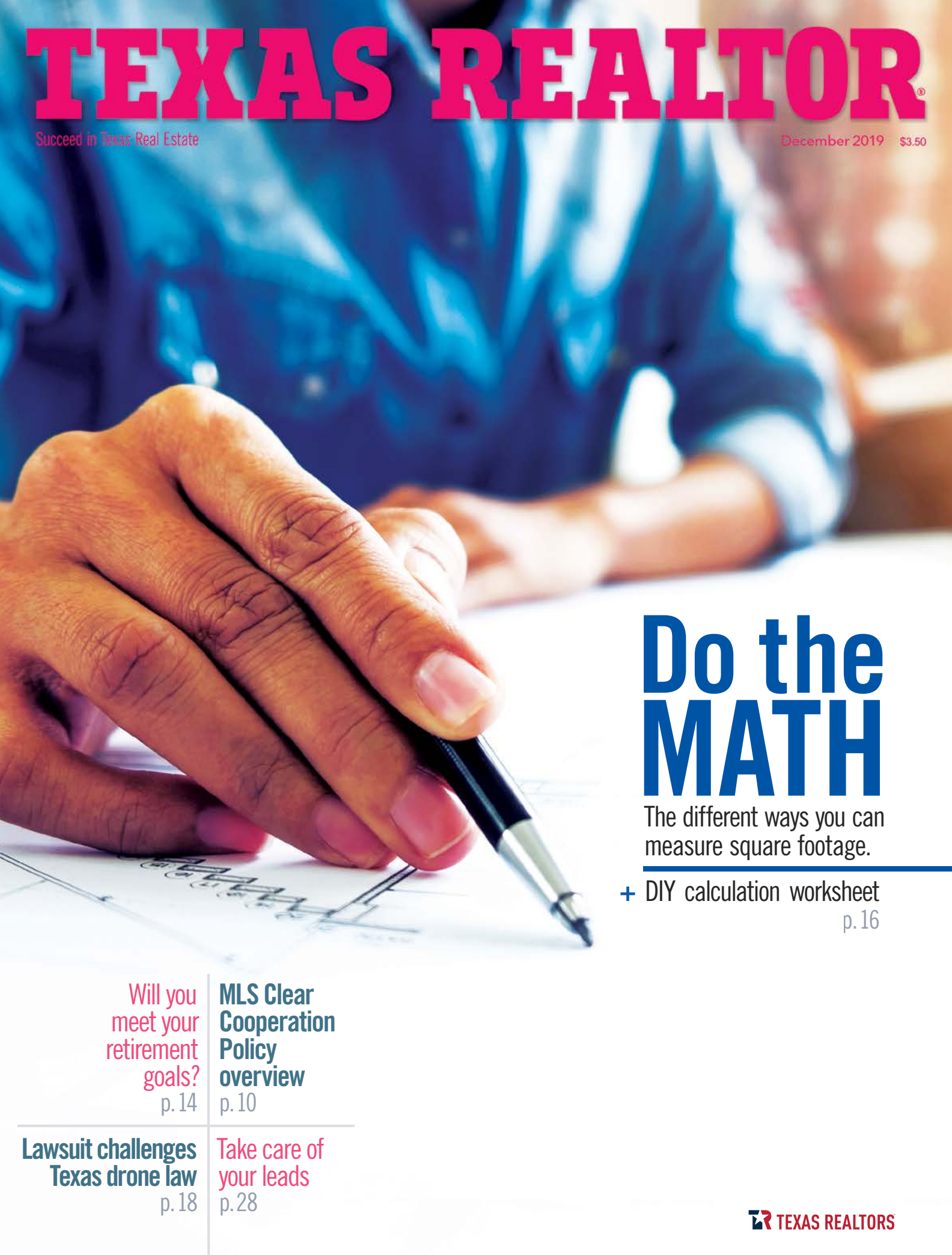


TEXAS REALTOR®

Succeed in Texas Real Estate

December 2019 \$3.50



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TEXAS REALTOR®

December 2019-Volume 72-Number 10

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CONTACT THE EDITORS
editor@texasrealtors.com
512-480-8200
P.O. Box 2246
Austin, TX 78768-2246

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INSIGHTS

Chairman

“ Serving as your 2019 chairman has been an incredible honor.

