

2011 Public Policy Statements

Legislative Priorities for the 82nd Texas Legislature



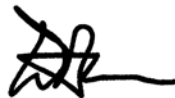


As the 82nd Texas Legislature gets under way, you will be inundated with information on the issues that are expected to be debated. This publication highlights areas of interest to the Texas Association of REALTORS® this session.

Four years ago, the Texas Association of REALTORS® implemented a comprehensive process to determine legislative issues important to our members and to private property owners in Texas. This ongoing process includes in-depth polling of our members and the formation of legislative subcommittees, which study relevant topics and determine the validity of legislative solutions. It's important to note that any decisions made on legislative issues are made with the input and backing of our more than 85,000 members.

With Texas REALTOR® members in all 181 legislative districts, our association can accurately assess the specific issues that may affect the real estate industry. With real estate having such an impact on our economy, we stand ready to help legislators understand our viewpoints and make Texas a better place to live.

Sincerely,

A handwritten signature in black ink, appearing to be 'D Hale', written in a cursive style.

Dwight Hale
2011 Chairman
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Appraisal issues/broker price opinions

Issue

In response to the implementation of the Home Valuation Code of Conduct (HVCC) and subsequent federal legislative activity, bills may be introduced in the next legislative session to amend statutory language to clarify appraisal standards and provide a regulatory framework for appraisal management companies operating in Texas. Such legislation could likely include regulation of appraisal management companies (AMCs), as well as language intended to draw a distinct line between appraisals and broker price opinions.

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When the HVCC took effect, REALTORS® experienced unintended consequences including delay in obtaining appraisal reports, increased costs, and a decrease in quality. While not all Texas REALTORS® were familiar with AMCs prior to the HVCC taking effect, these entities have become a relatively important piece of the real estate transaction. Furthermore, in efforts to increase standards for appraisal, there is a concern that broker price opinions may be affected. Currently, brokers in Texas are allowed to do any evaluation for a separate fee that is not an appraisal if they include a disclaimer that the evaluation is an opinion of value or comparative market analysis and should not be considered an appraisal.

Our position

The Texas Association of REALTORS® would not oppose the clarification of the laws related to appraisal standards and requirements as long as any statutory changes do not affect the ability of REALTORS® to continue to provide broker price opinions. The Texas Association of REALTORS® should further closely monitor

bills filed to clarify laws related to appraisal standards and provide additional oversight of appraisal management companies to ensure no unintended consequences have an adverse impact on Texas REALTORS®. The association supports licensing of AMCs as a necessary tool to ensure consumers are protected.

Legislative outlook

It is likely that one or more bills to regulate appraisal management companies and implement federal appraisal standards will be introduced in the 2011 legislative session.

Historical perspective

The Home Valuation Code of Conduct (HVCC) took effect May 1, 2009, applying to residential mortgages sold to Fannie Mae or Freddie Mac. It was brought about by an agreement between those two entities and the New York State attorney general to reduce conflicts of interest on single-family mortgage appraisals. Since the adoption of the HVCC, there has been a push to impose a moratorium on the HVCC. The Dodd-Frank Wall Street Reform and Consumer Protection Act (H.R. 4173), enacted in July, sunsets the HVCC and replaces it with new oversight and standards for the appraisal industry.

The Dodd-Frank act further prohibits the use of broker price opinions as the primary basis for determining market value for residential mortgage loans secured by the consumer's principal dwelling. TREC rule 535.17 governs broker price opinions in Texas. Appraiser licensing requirements in Texas do not prohibit a real estate broker or salesperson licensed under Chapter 1101 but not certified or licensed under the appraiser licensing law from performing an appraisal in a transaction other than a federally related transaction.



County rulemaking authority

Issue

Counties in Texas have various powers and duties related to regulating land use, regulating structures, platting and subdividing land, and providing and regulating water, sewer, and other utility services to residential property. While these powers and duties have been helpful, many county governments believe more regulation is necessary to restrict growth.

I'm a Texas REALTOR® ... what does this mean for my business?

Limiting growth in Texas will put our state on the fast track to becoming the next California, Ohio, Michigan, or Florida. All of these states have experienced negative economic growth and the people leaving these states are coming to Texas. If Texas adopts a policy position of limiting development in Texas, people will stop moving to Texas and the real estate industry would suffer tremendously. The population of Texas is expected to more than double between 2000 and 2060,¹ which means more than 20 million new people will call Texas home. Restricting growth by giving counties more development regulation powers will limit the ability of Texas to prosper.

Our position

The Texas Association of REALTORS® does not support wholesale expansion of county rulemaking authority to Texas counties.

Legislative outlook

Many counties will ask the legislature for more regulatory authority to limit growth. However, since the legislature will be dealing with a potential budget shortfall of \$11 billion to \$28 billion, redrawing legislative districts, and determining whether over 29 state agencies continue to exist, very little time will remain for debate on such a contentious issue.

