ONE-SIXTEENTH.”

In 1924, the Mulkeys conveyed their ranch and the underlying minerals to White & Tom with the following reservation: *It is understood and agreed that one-half of one-eighth of all minerals and mineral rights in said land are reserved in grantors ... and are not conveyed herein.*

After the deed was executed, the parties engaged in a number of transactions and filings indicating that both the buyers and sellers had an equal one-half interest in the mineral estate. For the next 90 years, parties on both sides (including new owners who received the various interests over time) understood that each original side owned one-half of the mineral estate.

This mutual understanding ceased when, in 2013, the White parties (owners whose interest derived from the White & Tom interest) filed suit against the Mulkey parties (owners whose interest derived from the Mulkey reservation) with a trespass-to-try-title action. The White parties raised the mineral ownership question when Endeavor Energy began paying royalties to both parties in equal shares. The result of this ownership dispute is at least \$44 million in accumulated disputed royalties.

The parties’ dispute revolves around the meaning of the “one-half of one-eighth” interest in the Mulkey’s reservation. The White parties argued the double fraction is simply a mathematical formula, meaning that it was only a one-sixteenth interest reserved by the Mulkeys. The Mulkey parties contend that the double fraction was actually a term of art at the time to refer to reserving one-half of the mineral interest. Further, they argued that even if the deed had only reserved a one-sixteenth interest, they gained title to the remaining seven-sixteenths interest (equating to one-half) interest by operation of the presumed-grant doctrine.

**The result of this ownership dispute is at least \$44 million in accumulated disputed royalties.**

The trial court sided with the White parties, holding that the reservation “unambiguously reserved only a 1/16 interest in the mineral estate.” The court rejected the other arguments raised by the Mulkey parties. The Eastland Court of Appeals affirmed, holding the estate-misconception theory did not apply because there were no conflicting provisions in the deed and that the presumed-grant doctrine was inapplicable because there was not a “gap” in the chain of title. The Mulkey parties appealed.

#### Supreme Court Opinion

The Texas Supreme Court reversed the opinion of the lower courts for the following reasons:

**Construction of 1924 Deed** - First, the court turned to the construction of the 1924 deed. The court noted to those not steeped in Texas oil and gas law that this fact pattern may seem odd, but the framework for analyzing the text of this

**Unless otherwise defined, the court adopts a term’s ordinary meaning at the time when it was drafted.**

conveyance is the same as any other. Unless otherwise defined, the court adopts a term’s ordinary meaning at the time when it was drafted. The meaning of an unamended text is not affected by the passage of time or linguistic developments. The court offered examples of this in other contexts, noting that in early Texas law, a contract for a thousand rabbits was understood to mean 1,200 rabbits, and that the reference to a day could mean 10 hours in certain contexts. Thus, the court’s analysis turned not “on what we might think ‘one-half of one-eighth’ would mean if written today,” but what the parties meant in 1924.

The court noted it is a “now-familiar observation” that in 1924, the term one-eighth was “widely used as a term of art to refer to the total mineral estate.” This is true only for the fraction one-eighth and not for any other fractional terms. Historical features indicate that one-eighth was widely used as a term of art so much so that courts have taken judicial notice of this “widespread phenomenon.” This became known as the “estate misconception theory.” Legal scholars have noted that the very use of one-eighth in a double fraction should “be considered patent evidence that the parties were functioning under the estate misconception.”

Others have noted there would be little use for a double fraction to express a fixed interest absent a misunderstanding about the grantor’s use of the one-eighth as a proxy for the customary royalty. The court also noted that parties likely believed the mineral owner’s royalty interest would always be one-eighth, which resulted in that number being used as a placeholder for future royalties generally, without anyone understanding it as being tied to a mathematical value.

In light of this, the court noted it was not aware of any double fractions that were aimed at simple multiplication rather than referencing the mineral interest as a whole. It reaffirmed its approach from a prior case, *Hysaw v. Dawkins*, which created a rebuttable presumption to approach these types of double fractions. “Antiquated instruments that use 1/8 within a double fraction raise a presumption that 1/8 was used as a term of art to refer to the mineral estate.” The presumption can be rebutted if evidence shows that the text itself illustrates that the double fraction was used as nothing more than a double fraction.

Based on this, the court disagreed with the approach by the Eastland Court of Appeals. The very use of double fractions including one-eighth is, in itself, the primary reason to presume purposefulness. There appear to be no inconsistent provisions elsewhere in the deed that could indicate the parties meant anything other than one-half of the mineral estate, meaning there was no evidence to rebut the estate misconception theory presumption. Thus, the court held that, as a matter of law, the 1924 deed did not use one-eighth in its arithmetical sense but instead reserved to the Mulkey owners a one-half interest in the mineral estate.

**Presumed-Grant Doctrine** - Turning to the Mulkey parties’ second argument, even were the court to have held the

## The very use of double fractions including one-eighth is, in itself, the primary reason to presume purposefulness.

reservation was only for one-sixteenth, they would still have ownership of one-half of the mineral estate pursuant to the presumed-grant doctrine. Essentially, they argued that even if the deed only reserved them one-sixteenth, they acquired the remaining seven-sixteenths over time under the presumed-grant doctrine. The court agreed.

The presumed-grant doctrine has been described as a common law form of adverse possession.