We've had an unforgettable year with a successful legislative session, achieving goals and navigating changes to ensure Texas REALTORS® remain relevant.

I know that our association is in great hands with the 2020 Leadership Team of Chairman Cindi Bulla, Chairman-Elect Marvin Jolly, Secretary/Treasurer Russell Berry, and CEO/President Travis Kessler to guide us through our association's centennial year.

Texas will also be well represented at the national level in 2020. Leslie Rouda Smith will serve as First Vice President of the National Association of REALTORS®, Kaki Lybbert will serve as NAR Regional Vice President for Region 10, which covers Texas and Louisiana, and almost 200 Texans have been appointed to NAR committees for 2020.

We know that serving our industry takes commitment, and it's a role we don't take lightly, because it can mean time away from your family and your business.

It also means engaging in tough discussions on issues with wide-ranging implications, such as budgeting, strategic planning, and setting our public policy priorities.

Your Leadership Team traveled the state throughout the year, visiting with members and providing updates on association programs.

We didn't just listen to your comments; we took action.

I'm proud to say that we responded to member feedback in areas such as enhancing our events, updating our branding, and improving the services and programs we provide.

As I reflect on these and other accomplishments from this year, I want to thank every REALTOR® who

took the time to share concerns and provide innovative ideas for moving us forward. Our association is stronger and more engaged than ever because of you.

I encourage you to continue reaching out to your Texas REALTORS® Leadership Team, directors, regional vice presidents, and committee leaders and members.

Your association's leaders don't just welcome your input—we depend on it.

With a state as large and diverse as ours, we need your insight into what you and your clients are experiencing in every region.

Thank you for the opportunity to represent you and, more importantly, to serve you!



Tray Bates

YOUR ASSOCIATION'S LEADERS DON'T JUST WELCOME YOUR INPUT—WE DEPEND ON IT. WITH A STATE AS LARGE AND DIVERSE AS OURS, WE NEED YOUR INSIGHT INTO WHAT YOU AND YOUR CLIENTS ARE EXPERIENCING IN EVERY REGION.



LEHMAN RETIRES AFTER DISTINGUISHED REALTOR® ADVOCACY CAREER



After more than two decades of service to Texas REALTORS®, Mark Lehman will retire as the association's vice president of governmental affairs.

"During his 21-plus years with Texas REALTORS®, Mark has grown our association's governmental affairs division to become the gold standard among advocacy organizations," says Texas REALTORS® CEO/President Travis Kessler.

Lehman will officially step down from the role on December 31, 2019, following a distinguished career advocating for real estate consumers and professionals.

"I am confident in the long-term vision of the association, and I leave knowing the association's future is in outstanding hands," Lehman says. "My respect and admiration for the work Texas REALTORS® accomplishes has no limits."

Under Lehman's leadership, the association modernized our political and public policy initiatives, increased resources available for local boards, and raised record-breaking funds annually for TREPAC.

Lehman himself was inducted into the RPAC Hall of Fame in 2018 for his lifetime of investments in TREPAC and RPAC.

He joined the association in 1998 as director of governmental affairs, ascending to vice president of governmental affairs in 2004.

His previous roles include campaign director for U.S. Sen. John Cornyn's successful campaign for attorney general of Texas, chief of staff for former Texas Sen. Florence Shapiro, and numerous campaigns at the national, state, and local levels.

"On behalf of the Texas REALTORS® leadership and our entire membership, I extend our heartfelt gratitude for Mark's years of service to the organization. His efforts will benefit every real estate consumer in Texas for years to come," Kessler says.

[A] Lehman greets First Lady Nancy Reagan in Austin (1984).

[B] Lehman served as chief of staff for former Texas Sen. Florence Shapiro, here at a bill signing with Gov. George W. Bush. (1995)

[C] Lehman visits with Gov. Greg Abbott (2018).