Historical perspective

The Texas Legislature has consistently affirmed its unwillingness to give county governments the same regulatory authority as home-rule cities. However, the Legislature at the same time has given county governments some ability to regulate land use, structures, platting and subdividing land, as well as providing and regulating water, sewer, and other utility services to residential property. The Texas attorney general is also tasked to compile a list of all county powers and duties and must update it after every legislative session. As of 2009, this list is more than 30 pages.

¹ According to projections from the Texas Water Development Board and the Texas State Data Center.



Eminent domain

Issue

In November 2009, Texans took the first step toward strengthening private-property rights against abusive eminent domain by passing Proposition 11 with an overwhelming 81% of the vote. However, while passage of Proposition 11 was a good step, the legislature must now complete the job and enact legislation to ensure property owners are treated in a fair manner.

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While eminent domain does not have an impact on most common real estate transactions, it is important to remember that virtually the entire population of the world lives on land it does not own. However, in the United States, Americans enjoy real property rights that are far more generous when compared to the rest of the world. REALTORS® are uniquely positioned to ensure private-property rights are protected from abusive eminent domain practices.

Our position

The Texas Association of REALTORS® supports legislation similar to the previously unsuccessful House Bill 2006, 80th Legislature in 2007, to provide for changes to various codes and provisions in Texas law to reform the limitations, process, and other aspects of the power of eminent domain and condemnation in this state. Other areas of support to enhance the rights of property owners as they relate to eminent domain proceedings for all easement placements include:

- a. Property owners shall receive engineering reports, appraisals and any other discovery reports performed by the condemning entity that are relative to value — and have 45 days to prepare for the condemnation hearing;
- b. Attorney fees shall be reimbursed to a property owner if the owner prevails with a higher property value in a condemnation

hearing;

- c. Easements are limited to the width, depth and use specified by the condemning entity;
- d. Compensation for lack of access; and
- e. Enable property owners the ability to buy back land within a 10-year window if the project has not moved forward.

Legislative outlook

Commissioner Todd Staples has launched an online effort (ProtectYourHomeAndLand.com) to bring attention to reforming the eminent domain laws in Texas. While the legislature will be dealing with an enormous budget shortfall, redistricting and other matters, there may not be enough time left to debate eminent domain laws.

Historical perspective

In 2005 (79th Legislature, 2nd Called Session), the legislature passed Senate Bill 7, prohibiting entities with the authority to use eminent domain from condemning private property for economic purposes. Many issues remain unresolved, including the constitutional issues of who should have the burden of proof and how to define public use and public purpose. While the Legislature did attempt to clarify many provisions relating to eminent domain during the 2007 legislative session with House Bill 2006, unfortunately the bill was vetoed by the governor.

The Texas Constitution limits the use of eminent domain by requiring adequate compensation for the land on which eminent domain is used. The exercise of this power, while considered a necessary tool of government by some, has been argued to have been expanded and used in improper ways by others. Reform of the power of eminent domain may be necessary to limit the possibilities for abuse.



Energy

Issue

“Due to global market demand, the costs of all forms of energy (including natural gas, electricity, and gasoline) have increased dramatically in the past several years, and Texans have had to dedicate a growing portion of their household income toward these increased costs. Texas companies, competing in the global marketplace, also need adequate, reliable, and reasonably priced energy. Without access to such energy, the economic prosperity of Texas and its citizens is threatened.”¹

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Without expansion of current capacity and development of other generation sources, inadequacy in the current electric system during peak usage could lead to brownouts and blackouts in areas of the state. A state that can’t provide adequate and reliable energy to consumers will not be able to support population growth or the expansion of business in the state, which could dramatically impair the livelihood of Texas REALTORS®.

Our position

The Texas Association of REALTORS® continues to support the establishment of a comprehensive statewide energy policy. The state’s energy policy should recognize use of current sources of energy and include a planning process for diversification of energy sources, evaluating all forms of generation for possible inclusion in the planning process: wind, nuclear, solar, coal, bio-fuels, and geothermal. The policy should include incentives for generation of capacity, security of the system, and management of consumption. The association supports the movement toward non-polluting

energy sources, including nuclear, wind, and solar, as increased use of renewable energy is essential to ensuring energy markets remain competitive and affordable. Renewable energy also protects the Texas economy. Toward that end, the state should charge one agency with, or provide coordination among involved agencies for, the harmonization of energy functions in the state, encourage the expansion and addition of electric generation capacity, and provide incentives for consumer compliance with voluntary green standards for homes and businesses. Finally, the state should maintain the electric system independence most of the state enjoys today to ensure system reliability.