To prove this doctrine, the plaintiff must show three elements: (1) long-asserted and open claim, adverse to that of the apparent owner; (2) nonclaim by the apparent owner; and (3) acquiescence by the apparent owner in the adverse claim. There is no requirement, as the Eastland Court of Appeals imposed, that there be a gap in the title.

The court stated that the parties' history of repeatedly acting in reliance on each having a one-half mineral interest satisfies the presumed-grant doctrine's requirements. The 90-year history includes conveyances, leases, ratifications, division orders, contracts, probate inventories, and a number of other recorded instruments that provided notice. During this entire timeframe, the White parties never said anything to the contrary. For example, in 1926, the White parties acknowledged owning only one-half the minerals, with the other half belonging to the Mulkeys, in a purchase and escrow agreement. The court also noted a document related to a different property whereby the Mulkeys conveyed a one-sixteenth interest in the

minerals to a third party. This, the court explained, makes clear the Mulkeys could and did refer to the one-sixteenth royalty directly when meaning a one-sixteenth interest, rather than by double fractions as was done in the 1924 reservation. The court discussed additional transactions during the 90-year timeframe, and held that the 2013 lawsuit filing cannot negate nearly a century of overwhelming evidence that the White

## There can be situations where the plain language of a document may not be so plain after all.

parties never previously sought to make that claim. "In fact, all of the transactions suggest that the White parties understood and intended the Mulkey parties to have a 1/2 interest."

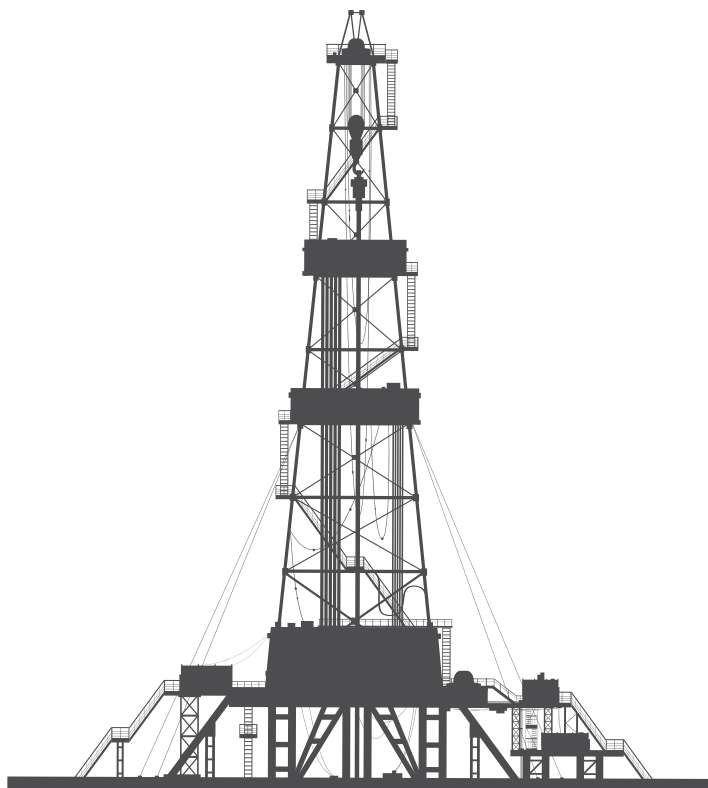
Thus, if the presumed-grant doctrine were necessary, the court would have found the Mulkey parties satisfied it.

In light of this, the court concluded that "an accurate construction of the 1924 text requires us to accept that the equation 'one-half of one-eighth' equals one-half of the mineral estate." Further, if it were needed, the presumed-grant doctrine would remove any remaining doubts. The case was reversed and remanded.

### Texas Oil and Gas Law is Complicated

This case is obviously important to interpret any historic oil and gas deed utilizing a double fraction. However, beyond that, it illustrates an important point for landowners, mineral owners, and real estate professionals to keep in mind: Texas oil and gas law is complicated. There can be situations where the plain language of a document may not be so plain after all. It is always advisable to consider seeking advice from a Texas oil and gas lawyer when entering into any transaction related to a mineral estate, whether that might be a deed, a reservation, or an oil or gas lease. ★

**TIFFANY DOWELL LASHMET** is associate 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 [agrilife.org/texasaglaw](http://agrilife.org/texasaglaw). Lashmet is the author of *Owning Your Piece of Texas: Key Laws Texas Landowners Need to Know*.




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- Recapping the 88th Texas Legislature
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- And More!