TEXAS REALTORS® GLOBAL & COMMERCIAL TEAM RECOGNIZED BY NAR

The Texas REALTORS® Global & Commercial team was recently named a 2019 Platinum Council in the National Association of REALTORS® Global Achievement Program. The Global Achievement Program recognizes the most active associations in global business and the high bar they set by providing members with the tools, education, and networking they need to maximize their share of the global real estate market.

- Congratulations to local associations in Texas also honored this year:
- Houston Association of REALTORS®, 2019 Diamond Council
 - Austin Board of REALTORS®, 2019 Platinum Council

TOP WORK PLACES 2019

Austin American-Statesman
statesman.com

TEXAS REALTORS® NAMED ONE OF AUSTIN TOP WORKPLACES 2019

Texas REALTORS® has been named a Top Workplace 2019 by the *Austin American-Statesman*. The honor is based solely on anonymous employee feedback about several aspects of workplace culture, including alignment, execution, and connection.

"The staff at Texas REALTORS® is a group of committed, talented, and professional individuals who are passionate about serving REALTORS® and our local associations across the state," says Travis Kessler, CEO of Texas REALTORS®. "This recognition reinforces how proud I am as the CEO to work with a team of exemplary staff who always go beyond expectations to achieve the goals of the organization."

HOW TEXAS REAL ESTATE WON ON ELECTION DAY



You did it! All three of the constitutional amendments supported by Texas REALTORS® in last month's election passed by large margins.

State of Texas Proposition 2: Help with Water Infrastructure

- Passed with 66% approval
- This amendment allows the Texas Water Development Board to sell bonds. The association supported Prop. 2 because it's critical for Texans to have access to water that meets state standards.



State of Texas Proposition 3: Property Tax Exemption

- Passed with 85% approval
- This amendment provides a temporary property tax exemption for property owners in areas declared disasters by the governor. The association supported the amendment to aid property owners struggling in the wake of disaster and provide these taxpayers more immediate relief.



State of Texas Proposition 8: Flood Protection Funding

- Passed with 78% approval
- This amendment creates a Flood Infrastructure Fund to develop flood mitigation infrastructure, which will help communities better withstand future flood events. The association supported Prop. 8 because it would create a more resilient Texas in preparation for future flooding.



Your support of these issues during the 2019 legislative session ensured they would appear on the ballot for Texas voters.

BUSINESS

HEY, ALEXA, HOW DO I OPTIMIZE MY WEBSITE FOR VOICE SEARCH?



Website search engine optimization (SEO) efforts have long been designed around keywords. Your business's site likely is littered with references to your city, the services you provide, and real estate terms—both in the copy and code.

That's because prospects search online by typing things like "lake house agent Fort Worth." But that's not the way people talk or search using voice commands.

When they query Siri, Alexa, or Google Home, they might say, "Who's the best person to help me buy a lake house within an hour of Fort Worth?"

That means you need to optimize your website for voice search.

Natural Speech Over Keywords

Voice searches tend to have longer word counts than text searches, so experts recommend including long-tail keywords in the code. Instead of one word, long-tail keywords are phrases that are very specific to the services you provide.

For example, instead of using "agent" as a keyword, use "Which agent can sell my house in Harlingen?"

This will make it more likely that your website

will be the answer they hear when asking a question.

Don't Force the Keywords

Just like with keywords for traditional search, inserting long-tail keywords in your content shouldn't feel forced.

Make Your Content Conversational

Keep the tone of the copy conversational, using words and phrases that a potential client might use when searching for your business.

Focus on Your Location

Most voice searches are local: "What's the best coffee shop in town?" or "Where is the nearest Bank of America ATM?" It's important to make sure the locations you serve are highlighted on your site, and also include locally focused content. Also, create a free Google My Business profile, or make sure your existing one is current with the correct name, location, and contact information. Using Google's profile will improve your ranking with the search engine.

Ask your web programmer for help adjusting code to focus on long-tail, conversational keywords.