Legislative outlook

The Texas Legislature is expected to tackle a proposed budget shortfall of \$11 billion to \$28 billion when it convenes in Austin this January. This budget shortfall may preclude the legislature from being able to provide incentives for increased electric generation, movement toward alternative resources, or incentives for reduced consumption. However, with the population of Texas expected to more than double between 2000 and 2060,² the legislature must find ways to support expansion of the system to ensure availability, reliability, and affordability for future generations.

Historical perspective

The Texas Legislature created the Public Utility Commission of Texas (PUC) in 1975 to provide statewide regulation of electric utilities. The Legislature restructured the electric market in 1999, paving the way for retail electric utility competition within the ERCOT service area in 2002. The retail energy market has not been fundamentally affected by legislation since that time.

¹ 2008 Texas State Energy Plan – Governor’s Competitiveness Council, June 2008.

² According to projections from the Texas Water Development Board and the Texas State Data Center.



Expansion of gaming in Texas

Issue

The Texas Legislature, when it convenes in Austin in January 2011, will be required to pass a two-year budget for FY 2012-13. By some estimates, the budget shortfall could be as high as \$20 billion. As the budget shortfall number increases, more and more groups have called upon the Legislature to expand the footprint of gaming in Texas; to include destination resort style casinos or limit the expansion of gaming to include slot machines at licensed race tracks. Many experts estimate if destination resort style casinos were allowed in Texas, state coffers could see more than \$2.5 billion generated from tax revenue—or more than \$1 billion from slot machines at licensed race tracks.

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Destination resort style casinos in Texas could have a huge economic impact on the Texas economy. Land development around destination resort style casinos could include retail establishments and new home subdivisions, which could generate leads for real estate professionals. In addition, new revenue from voluntary gaming activities could stifle any new attempts by legislators to tax real estate specific activities.

Our position

We support efforts to expand the gaming opportunities in Texas to include destination resort style casinos. Any expansion of gaming in Texas must be approved by Texas voters.

Legislative outlook

Gov. Rick Perry has stated his opposition to expanding the current footprint of gaming in Texas, and destination resort style casinos would definitely expand the footprint of gaming in Texas. However, several prominent legislators have stated their willingness to allow for destination resort style casinos in Texas because of the potential tax revenue that would be generated from this “voluntary tax.” Expanding gaming opportunities in Texas will be part of the debate during the next legislative session.

Historical perspective

Pari-mutuel racing was first enacted by the Texas Legislature and approved by Texas voters in a statewide referendum in November 1987. The Texas Racing Act authorized pari-mutuel wagering on horse and greyhound racing. In 1980, Texas voters approved a constitutional amendment allowing the regulation of bingo for charitable fund-raising purposes. Voters approved another amendment in 1991 creating the state lottery to generate revenue for Texas government and, in 1997, the Legislature dedicated lottery revenue to public schools.



Homeowners associations

Issue

Homeowners associations (HOAs) continue to be created to enhance neighborhoods and increase property values. Increasingly, though, HOAs are created to take on many functions local governments traditionally provide. The Texas Legislature has addressed HOA issues a number of times over the last 20 years, yet property owners and property buyers still voice concerns over actions taken by HOAs. Most of the problems with HOAs generally fall into three categories: money or collection issues, deed restriction enforcement, and lack of responsiveness from the HOA.

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HOAs can provide a great benefit to property owners by enhancing their quality of life and the enjoyment of their property. However, when HOAs are not managed well, the ability to market and sell homes in these HOAs can be difficult.

Our position

We support the legislature's continuing effort to reform HOA laws to ensure HOA operations are transparent and consumer-friendly. Specifically, we support legislative efforts that will:

- a. Require transparency of all fees associated with the transfer of a property within the boundaries of an HOA, including the disclosure of the fee amount and the recipient of the fee;
- b. Encourage new methods of voting to eliminate the need for proxy voting;
- c. Extend statutory homeowner protections to include maximum fine amounts and reasonable payment schedules, among others; and
- d. Set forth minimum requirements for bylaws and prohibit the bylaws from expanding the powers of the association beyond those powers specifically granted in the dedicatory instrument.

We will carefully monitor legislation affecting homeowners associations and work with the legislature to ensure legislation does not contradict or confuse current law. We will also monitor HOA legislation to make sure it continues to provide a balance between property owners, property buyers, and homeowners associations.

Legislative outlook

A Texas Senate committee has been charged with continuing to research various issues related to HOAs. There has been some recent news about HOAs foreclosing on homes for failure to pay annual dues. In one case, a soldier serving in Iraq and his wife lost their home when the wife did not pay the annual dues to the HOA. The HOA subsequently sold the home for pennies on the dollar. While the legislature will be debating a potential budget shortfall of \$11 billion to \$28 billion in 2011 and redistricting of legislative boundaries, little time may be left for true HOA reform.