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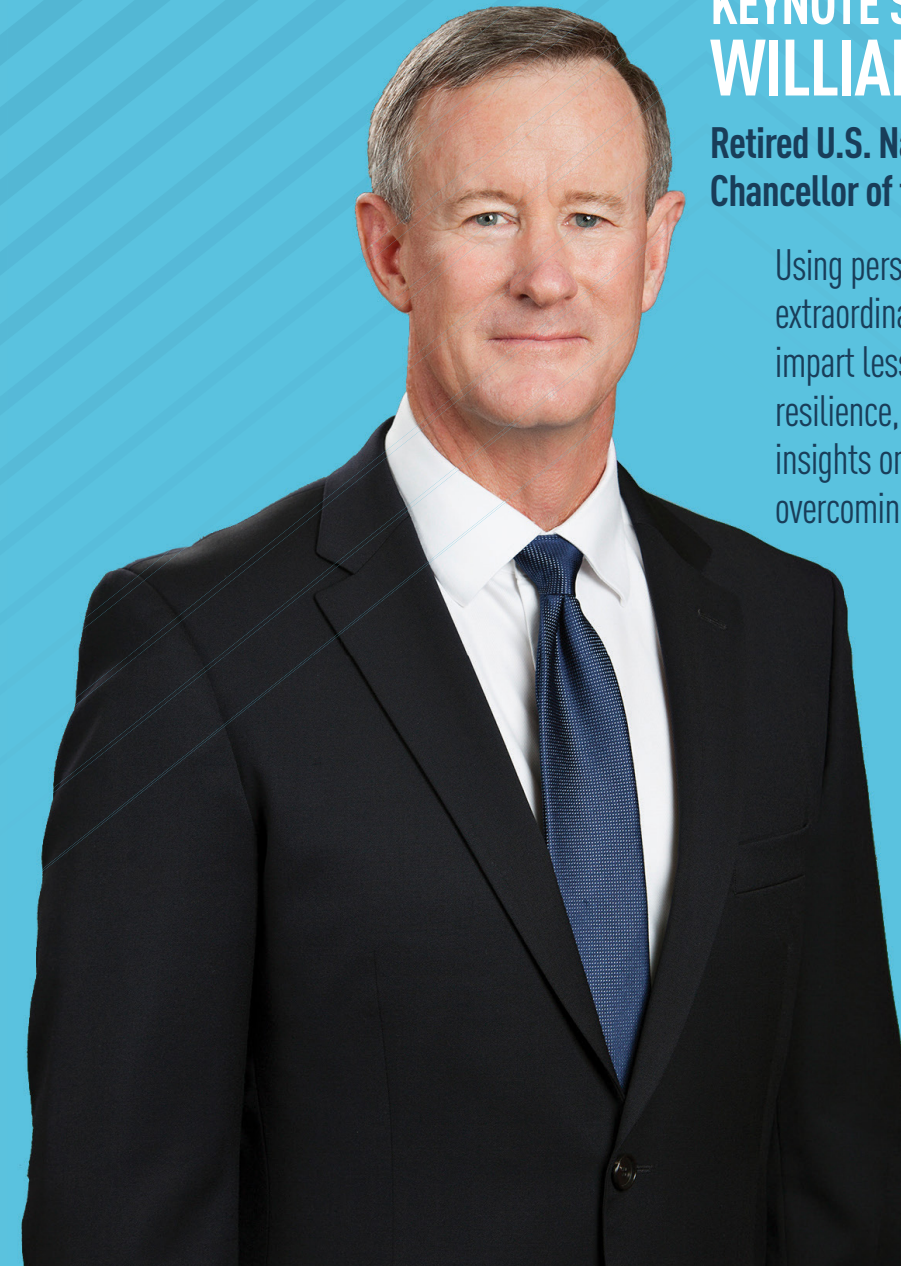
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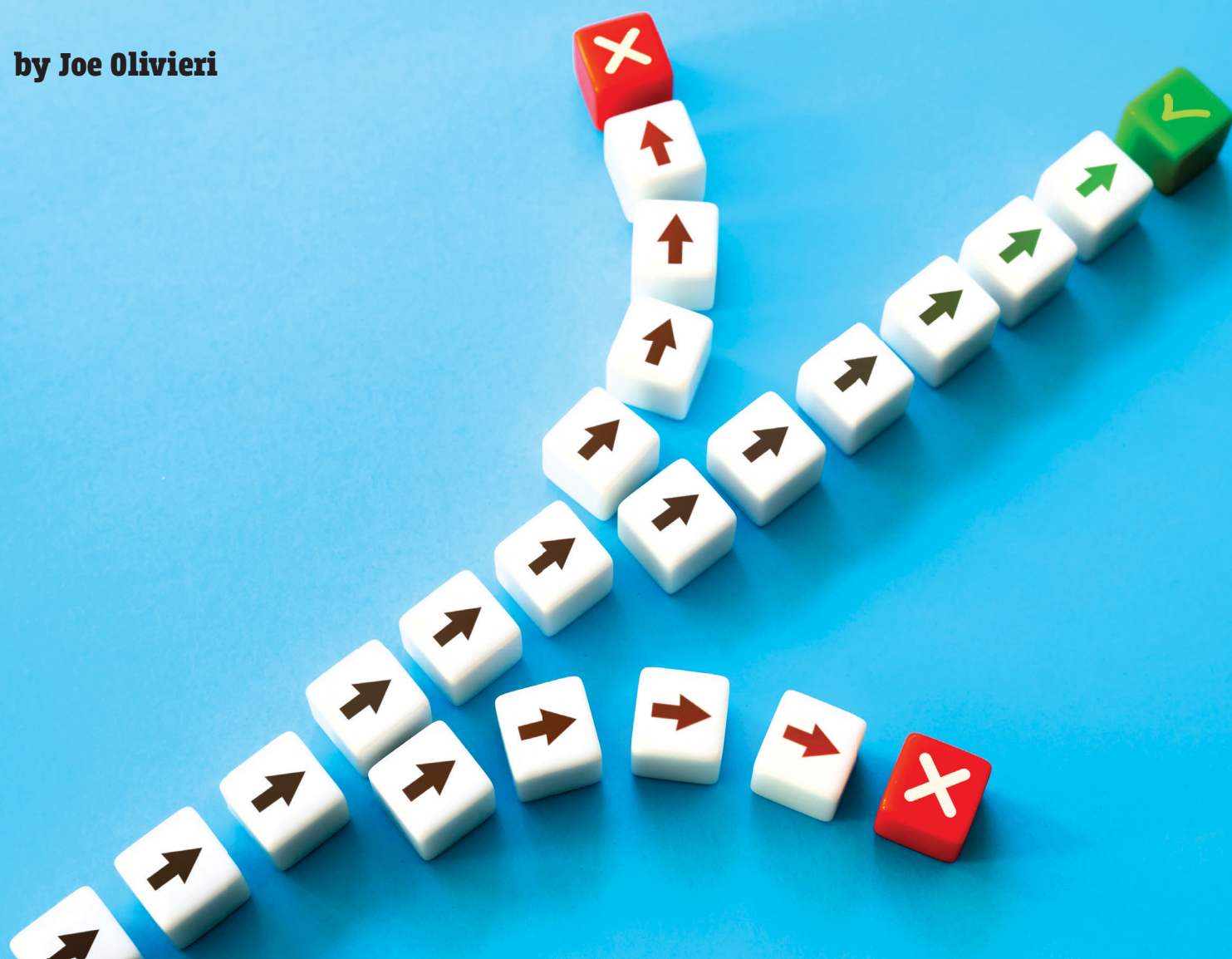
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# STAY OUT OF TROUBLE!