NEW APPRAISAL STANDARDS RELEASED

The Uniform Standards of Appraisal Practice (USPAP) created by the Appraisal Foundation's Appraisal Standards Board is updated every two years, and the 2020-2021 version is available for purchase at the Appraisal Foundation's website, appraisalfoundation.org. In addition, the Appraisal Foundation created a three-page summary of the changes as well as a detailed 128-page preview of all revisions. Both summaries are available free online at the Appraisal Foundation's website.

DO YOU HAVE AN AWARD-WORTHY COMMERCIAL TRANSACTION?



Have you completed a transaction that represents excellence in commercial real estate? Did the transaction have a positive impact in your community? If so, apply for the William C. Jennings Award, which is given annually by Texas REALTORS® to recognize outstanding efforts in commercial brokerage.

All REALTORS® in Texas are invited to apply by January 10, 2020. The award will be presented at the 2020 Texas REALTORS® Winter Meeting in Austin, and the winner will be featured in *Texas REALTOR*® magazine. In addition, the award winner's primary local association will receive a \$1,000 grant. Learn more about this and other awards honoring the achievements of Texas REALTORS® members at texasrealestate.com/awards.

6 TIPS FOR BETTER NEGOTIATIONS



Effective negotiation doesn't have to be a trade-off between getting the best outcome and being well-liked. Experts say there are strategies you can use to have it both ways:

- Establish a rapport with small talk
- Don't make concessions to avoid tension
- Look for ways to frame the issue other than confrontation
- Highlight the areas of common ground
- Ask questions about the other side
- Try to put yourself in the opposing position.

Using these techniques to build an understanding while still being firm on issues important to you can help what could be an adversarial process become a joint problem-solving challenge, where both parties are invested in a mutually beneficial outcome. Remember not to mistake someone else's demands as a slight or insult, and instead ask questions about motivations and constraints to better understand where negotiations can move.

3 MISTAKES YOU'RE MAKING WITH YOUR BUSINESS PLAN



The most obvious mistake is not having a business plan at all. But if you do have a plan, make sure it's as comprehensive and effective as it should be. Here are common mistakes agents make with their plans and ways to fix them.

You Don't Know Your Audience

Who is your prospective client base? If you haven't drilled into the details of who you are here to serve, your business plan will go nowhere.

The fix: Identify the type of consumers you want to work with, whether it's buyers, sellers, or both. You can also refine the audience further and target first-time homebuyers, seniors who are downsizing, or members of the military. Look for associated designations exclusively for REALTORS® that will help you better understand those you want to serve. Find designations at texasrealestate.com/designations.

You Don't Have a Clear Path to Reach Your Goals

If you have a target income goal for the year, do you know how you'll earn it?

The fix: It's not enough to set a number and get to work. Outline the specific actions you will take to reach your goals. This might include scheduling time each day to follow up with prospects, hosting information sessions about real estate for your farm area, and contacting past clients once a month to ask for referrals.

You Never Look at Your Plan

Maybe you already have a business plan that includes all of these aspects, but when is the last time you reviewed it?

The fix: Don't finish the plan and put it away. Review it often—at least once a month—to assess your current achievements and your progress to reaching your goals. You can also make adjustments as needed. It's OK if you realize actions you thought you'd want to take six months ago aren't practical. As long as you can replace what's not working with something that will, you'll still have a solid plan.

4 LEASING SCAMS TO WATCH

Property managers and landlords should beware of these identity-fraud scams that potential tenants might try.



An increasing number of applicants are using fake identities to secure leases, according to a report by real estate data firm CoreLogic. The report cites several reasons for the fake identities, including trying to live rent free until evicted and hiding poor credit, criminal history, or another characteristic that would make an application unattractive. Property managers and landlords should be on the lookout for these four types of fraud:

Synthetic Identity Fraud: This is the fastest growing type of identity-related fraud, responsible for an estimated 85% of all identity fraud. The applicant creates an entirely new fake identity from multiple stolen sources, with made-up information, or with a combination of both.

First-Person Fraud: The person who applies for the lease uses his real identity. However, he is not the person who moves in.

Third-Party Fraud: The person who applies for the lease uses a stolen identity.