Historical perspective

Numerous homeowner association bills have been filed in recent sessions with only a few becoming law each time. Many times, egregious actions by homeowner associations are reported in the news, prompting legislators to file bills intended to address one particular issue. A few of those bills have passed. For example, a 2009 bill now restricts an HOA's ability to regulate a homeowner's display of religious symbols. At the same time, numerous other bills filed to address egregious HOA action have not passed. For instance, many bills intended to restrict an HOA's ability to regulate a homeowner's installation of solar energy panels on a home have been filed, yet none have passed. In the past two legislative sessions, omnibus HOA legislation had been filed to protect property owners and address numerous HOA-related issues. In 2009, Sen. Royce West and Rep. Burt Solomons carried HB 1976, an omnibus HOA reform bill. That bill died in the Senate in the final days of the session.



Mandatory sales price disclosure

Issue

Some appraisal districts, cities, and counties have argued for full disclosure of all real estate sales to establish a market value of real property in Texas. They contend that if sales price information is divulged, more-accurate appraisals could be obtained. However, the Texas Comptroller of Public Accounts, in its most recent report on appraisal districts and appraisals, stated that all real property in Texas is being valued at 99% of market value. Based on this official report, it can hardly be determined that real property appraisals in Texas are inaccurate.

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Sales price disclosure will lead, according to some very conservative estimates, to more than a \$250 million property tax increase for all property owners in Texas. As you know, property taxes can be a barrier not only to homeownership in Texas but also to relocation of business to Texas. Your customers and clients have a hard time affording the principal and interest (PI) on the mortgage. Increasing property taxes in Texas could lead to fewer people being able to afford their piece of the American Dream. As fewer people are able to buy homes in Texas, the real estate market suffers and the Texas economy is negatively affected.

Our position

The Texas Association of REALTORS® opposes all legislative efforts to require the disclosure of sales price information because: 1) It's an unnecessary invasion of privacy since all real property in Texas is already valued at 99% of market value; 2) A lack of uniform appraisal standards in the state would lead to inequities; and 3) It could pave the way for a new real estate transfer tax in Texas, as most states that require sales price disclosure use it to compute the tax liability for the transfer of real estate.

An example of a problem created by a lack of appraisal standards is the practice of some districts to not back out from the sales price seller concessions given to a buyer. That leads to artificially high tax-appraisal values in the year of purchase and beyond.

There also is a magnified problem with subdivision properties that have unequal-sized lots or have custom-built homes. Another issue concerns farm and ranch properties where improvements like trade fixtures and livestock are included in the sales price. Additional difficulties arise with commercial properties, which may include a business and/or trade fixtures, and properties where mineral rights are included or excluded from the sale.

Legislative outlook

During the last session (2009), the legislature passed comprehensive appraisal reform in the form of numerous bills aimed at reforming the process. Specifically, the legislature passed H.B. 8 that enacted a “methods and procedures” audit on every appraisal district in Texas.

The comptroller’s office was tasked with implementing the bill and has completed audits for half of the 253 appraisal districts in Texas. The other half will be audited beginning in 2011, with final results expected in December 2011. The legislature also passed (and voters approved) a constitutional amendment which allows for uniform appraisal standards to be used in all appraisal districts. At this time, the legislature seems willing to allow comprehensive appraisal reform passed in 2009 to be implemented and to see if additional appraisal reform is necessary.

Historical perspective

The appraisal process we know today was created by the Legislature in 1979 and was fully implemented in January 1982. Mandatory sales price disclosure was part of the debate then and has been ever since. Prior to a central appraisal process, each local taxing jurisdiction valued real property separately. The city could have one value on their books while the county had a completely different value.

Since 1982, real property in Texas has been subject to a local property tax administered at the local-taxing-jurisdiction level. Central appraisal districts are tasked with appraising real property for ad valorem taxation purposes. Many of these appraisal districts have called upon the Legislature to pass sales price disclosure to enable districts to adequately appraise real property.

However, because half of appraisal districts have never undergone an appraisal audit, the appraisal standards of each district have been unknown. In fact, in 2006, Governor Rick Perry created the Texas Task Force on Appraisal Reform (TTFAR), and the final report stated, “Most appraisal districts do not have the internal capacity to analyze complex financial or commercial transactions.”

The Texas Legislature heeded the advice from the TTFAR report and in 2009 passed comprehensive appraisal reform. Specifically, the Legislature passed H.B. 8 that enacted a “methods and procedures” audit on every appraisal district in Texas. The comptroller’s office was given responsibility to implement the bill and has completed audits for half of the 253 appraisal districts. The other half will be audited in 2011 with final results in December 2011. The Legislature also passed (and voters approved) a constitutional amendment that calls for uniform appraisal standards to be used in all appraisal districts.



Mortgage finance: home equity

Issue

Discussions continue on “watering down” the constitutional protections afforded to Texas consumers on home equity loans.