Avoid Disciplinary Action by Following the Rules.

by Joe Olivieri



## GET THE TRAINING YOU NEED

Texas REALTORS® offers a variety of CE courses and training opportunities throughout the state. Visit [texasrealestate.com/findacourse](https://texasrealestate.com/findacourse) to see upcoming classes near you.

No one ever expects to lose their real estate license. But it does happen. Just look at the list of recent disciplinary actions on the website of the Texas Real Estate Commission. You'll see a range of consequences for violations, from cease-and-desist notices and reprimands all the way up to license suspension and revocation.

Don't let this happen to you. Protect yourself and your livelihood by following *all* applicable rules and regulations.

# TROUBLE!

**T**exas REALTORS® instructor Steve Stovall teaches the course 43 Ways to Lose Your License. The broker/owner of Stovall, REALTORS® with Berkshire Hathaway HomeServices in Abilene developed the material based on The Real Estate License Act.

And that's just one set of regulations. You must also adhere to TREC rules, local regulations, MLS rules, the Real Estate Settlement Procedures Act (RESPA), and the NAR Code of Ethics.

This has surprised some of the agents Stovall taught. "They don't know the Code of Ethics. They don't really understand their local MLS rules. Maybe they hit some of the highlights in their classes, but they don't talk about them over and over. The knowledge doesn't stick."

### Where Many Agents Have Challenges

Property sales generate the largest category of TREC complaints. These complaints could be based on earnest money, negligence, rebates, or referrals.

Understanding your sales contracts inside and out is essential, Stovall says.

"The contract is the foundation of the real estate transaction, and TREC has been cracking down lately on agents practicing law," he says. "Just read the contract. Most of the information you need is in there."

The survey provision of the *One to Four Family Residential Contract (Resale)* (TXR 1601, TREC 20-17) can sometimes be a problem area for agents. In Paragraph 6, there are three boxes, only one of which needs to be checked, to state who will be responsible for paying for and providing the survey of the property.

Often, seller's agents receive the contract with the box next to Paragraph 6C(1) marked by the buyer's agent, who has assumed the seller has an existing survey. This box obligates the seller to provide an existing survey of the property and a *Residential Real Property Affidavit* promulgated by the Texas Department of Insurance (T-47 Affidavit).

If the seller does not have an existing survey and Paragraph 6C(1) is marked, then the seller will be responsible for paying for the survey that the buyer orders. Therefore, it is best for seller's agents to go over Paragraph 6 with their seller before allowing the seller to sign the contract, and if they don't have an existing survey, it is best to direct them to mark either Paragraph 6C(2) or (3).

Repairs are another challenging topic. "Repairs are an area where, if there's going to be a lawsuit, it comes down to the seller making repairs and the buyer not feeling like they've been done correctly," Stovall says. Agents need to be aware that this is a problem area and always provide receipts from qualified repair people who will stand behind their work.

Not including a full and complete legal description for the property can be another pitfall for agents, he adds, noting a recent TREC complaint on the topic.



The contract is the foundation of the real estate transaction.

-Steve Stovall



\* See page 28 for ways to avoid unintentionally practicing law.

## ENSURING REPAIRS GET DONE

Receipts show the work was done, but many times, fail to convey if repairs were done to the agreed-upon specifications or to detail what those specifications were. These specifications should be included in the contract. However, since agents are prohibited from drafting legal language, they can only rely on the language given to them by their client or their client's attorney. Therefore, if there are certain specifications for the work that the client wants to be completed, and the client does not know how best to write this in the contract, they should consider hiring an attorney to draft contract language detailing how repairs should be completed.