Identity Manipulation Fraud: The applicant slightly changes some information, such as using a different birthday, to make it difficult to match the applicant with his true identity.

There is no foolproof way to guard against all types of identity-fraud scams. But with diligent and consistent tenant-screening practices, landlords and property managers can avoid many potential traps.

“How Identity Fraudsters Operate and What You Can Do to Stop Them” was published in October 2019 and is available at corelogic.com.

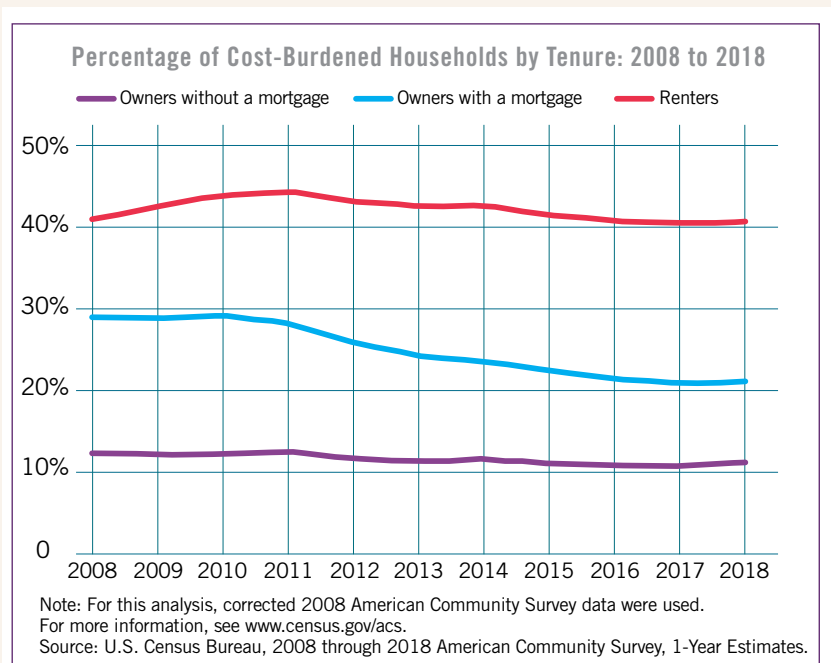
Your membership in Texas REALTORS® includes a discount on SmartMove tenant screening. Find the discount code in the Member Benefits section of texasrealestate.com.

MORE U.S. RENTERS BURDENED BY HOUSING COSTS THAN U.S. HOMEOWNERS

Data released from the U.S. Census Bureau’s American Community Survey estimates that 40.6% of the U.S.’s 43.8 million renters in 2018 are burdened by housing costs.

For the analysis of the data, the U.S. Census Bureau defines “burdened” as households that spend at least 35% of their monthly income on housing costs. For renters, this includes rent and utilities. For homeowners, this includes mortgage payments, utility bills, property taxes and insurance, and any other fees associated with homeownership.

In 2018, 20.9% of the nation’s homeowners with a mortgage were burdened, which is down from 10 years ago when the figure was 28.8%.



IMPRESS PROSPECTS AND GET MORE CLIENTS WITH THIS REALTOR® TOOL

RPR (REALTORS® Property Resource) is a real estate data platform made exclusively for REALTORS® as part of your NAR membership. As the nation's largest property database, RPR aggregates real estate data and helps you create robust reports. Here are a few ways to use RPR to impress prospects and clients.

Make a high-quality pre-listing package. Include an RPR Property Report along with your personal testimonials, sales history, resume, company profile, sample documents and contracts, marketing calendar, and related checklists. Have these documents professionally bound and printed before the listing appointment.

Prepare RPR reports before an open house. Offering custom Property Reports during the event helps position you as a professional, local real estate expert. With these reports and the RPR Mobile app, you'll be able to easily answer questions about the property, the neighborhood, and the community. Use other information from RPR as conversation-starters to generate leads without coming on too strong.

Help relocating military families. When someone in the military gets re-stationed to a new city, there may be little time to look for housing. Create and share Neighborhood, School, and Market Activity Reports from RPR so the relocating family can get a feel for the housing market in the new location. They'll remember your helpfulness when it's time to list their property before they move or buy when they return to your community.