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An article written last year showed Texas is not experiencing some of the downturns in the real estate market due to “... a state law(s) that restricts home equity lending ...” Other states in the union allowed for upwards of 120% loan-to-value, thus creating a situation where the homeowner was already upside down because they owed more to the bank than their home was actually worth. Therefore, as real estate prices dipped in these states, many homeowners walked away from their obligation. Foreclosures hurt the overall real estate market and lower home values.

Our position

We do not support any change in the home equity constitutional protections, specifically any attempt to allow a seasoned loan refinance or to increase the loan-to-value ratio. Lending institutions are currently able to refinance a home equity loan and a first mortgage into one payment. In addition, several reports of rampant abuses within the financial sector are alarming. These increased reports of predatory lending practices by financial entities based in Texas and around the country should be a warning signal not to water-down the consumer protections currently provided for in the Texas Constitution.

Legislative outlook

There might be some attempts to pass a joint resolution amending the protections relating to home equity lending in the Texas Constitution. However, because of the unprecedented projected budget shortfall, the legislature will have to tackle during the 2011 session, there will not be much time for other auxiliary matters.

Historical perspective

In 1997, the Texas Association of REALTORS® was very involved in passing a constitutional amendment allowing Texans access to the equity in their homestead. Texas, for more than 140 years, did not allow home equity loans because of the possible repercussions from defaulting on the loan. While our home equity laws are conservative in nature, Texas leaders did not want to experience some of the problems other states have incurred. Some of the consumer protections placed in the Texas Constitution are: a 12-day waiting period, 3-day right to rescind the loan, an 80% loan-to-value ratio maximum, and refinancing is allowed after the first year of the loan. However, any refinancing of a home equity loan must maintain the same characteristics of a home equity loan.

Since 1997, many financial lenders have tried to change the home equity constitutional provisions to allow a refinance of a home equity loan to a conventional loan. Currently, once a loan is designated a home equity loan, it will always be a home equity loan during any refinance, and thus the loan will be subject to all the consumer protections outlined in the constitution.



Mortgage finance: seller financing

Issue

The ability of sellers of real property to seller-finance the transaction has been jeopardized by efforts to protect consumers in the residential mortgage loan industry.

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While seller-financing was not abolished altogether, the implementation of the SAFE Act in Texas necessitated that seller-financiers be licensed as residential mortgage loan originators.

Our position

The Texas Association of REALTORS® will support legislation to reinstate a de minimis exception to residential mortgage lending licensing requirements for sellers who finance the sale of five or less properties in a 12-month period.

Legislative outlook

It is likely that the Texas Association of REALTORS® can achieve a de minimis exception to the SAFE Act, allowing sellers to finance up to five transactions per 12-month period without triggering the licensing requirement.

Historical perspective

On July 30, 2008, President Bush signed into law the Secure and Fair Enforcement for Mortgage Licensing Act—the SAFE Act. This federal law mandated state passage of uniform minimum licensing provisions for originators of residential mortgage loans. This included a licensing requirement for seller-financiers who financed residential property, unless the seller was selling his or her primary homestead or selling the property to a direct family member.

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act, which included an exception in the SAFE Act to the residential mortgage lending licensing requirements for sellers who finance the sale of three or less properties in a 12-month period. On August 12, 2010, the commissioner of the Texas Department of Savings and Mortgage Lending, the state agency charged with implementation and enforcement of the SAFE Act in Texas, reinstated the de minimis exception in Texas. The exception will remain in effect until a subsequent statutory amendment or rule provides otherwise, or until HUD or a successor agency determines the de minimis exception does not meet the SAFE Act requirements.



Private transfer fees

Issue

Some developers are recording deed restrictions that require the payment of a percentage of the proceeds of future property sales back to the developer or other entity for the next 99 years.

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Private transfer fees are another potential obstacle to closing and could potentially create a source of liability for REALTORS®, which could lead to title problems and litigation. If title problems exist, the real property transaction can't close; therefore, the real estate industry could be negatively affected.

Our position

The Texas Association of REALTORS® opposes private real estate transfer fees. We believe such fees decrease affordability, serve no public purpose, and provide no benefit to property purchasers, or the community in which the property is located. Because private transfer fee deed restrictions are often difficult to discover, and, therefore, disclose prior to a transaction, REALTORS® risk liability issues. In addition, deed restrictions imposing private real estate transfer fees will position affected properties at a disadvantage in the marketplace, and may well undermine economic stability.

Legislative outlook

A simple clarification is needed in state law to prohibit private transfer fees. Texas took the lead in 2007 when it passed its law, and now 12 states have passed legislation to prohibit or restrict private transfer fees. It is likely that more states will do so. The Federal Housing Finance Agency has published a notice of proposed guidance to restrict government sponsored entities (GSEs) from investing in mortgages with private transfer fee covenants.