## TOTAL ALLEGATIONS: 2,271

### TREC Complaints by Category, March 2022- March 2023

- 21.80% Sales Other\* (Includes negligence, rebate, referral, and earnest money)
- 18.93% Breach of Fiduciary Duties
- 15.10% Licensure Issues (Criminal background check, denials, probationary license)
- 11.49% Broker Supervision
- 6.78% Leasing/Property Management - Other (Negligence, referral)
- 6.12% Failure to Disclose
- 5.72% Advertising (Includes misleading and doing business as)
- 3.35% Administrative (Bad check, contact information, uncooperative)
- 3.35% Unlicensed Activity
- 2.86% Intermediary/IABS
- 1.67% Improper Contract/Seller Disclosure Form Usage
- 1.59% License Holder Acting as Principal
- 0.97% Leasing/Property Management - Misappropriation
- 0.26% Sales Misappropriation

## CASES ENDING IN DISCIPLINARY ACTION

- 66 of 650 total cases closed in March 2023
- 401 of 3,776 cases closed January - March 2023

## RECENT DISCIPLINARY ACTIONS

### Out of 268 cases from March 1, 2022 to March 1, 2023\*

- 163 Administrative Penalties (Fines)
- 96 Reprimands
- 87 Application Order
- 46 Probated Suspension
- 33 Suspension
- 24 Revocation
- 9 Cease and Desist
- 2 Complaint Withdrawn
- 2 Advisory Letter
- 2 Probated Revocation

\*Cases may include more than one outcome.

SOURCE: TREC March 2023 Staff Report, TREC Disciplinary Actions



**It's like watching a train wreck: you're sort of interested but it's horrible.**

### This Could Happen to You

"After we look at the Texas Occupations Code, we look at the actual complaints that have happened," Stovall says. "It's like watching a train wreck: you're sort of interested but it's horrible."

TREC disciplinary actions can be found at [trec.texas.gov](https://www.trec.texas.gov) by selecting the *Public* dropdown menu and clicking *Disciplinary Actions*. There, you can search by name or license number, city, type of violation, and other options.

Stovall encourages agents and brokers to search the TREC violations. "It's eye-opening," he says. "They may realize, *I've been doing that*. I recommend they take very seriously their work with the contract, paperwork in general, and their interactions with clients."

Chapter 1102 of the Texas Occupations Code describes the penalties and fines TREC may impose for violations. Penalties include reprimands, cease and desist notices, administrative penalties and fines, putting a real estate license on probation, temporary license suspension, and revocation of a real estate license. Some violations are considered misdemeanors and may be referred to criminal proceedings.

Fines for violations can be in the hundreds or thousands of dollars.

### Training, Training, Training

Overall, agents put themselves at risk when they do business without enough training. Stovall advocates getting the training you need and making sure you understand it. There's no magic number of courses or amount of time required. What matters is taking enough training to understand the rules and regulations.

"I've been licensed since 1989, and I've supervised quite a few agents," he says. "I can tell you it depends on the person. Some agents pick up the training quickly and build a confidence level. It may just take them some basic training and on-the-job learning over three or four transactions to get to where they need to be. Other agents take years to get there, and I'm constantly looking over their work. It may not be because they intend to do things incorrectly. It just happens."

Common mistakes can include overconfidence, talking too much, and unintentionally misrepresenting things, Stovall says. Some agents think interactions with other agents should be adversarial.

Newer agents—and their clients—can be better protected if they use forms provided by TREC and Texas REALTORS®. Checklists can be very helpful, even for longtime practitioners. Texas REALTORS® has a *Residential Listing Checklist* (TXR 1415) to assist with residential transactions.

More experienced agents are not immune from violating rules and receiving disciplinary action. Stovall says seasoned agents can become sloppy with paperwork if they become too busy. Keeping up with paperwork is key. TREC rules require that license holders keep the required paperwork for at least four years from the date of closing, termination of the contract, or end of a real estate transaction.

This is where the broker's role is so important. Stovall recommends that brokers reinforce key topics in meetings. "Most brokers are not concentrating on the legal and contract aspects of the job. They're focusing on prospecting, advertising, social media, and all of that. But we've got to have these foundations in place or else we'll lose our professionalism."

Training and supervision are essential components of a broker's responsibilities, as described in TREC Rule 535.2. "It's serious business when helping someone with the sale of a home," he continues. "The rules are there to protect the customers. We need to follow the rules so not just the consumers are protected; we protect ourselves, too." ★