Help small-business owners. When a small-business owner is considering opening another location in a different neighborhood, create a Retail Gap Analysis report in RPR Commercial. It can show whether the market is saturated and find adjacent areas with potential.

Calculate home improvements with better data. When trying to gain a new listing, use RPR's refinement tool to add various home improvements to provide a more accurate price recommendation.

These are just a few ways RPR can help you stand out from the crowd. Learn more about using RPR at blog.narrpr.com.



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LEGAL & ETHICS

NAR PASSES MLS CLEAR COOPERATION PROPOSAL

The National Association of REALTORS® Board of Directors on November 11 approved MLS Statement 8.0, also known as the Clear Cooperation Policy. The policy requires listing brokers who are participants in a multiple listing service to submit their listing to the MLS within one business day of marketing the property to the public.

MLSs have until May 1, 2020, to adopt the policy.

Texas REALTORS® has put together a webpage of resources and guidance, which will be updated as necessary. Find it at texasrealestate.com > *For REALTOR® Members* > *Legal & Ethics* > *Hot Topics*.

This policy is intended to address the growing use of off-MLS listings, which, according to NAR, exclude consumers and undermines REALTORS®' commitment to provide equal opportunity to all.

The policy doesn't prohibit brokers from taking office-exclusive listings, nor does it impede brokers' ability to meet their clients' privacy needs.

Here's the full text of MLS Statement 8.0:
Within one (1) business day of marketing a property to the public, the listing broker must submit the listing to the MLS for cooperation with other MLS participants. Public marketing includes, but is not limited to, flyers displayed in windows, yard signs, digital marketing on public facing websites, brokerage website displays (including IDX and VOW), digital communications marketing (email blasts), multi-brokerage listing sharing networks, and applications available to the general public.

NEW TREC EXECUTIVE DIRECTOR ANNOUNCED



Chelsea Buchholtz was announced as the next executive director of the Texas Real Estate Commission effective January 1, 2020. She replaces Douglas Oldmixon, who will remain with the agency during a transition period through March 2020. Buchholtz currently serves as TREC's general counsel.

TEXAS REALTORS® MEMBERS APPOINTED TO TREC COMMITTEE

Texas REALTOR® Candy Cooke [A] was appointed to the Education Standards Advisory Committee. Rob Cook [B] and Sarah Norman [C] were reappointed to the committee. Rick Albers also was appointed as a member of the public.



WHAT HAPPENED AT TREC'S NOVEMBER MEETING



Photos: © tirindade51, © CrackerClips - stock.adobe.com

The Texas Real Estate Commission met last month. The full agenda and materials are available at TREC's website at trec.texas.gov/apps/meetings. Below are highlights relevant to your business.

ADOPTED FORM CHANGES

- The commission adopted changes to the *Third Party Financing Addendum*. It was amended to clarify that the three-day notice requirement in Paragraph 2B does not apply to Paragraph 4.
- Changes were adopted to the *Addendum for Authorizing Hydrostatic Testing*. It was amended to include a reference to the scope of hydrostatic testing in the top sentence.

These forms were adopted for voluntary use until March 1, 2020, when they become mandatory. Texas REALTORS® will work with form vendors to post the updated forms as quickly as possible.

PROPOSED FORM CHANGES WITHDRAWN

The commission withdrew proposed changes to its contract forms at the recommendation of TREC's Broker-Lawyer Committee, which would like to further consider the proposed changes. The proposed changes would have affected the following forms:

- *Unimproved Property Contract*
- *One to Four Family Residential Contract (Resale)*
- *New Home Contract (Incomplete Construction)*
- *New Home Contract (Completed Construction)*
- *Farm and Ranch Contract*
- *Residential Condominium Contract (Resale)*

Proposed changes to the *Addendum for Property Subject to Mandatory Membership in a Property Owners Association* were also withdrawn.