Historical perspective

Texas passed a law to prohibit private transfer fees during the 2007 session. The law became effective Jan. 1, 2008 and strictly prohibits private transfer fees except for a 501(c)(3), a homeowner association, or a governmental entity as well as the law does not apply to commercial real property. Some private entities have said that the Texas Legislature "rubber stamped" private transfer fees in Texas because the law only prohibits a buyer (transferee) from paying the fee. The Legislature came back in 2009 to clarify the law that, regardless of who pays a private transfer fee, the fee is prohibited in Texas.



Sales tax on professional services

Issue

During past legislative sessions, some discussion has concentrated on expanding the state sales tax base to include professional services. All professional services, including real estate services, would be taxed.

The state of Texas currently imposes a sales and use tax (sales tax) on all retail sales, leases, and rentals of most goods, as well as some taxable services. All local governmental entities have the option of imposing an additional local sales tax for a maximum combined total state and local taxes of 8.25%.

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If Texas expanded the sales and use tax to include professional services, this would be a "targeted income tax" and would have a detrimental impact on the overall Texas economy and the real estate industry. Therefore, the amount of demand for housing in Texas would be severely affected and your ability to earn a living would be irreparably harmed. Finally, any taxing structure should not place an undue burden on the real estate industry that would hamper the continued economic recovery in Texas.

Our position

We oppose efforts to expand the state sales tax base to include professional services. The net effect of a sales tax on real estate services is vastly different once analyzed. The overall impact of taxing real estate services will hinder further economic recovery in the state and put Texas on the fast track to becoming just like other struggling states such as California, Michigan, Florida, and Ohio.

We have long advocated for taxing structures at the local, state, and federal level to be fair and equitable to all taxpayers. A tax should not disproportionately affect one group over another; most people are willing to pay their fair share of taxes as long as they

perceive the tax system is fair. Greater equity is achieved when the system requires the largest number of taxpayers to pay the smallest possible number of dollars, and when people in similar circumstances pay similar taxes.

Legislative outlook

With the expected potential budget shortfall of \$11 billion to \$28 billion when the legislature convenes in 2011, there will be a lot of pressure to increase tax revenue to help cover the budget shortfall. In fact, the House Ways and Means Committee has been meeting throughout the interim reviewing all sales-tax exemptions and exclusions, trying to determine which exemption and exclusions are outdated.

Historical perspective

The National Association of REALTORS® commissioned a study in 2005 on the issue of expanding sales-tax bases to include real estate services. The report analyzed what impact a tax on services would have on the ability of homebuyers to attain a home and how much additional cost would be added to the entire real estate purchase. The report assumed a 6% sales tax rate and included the most common services associated with the purchase of residential property. Based on the preliminary results, homebuyers would experience an additional \$621 increase in the cost of buying a home. However, calculating the increase in costs for the state sales tax rate of 6.25% would yield an increase of \$775. If the local option of 2% were added in, the cost of purchasing a home would increase by \$1,022. According to the report, home sales in Texas would decline by almost 3% when real estate services are taxed at a rate of 6%. Home sales in Texas sharply decline proportionate to a sales-tax increase.

In addition, the Real Estate Center at Texas A&M concluded in a similar report that expanding the sales tax base to include professional services, including real estate services, would cause irreparable harm to the real estate industry and the Texas economy.



Sales tax on real estate

Issue

Increasingly, some legislators are advocating for applying the combined state-local sales tax rate (8.25%) to all real estate sales transactions that occur in Texas. A sales tax on real estate would be assessed on real estate when ownership of the property is sold or transferred from one party to another (also referred to as a transfer tax). A sales tax on real estate would also apply to long-term leases. Proponents argue applying the sales tax rate to all real estate transactions could eliminate the burden of school property taxes in Texas. In 2007, school property taxes accounted for 53.8% of total property taxes levied.

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A sales tax on real estate transactions would mean fewer transactions take place and real property is less affordable. Any sales tax rate applied to the real estate transaction would require purchasers to come up with tens of thousands of dollars at the closing table to pay the new sales tax on real estate, in addition to downpayment and closing costs. Some real estate experts and economists have opined a sales tax rate of over 19.5% would be required to replace school property taxes in Texas, with the sales tax rate increasing every year after to keep up with fewer sales transactions as demand goes down.

Our position

We oppose efforts to create a sales tax on all real estate transactions in Texas. Applying the sales tax rate to all real estate transactions in Texas would be a major burden to buyers and sellers. Additionally, this type of tax would have a negative impact on housing costs and the real estate market as a whole; therefore, economic development would be severely affected throughout

Texas. Finally, because of the volatility of sales taxes, many experts believe these taxes are a particularly poor revenue source for the general operating budgets of state and local governments.