**JOE OLIVIERI** is a business writer who has written for several publications, including Texas REALTOR®.



**It may not be because they intend to do things incorrectly. It just happens.**



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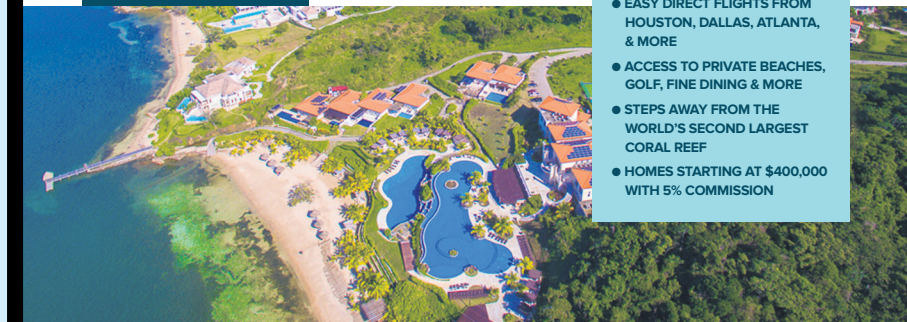
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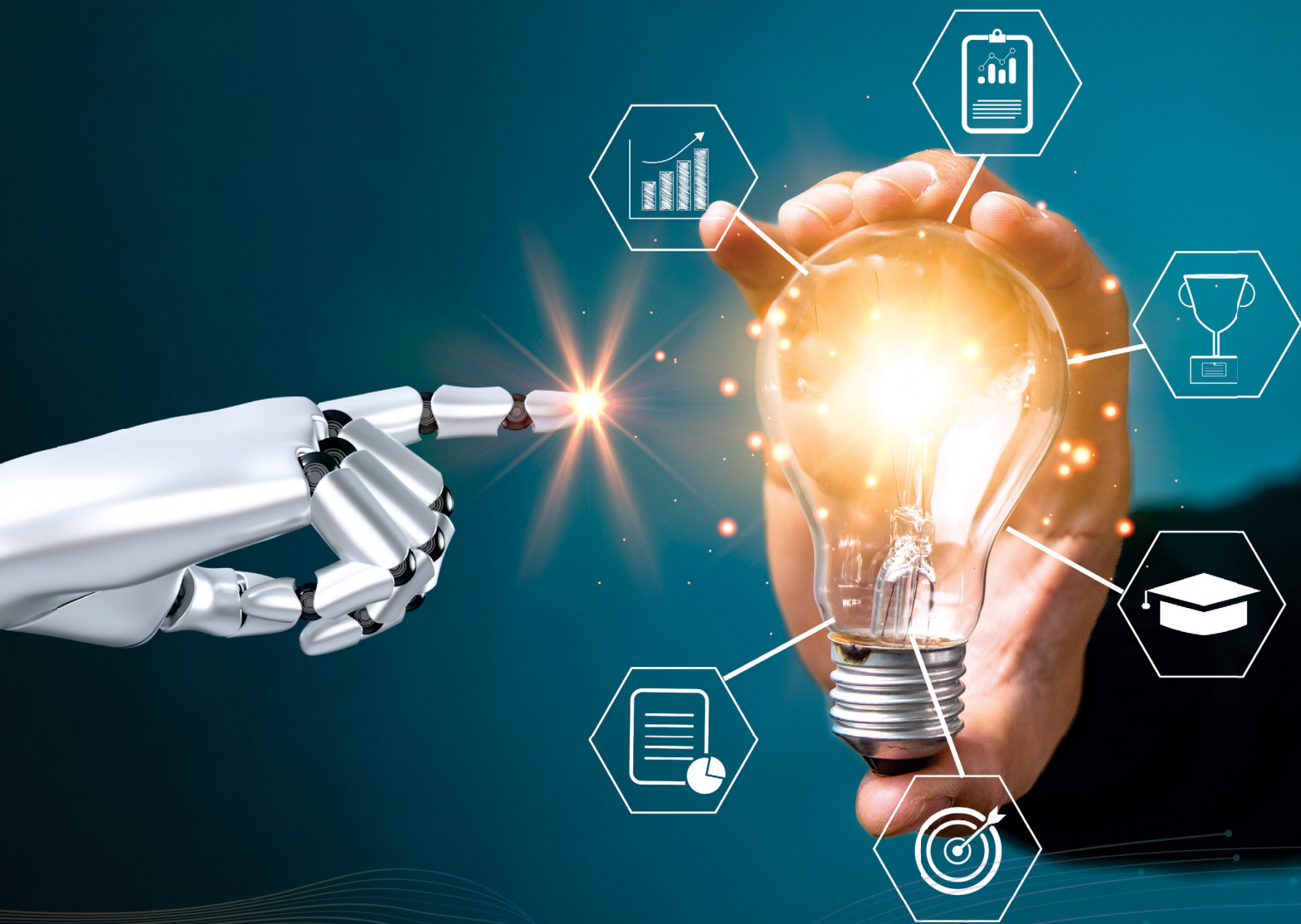
## LEGAL QUESTIONS?

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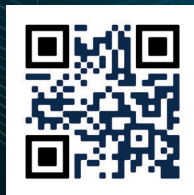
# AI is Already in Real Estate

## How Are You Harnessing It?



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AI and Tech Trends Impacting Real Estate  
1 p.m. September 11 in Austin  
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by Joe Olivieri

**FIRST, SOME GOOD NEWS:** You, as a real estate agent, aren't in danger of being replaced by artificial intelligence.

You are, however, at risk of one day being replaced by an agent who effectively uses AI. That agent will provide the same services you do, only faster and more efficiently.

So warns Texas REALTORS® instructor Marion Napoleon, the broker/owner of Unlimited Realty Solutions in Grand Prairie. She teaches the course AI and Tech Trends Impacting Real Estate.

Her advice is to stop thinking about AI as a single tool or set of tools. It's closer to having another you helping you work. "In layman's terms, AI is simply using technology to do tasks faster than it would normally take you to do," she explains.