ADOPTED RULE CHANGES

The commission approved a number of rule changes proposed at its August 12 meeting, many of which were necessitated by action during the 2019 legislative session.

Eliminated branch office license: As a result of Senate Bill 624, a branch office license is no longer required. Therefore, the commission adopted changes to TREC rules to remove references to a branch office license. For more information about this change, visit TREC's website.

Eliminated certain fees: The adopted amendments eliminate fees for a branch office license, establishing or changing a relationship with a sponsoring broker, change of address or name, an active license certificate, instructor approval, submitting paper application or forms, and certified copies. The fee for dishonored checks is also removed; however, the rule creates a process for requesting payment and allowing the commission to place a license on inactive status if payment isn't received.

Removed residency requirement: The Texas Legislature removed the residency requirement for real estate license eligibility. The adopted amendment removes that requirement from the rule and removes references to service members to incorporate them in a new section, Section 535.58, License for Military Service Members, Veterans, or Military Spouses.

Additional rule changes adopted by the commission are available in the meeting materials.

PROPOSED RULE CHANGES

Changes were proposed to Section 531.18, Consumer Information, adding an additional statement to the Consumer Protection Notice that inspectors are required to maintain errors and omissions insurance to cover losses.

Details about additional proposed rule changes are available in the meeting materials. All proposed rule changes will be posted in an upcoming Texas Register, after which the public will have 30 days to comment. Once published in the register, you can send comments to general.counsel@trec.texas.gov.

Legal Hotline

800-873-9155

Callers have been confused about when sellers must provide the *Seller's Disclosure Notice* to buyers. Section 5.008 of the Texas Property Code says that the disclosure notice must be provided to a buyer on or before the effective date of the contract. If the seller does not furnish the notice on or before the effective date, Paragraph 7B(2) of the *One to Four Family Residential Contract (Resale)* allows for the parties to stipulate how many days the seller has to provide the notice. However, a seller who provides the notice after the effective date gives the buyer the opportunity to terminate the contract for any reason within seven days after receiving the notice—or if the seller never delivers the notice, at any point prior to closing—and receive a return of his earnest money.

Laura Miller, associate attorney

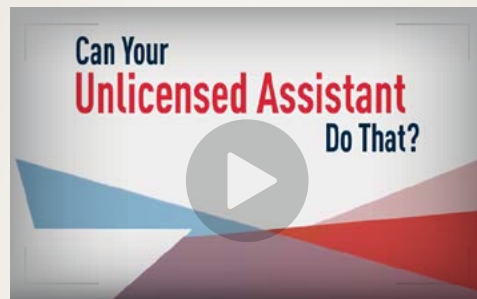


Your Forms

When you have prospective tenants who may not meet qualifications to sign the lease on their own—like college students—use the *Residential Lease Guaranty* (TXR 2007). This members-only form allows a third party—like college students' parents—to guarantee the lease.



FAST ANSWERS TO 8 LEGAL QUESTIONS



The Legal Topics Explained video series offers simple explanations of common legal issues in less than one minute. The videos are text only, so there's no need for audio. Play them during sales meetings, watch them in line at the coffee shop, or loop them on your office's reception-area monitor.

Access the full YouTube playlist at texasrealestate.com/legalvideos.

Here's a list of the eight topics:

- The Tenant Broke His Lease. Can the Landlord Keep the Security Deposit?
- What Items Stay With the House?
- Assistance, Emotional Support, and Service Animals
- Can Your Unlicensed Assistant Do That?
- Why You Need a Buyer's Rep Agreement
- 4 Common Questions About the Termination Option
- Are You Counting Contract Deadlines Correctly?
- What Your Ads Have to Include

Contract Closeup

The Settlement and Other Expenses Paragraph of TREC contracts contains a provision for the seller to pay a buyer's closing costs. Paragraph 12A(1)(b) includes a blank for a number that caps the amount of buyer expenses the seller will pay. This amount would be in addition to any amounts the seller must pay as seller's expenses.