Legislative outlook

While some legislators have advocated for broadening the sales tax to real estate transactions, not one current Texas legislator has filed a bill to create this new taxing scheme. The outlook for this type of new tax to be passed by the legislature and signed into law by the governor is remote at best. Based on initial information from the comptroller's office and the Real Estate Center at Texas A&M, school property taxes levied by school districts in 2007 were \$18.9 billion. So in order to replace school property taxes with a sales tax on real estate, it would require nearly a 20% sales tax rate. During the last two years, the real estate market in Texas has seen a decrease in sales volume; therefore, the sales tax rate would have been over 23% in 2008 and over 26% in 2009 just to raise the same amount of revenue as the prior year.

Historical perspective

In 2001, one state representative filed H.B. 3259, which attempted to abolish school property taxes. The bill increased the state sales tax rate to 8% and applied the new sales tax rate to the sale, rental, or lease of real property. The bill would have added one million new taxpayers to the sales tax base because it would have included all building owners, apartment owners, people who rent houses to others, billboard owners, dormitories, pipelines, hotels, bed and breakfasts, public storage facilities, real estate brokers, and attorneys. According to state documents, the amount of money generated from this tax swap would have fallen short by more than \$24 billion over a 5-year period. During the general election in November 2002, this state representative was defeated, primarily because of this bill.



Transportation

Issue

The state of Texas must ensure its citizens the right to a safe and efficient transportation system. In doing so, Texas must continually address numerous transportation issues: congestion, capacity, construction and maintenance costs, safety, age and condition of roadways, and the impact transportation delays have on air quality, cost of goods, and quality of life.

I'm a Texas REALTOR® ... what does this mean for my business?

If Texas continues to do nothing to address the growing transportation infrastructure crises, congestion will increase while safety will decrease, leaving all motorists, including Texas REALTORS®, in peril on Texas roadways. Gridlock not only impedes commerce, increases the costs of goods and services, and creates air quality attainment issues, but also limits housing opportunities for individuals and families throughout the state.

Our position

The Texas Association of REALTORS® continues to support the following concepts:

A statewide, multi-modal transportation system must include sufficient transportation choices, including roads, freight and passenger rail, waterways, sea and inland ports, and air, for the safe and efficient movement of people and goods within urban areas and around the state.

All non-education diversions from the state gasoline tax must cease. Alternative funding options for education must be explored so a constitutional amendment redirecting state gasoline tax dollars to transportation can be considered. At a minimum, the state gasoline tax must be indexed or raised to keep up with inflation and need.

The Texas Transportation Commission should ensure accountability, transparency, and public involvement in the transportation planning process. Dedicated, sustainable funding sources should be permanently granted to the various transportation funds, including the Texas Mobility Fund and the Rail Relocation Fund, to finance specific transportation needs.

Legislative outlook

The Texas Legislature is expected to tackle a potential budget shortfall of \$11 billion to \$28 billion when it convenes in Austin this January. This budget shortfall may preclude the legislature from identifying any new permanent transportation financing options.

Historical perspective

While various financing options have been proposed and a few passed in recent sessions, the state gasoline tax has not been raised from its current 20 cents per gallon since 1991. The Texas Department of Transportation has been embroiled in the sunset process for the past four years. That endeavor has resulted in the Texas Transportation Commission adopting numerous changes and will culminate in sunset legislation in the 2011 session.



Tort reform

Issue

While improvements have been made in the Texas Civil Justice System in the last few legislative sessions, more work needs to be done to protect consumers and businesses from excessive and frivolous lawsuits. The U.S. Chamber of Commerce still ranks Texas as one of the 10 worst legal climates the country. Frivolous lawsuits discourage investment, job creation, and business innovation, thus limiting economic development and the future well-being of our children and grandchildren. Entrepreneurs who are afraid of losing their life-savings to excessive and unnecessary legal fees may not be willing to take the risks necessary to grow our economy.

I'm a Texas REALTOR® ... what does this mean for my business?

Texas REALTORS® have repeatedly been subjected to meritless and frivolous lawsuits. Frequently plaintiffs' lawyers name a REALTOR® in a lawsuit even though the REALTOR® has done nothing wrong because the plaintiff's lawyer knows that the REALTOR®'s insurance company may simply settle the lawsuit for the deductible cost to the REALTOR®. The REALTOR® in these cases is forced to pay these costs out of pocket and does not have an affordable legal defense.

REALTORS® also frequently shy away from delivering the best possible service to consumers because of fear of possible liability from giving thorough advice regarding a real estate transaction.

Our position

We believe that the Texas legal system needs additional

improvement to reduce the volume and extent of frivolous and unnecessary litigation. Improvements, such as limiting the overreaching aspects of the Deceptive Trade Practices Act, would improve consumer rights by allowing Texas REALTORS® to give better quality advice and consumer service. Such change would treat Texas REALTORS® the same as other regulated professionals including title agents, stock brokers, and insurance salespeople.

Legislative outlook

The new mandate facing our Texas Legislature in 2011 demands that excessive and unnecessary government regulation be reduced on the consumers and business people of Texas. Voters demand that our free market economy be allowed to expand and create jobs without fear of oppression by greedy trial lawyers and meritless legal claims. The legislature should be receptive to reasonable and fair tort reform that benefits consumers and businesses alike.