### The AI You Know

You have probably been using AI without even realizing it, Napoleon says. AI is behind many familiar technologies.

AI powers virtual assistants like Siri and Alexa. Real estate databases such as RPR use AI. Virtual and augmented reality platforms, from staging to floor plans? You guessed it: AI. Even social media platforms utilize it. What do you think is color filtering your photos and adding special effects to your videos?

Chatbots are perhaps one of the most well-known examples of AI. These programs can act as round-the-clock first points of contact for your business: answering questions and scheduling appointments from your website.

ChatGPT is an AI platform that can interact, respond, and provide information as if it was a human having a conversation. Agents are discovering all of the ways they can put this and other content-generating technology to use in real estate. "These technologies can write listing descriptions, marketing materials, communications, policies, and procedures," Napoleon says.

### Benefits and Risks

The major advantages of AI include speed and convenience. AI draws from and analyzes huge amounts of data quickly. Ask Alexa a question and it scours the internet for an answer. A listing description may take you an hour to write; AI drafts it in seconds.

Furthermore, AI can learn and improve. Napoleon can give content-generating AI examples of her writing and ask it to imitate her writing style. She can also ask it to give a document a more professional tone or make it more casual. AI used to sound unnatural and robotic; now it can be virtually indistinguishable from the author.

That said, AI brings with it new responsibilities for agents and brokers, Napoleon says.



**AI brings with it new responsibilities for agents and brokers.**

—Marion Napoleon

### COMMONLY USED TERMS

- **Artificial Intelligence:** A computer's ability to complete complex tasks that would otherwise require humans.
- **Chatbot:** A program that uses AI to understand and respond to questions.
- **Deep Learning:** A subset of machine learning that uses several networks to learn and refine by processing large amounts of information.
- **Machine Learning:** The study of using data and algorithms to teach machines.
- **Virtual Assistant:** AI-powered software that can imitate conversation and complete tasks. Examples include Amazon's Alexa, Apple's Siri, Google Assistant, and Microsoft's Cortana.

Even though you didn't write it, you are still responsible for the content produced in your—and your broker's—name. Ensure any material created by AI does not violate policies, rules, and laws, including fair-housing laws, The Real Estate License Act, TREC rules, and the NAR Code of Ethics.

You must also be mindful of how AI created the things you want. What sources did AI use and where did they come from? Are those sources trustworthy? Do those materials belong to someone else? "The biggest risk is that the information you're pulling is a scrape of the internet," Napoleon says. "No one is checking to see where that information is coming from. Plagiarism is a huge concern."

AI users should take the additional step of reviewing and editing AI-generated content. Put it in your own words. Use programs that cite sources, such as Google's AI model, Bard. Grammarly and other tools can check for plagiarism as well as flag and quote sources. Make sure your sources are credible and impartial. "Especially if you are trying to publish this information, you have to make sure it's OK," she says.

AI technology is developing rapidly and has incredible potential. Napoleon believes there should be guidelines governing its use. In the meantime, make sure your use of AI not only complies with laws and rules but also with your brokerage's policies and procedures—as well as common sense. Treat it like you would any other internet-connected tool and think about privacy and data security.

### Don't Be Afraid

"I think a lot of people are afraid of the technology because they don't understand it," Napoleon says. "They see it as scary, as taking over the world. Or that it'll replace people."

But avoid it at your own peril. Napoleon gives the example of Blockbuster versus Netflix. Consumers used to rent movies from Blockbuster stores. Blockbuster could not compete with Netflix's more convenient services: first mailed DVDs, then streaming video. The same thing will happen to agents who do not fully leverage AI technology. "Businesses that adopt AI will be able to offer their agents and clients a faster, greater experience," she says.

Consumers will change their expectations and start to expect certain levels of service. They'll also begin to adopt this technology themselves, and you'll need to keep up. "Look at virtual reality tools. While they're absolutely cool, a lot of people didn't adopt them at first," she says. "Now that it's affordable, it really helps buyers who can't get to the house to tour it."

Napoleon has used AI to generate and animate avatars for online marketing videos. "I built an avatar and brought it to life. It speaks for me," she says. "I ran the information through AI. In seconds, AI takes the script and makes a nice video. I can create as many as I want."

She says early adopters like her were able to grow with the technology. Napoleon has written about how she has incorporated AI into every aspect of her life. For example, she's asked AI to plan out her daily schedule and draft healthy meal plans. She asks her virtual assistant for real estate information as she goes through her day.

By delegating certain tasks to AI, Napoleon can focus on the creative and executive tasks only she can do. AI also frees up her schedule so she can do more of the activities she enjoys. "Now it doesn't take me months to write a curriculum or years to write a book. AI has the ability to tap into our world and make it absolutely amazing." ★

**JOE OLIVIERI** is a business writer who has written for several publications, including Texas REALTOR®.



**AI used to sound unnatural and robotic; now it can be virtually indistinguishable from the author.**

### TEAM UP WITH AI

Here are just a few of the leading AI programs and platforms you can use to maximize your business.

#### Generate Content

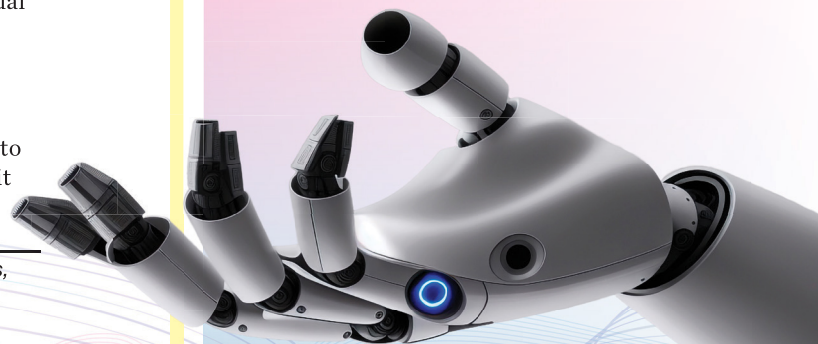
- Google's Bard, [bard.google.com](https://bard.google.com)
- OpenAI's GPT-4, [openai.com](https://openai.com)
- Canva's Magic Write, [canva.com](https://canva.com)

#### Generate Video

- DeepBrain AI, [deepbrain.io](https://deepbrain.io)
- Kapwing, [kapwing.com](https://kapwing.com)
- Steve AI, [steve.ai](https://steve.ai)
- Synthesia, [synthesia.io](https://synthesia.io)

#### Enhance Your Social Media

- ContentStudio, [contentstudio.io](https://contentstudio.io)
- Lately, [lately.ai](https://lately.ai)
- Make-A-Video, [ai.facebook.com](https://ai.facebook.com)
- Vista Social, [vistasocial.com](https://vistasocial.com)



# SHARE THIS

Help clients better understand real estate transactions by giving them this information. Download a PDF of this page at [texasrealestate.com/sharethis](https://texasrealestate.com/sharethis).

## STRESS LESS WHEN BUYING OR SELLING A HOME

Real estate transactions often involve large sums of money and emotional decisions, so it's no wonder people get stressed. Consider these strategies to help you move through the process with ease.



### CLARIFY YOUR GOALS

What is your main motivation for buying or selling? Clarity helps you avoid anxieties brought on by distractions. For example, if your top reason to move is more space for your family, you won't face a difficult decision when you tour a house with beautiful features but no more space than your current home.



### GET TIME ON YOUR SIDE

When possible, build in enough time to avoid spur-of-the-moment decisions or unrealistic deadlines. Yes, external factors like a job relocation or a hot market can necessitate quick responses, but there's a difference between being prepared to act and setting arbitrarily short time frames. Remember, a successful transaction requires coordination with the other party and providers such as title companies, inspectors, surveyors, and others. Just because you can move quickly doesn't mean everyone else can meet that timeline.



### FOCUS ON POSITIVES

You may experience a few bumps on the path toward your home purchase or sale. Simply being aware that surprises may pop up can relieve some pressure when they do. When challenges do arise, balance out those concerns by remembering the positives of moving, such as fresh opportunities, a beneficial transaction, and new friends.



The best way to avoid stress when buying or selling a home is to work with a REALTOR®. Your REALTOR® is the professional who can guide you through the steps to achieve your real estate dreams.

# TAKE 5



## PRACTICE REAL ESTATE, NOT LAW

You may think you're just being helpful, but if you're not careful, your advice could fall outside the scope of your real estate license. The unauthorized practice of law can lead to complaints, lawsuits, or other consequences.

Here are five common scenarios to avoid. When in doubt, recommend your client speak with an attorney.

### WRITING ESCALATION CLAUSES

TREC rules prevent you from writing escalation clauses. TREC Rule 537.11(b)(5) says license holders may not "draft language defining or affecting the rights, obligations, or remedies of the principals in a real estate transaction, including escalation, appraisal, or other contingency clauses." Clients who wish to add escalation clauses should work with a lawyer.

### ADDING SPECIAL PROVISIONS

You can only use the Special Provisions paragraph in TREC contracts to complete contract blanks if more space is needed, disclose facts, and provide instructions. If a form or addendum has been approved by TREC for mandatory use, you must use that form rather than Special Provisions. You cannot add, delete, or modify anything in the contract that affects the rights, obligations, or remedies of the parties unless a party or a party's attorney drafts the change.

### DRAFTING REPAIR LANGUAGE

Just like with Special Provisions, you cannot create language that affects the rights, obligations, or remedies of the parties in paragraph 7D(2) of TREC contracts or in a repair amendment. You may list the items in need of repair, but only a party or the party's attorney can draft additional language creating or modifying the parties' rights relating to completion of repairs, inspections, delivery of documentation, or termination of the contract.

### MAKING TITLE OBJECTIONS

Agents often call the Texas REALTORS® Legal Hotline asking how to make title objections under Paragraph 6D of TREC contracts. *You* shouldn't advise on these matters—your clients or their attorney should make the objections after reviewing the title.

### GIVING LEGAL ADVICE

Just because you work with contracts does not mean you have expertise in all aspects of them. You can explain the meaning of various choices in the contract, but you should not give opinions on the legal effect of any contract. You also should not discuss the validity of title to real estate. Clients should direct those questions to an attorney. The contract terms must come from the parties involved or their attorneys, not you. You are also not qualified to answer questions about how to handle possible contract breaches.



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**Bill A.**

*Member of Texas REALTORS® since 2006*