Historical perspective

Statutes like the Deceptive Trade Practices Act that were written by trial lawyers in the 1970s created unnecessary and overreaching government regulation of the free enterprise system, more as a result of political retribution against business organizations than because of any real concern for consumer protection. The Texas Association of REALTORS® has urged real and fair improved consumer protections through the years by lobbying for mandatory seller disclosure of material defects in homes and enhanced regulation and education of real estate licensees, thus eliminating the need for statutory roadmaps to lawsuit abuse.



TREC budget

Issue

The Texas Real Estate Commission (TREC) is funded primarily through fees charged to real estate licensees. Currently, TREC remits a portion of funds collected in the licensing process to the state general revenue fund. To complicate matters, an overall budget deficit has necessitated TREC cut its current budget (2010-11) by 5%, and may necessitate further cuts of 10% in the next biennium.

I'm a Texas REALTOR® ... what does this mean for my business?

TREC is the state regulatory agency for all real estate licensees. Any increase in fees you are required to pay to maintain your license means less money in your bank account.

Our position

The Texas Association of REALTORS® supports efforts to allow the Texas Real Estate Commission to achieve its budgetary needs, including but not limited to minimizing the amount of licensing fees diverted to the state's general revenue fund. The Texas Association of REALTORS® does not support increases in real estate licensing fees.

Legislative outlook

There is little likelihood of state budget writers increasing TREC's budget. More reductions will likely be required.

Historical perspective

In the last legislative session, TREC asked for appropriations for special budgetary items outside of the budget. The appropriations were to pay for salary equity, document imaging, information security testing, and an additional employee in the enforcement division. The Legislature granted TREC the authority to budget for these exceptional items, but required TREC to finance the items through additional fees to licensees.



Water

Issue

The Texas population is expected to more than double between 2000 and 2060.¹ The Texas Water Development Board (TWDB) estimated that roughly 85% of that projected population will not have enough water in 2060 during drought conditions if new management strategies and projects are not implemented.² While funding has been appropriated by the Texas Legislature for various TWDB programs and exceptional, one-time expenses in the past, a dedicated state funding source has never been identified to pay for strategies and projects identified by TWDB to meet the growing need. The strategies and projects identified in the current water plan are estimated to cost about \$30.7 billion.³

I'm a Texas REALTOR® ... what does this mean for my business?

The availability of water supports the economic growth of our state. TWDB estimates that water shortages during drought could cost Texas businesses and workers about \$98.4 billion by 2060. If Texas can't secure available water supplies to meet demand for a growing population, that growing population will quickly turn into a diminishing population, taking the livelihood of Texas REALTORS® with it. At the same time, Texas REALTORS® and landowners must be able to rely on secure private-property rights as the state of Texas strives to ensure water availability through management and conservation.

Our position

The Texas Association of REALTORS® continues to support a state water plan that balances public need with private-property rights. Groundwater conservation districts are charged with management of groundwater resources and, in doing so, must balance the rights of permit holders with the needs of the area the district serves. The districts must be required to apply rules and regulations

consistently and fairly. The state should continue to uphold private-property rights with respect to water sources. At the local level, Texas REALTORS® should actively seek leadership positions in governance over water management issues.

Legislative outlook

The Texas Legislature is expected to tackle a proposed budget shortfall of \$11 billion to \$28 billion when it convenes in Austin this January. This budget shortfall may preclude the legislature from adequately funding the state water plan. However, with the population of Texas expected to double by the year 2060, we must find the will and financial resources to ensure a safe and abundant water supply for future generations.

Historical perspective

“Since 1957, the TWDB has been charged with addressing the state’s water needs. With the passage of Senate Bill 1 by the 75th Texas Legislature, federal and state organizations, political subdivisions, and regional water planning groups have assumed increased responsibility for ensuring sufficient water supplies for the state.”⁴

“Senate Bill 3 (passed in 2007) designated the unique reservoir sites listed in the 2007 State Water Plan and included provisions for protecting environmental flows, conserving water, expediting regional water planning amendments, promoting voluntary land stewardship, providing lease-back and mitigation protections for landowners impacted by potential reservoirs, designating river and stream segments of unique ecological value for protection, and creating a water supply study commission involving Region C and D water planning areas.”⁵

Many of TWDB’s exceptional items as well as requested and additional funding were granted during the 2007 session.

¹ According to projections from the Texas Water Development Board and the Texas State Data Center.

² Water for Texas 2007, Volume 1, Texas Water Development Board.

³ Id.

⁴ 81st Legislative Session – Legislative Priorities, Texas Water Development Board, Executive Summary.

⁵ 81st Legislative Session – Legislative Priorities, Texas Water Development Board, p. 2.



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