This paragraph also specifies an order in which funds are to be applied, starting with expenses the buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board, or other government loan programs. Only after amounts to those entities are paid can funds be applied to other buyer closing costs, first to prepaid items and then to the buyer's other expenses. Paragraph 12A(2) lists the expenses the buyer is responsible to pay. Note that buyer expenses paid by the seller must be allowed by the lender. If there is any balance remaining after payment of the buyer's expenses, or payment of expenses allowed by the lender, that amount would not go to the buyer.



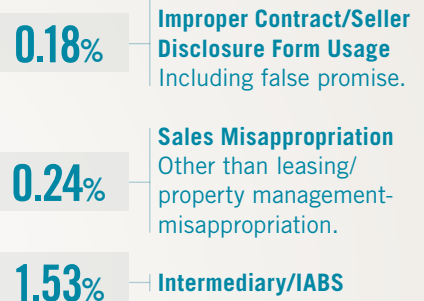
THE TOP TREC COMPLAINTS

Negligence, rebate, referral, earnest money, and other sales issues were the highest types of complaint allegations the Texas Real Estate Commission received from September 2018 to September 2019. Among the 1,696 total allegations, other top categories are licensure issues, leasing/property management issues, and breach of fiduciary duties. TREC publishes complaint totals each month. Find the latest information on active license holders and complaints at trec.texas.gov/license-and-complaint-count-totals.

TOP COMPLAINTS BY CATEGORY



FEWEST COMPLAINTS BY CATEGORY



ADDITION TO CODE OF ETHICS REQUIRES TIMELINESS OF WRITTEN AFFIRMATION

“As soon as practical” will be added to Standard of Practice 1-7 of the Code of Ethics in January 2020. Standard of Practice 1-7 requires the listing broker to provide written affirmation that an offer was submitted to the seller or landlord, if the cooperating broker who submitted the offer makes a written request for the affirmation.

The addition of “as soon as practical” is intended to make clear that simply providing the written affirmation is not enough if it was not provided in a timely manner—perhaps even after a transaction closed. Since circumstances vary from one transaction to the next, the standard of practice does not include a specific time frame to affirm that the offer was submitted. Should an ethics complaint be filed citing Article 1 based on this standard of practice, a hearing panel would look at the facts to determine whether notice was provided as soon as practical.

Note that “as soon as practical” also appears in Standards of Practice 3-4 (disclosing a dual or variable rate commission arrangement) and 16-12 (disclosing relationship as a representative of sellers/landlords or subagents of listing brokers).



How Do You Know if Your Retirement is on Track?

There are many people and tools you can turn to for insights.

by Marty Kramer

If your retirement strategy rests on winning the lottery, your odds of success may be low but at least you can easily gauge where you stand. Saving and investing for retirement—now *that's* where assessing your progress gets hard. Thankfully, there are many approaches to help you figure out if you're on track with your retirement goals.

Establish—Or Revisit—Your Goals

You know from your real estate business that you can't measure progress toward a goal you haven't defined. Simply wanting to retire someday isn't specific enough. Consider the age you plan to stop working, the retirement lifestyle you want to lead (and the costs associated with it), the current size of your retirement nest egg, income streams that will continue when you stop working, projected expenses in retirement, and how long you think you may live.

The more details you define, the easier it is to measure your status. And you'll need this information whether working with a financial planner, using a retirement calculator, or simply talking with your family about your future.

Do You Like to DIY?

If you have the time and interest, you can find a wealth of online retirement information and advice. There are countless articles about determining how much money you need to retire, pros and

cons of various strategies to build your nest egg, and so on.

General web searches on phrases that include the word *retire* or *retirement* will get you started. Keep in mind that rules of thumb may not apply to you depending on your goals and situation.

Crunch Some Numbers

You can access a wide range of online retirement calculators, most of which are free. Some calculators give you a general idea of your situation after only a few inputs, while others require you to enter dozens of detailed answers before spitting out results.

The more thorough calculators show your chances of reaching your retirement goals and may display year-by-year balances of your nest egg. Some calculators run a Monte Carlo simulation, putting your figures through thousands of hypothetical scenarios to determine likely outcomes for many different market conditions.

One of the most helpful ways to use retirement calculators is to modify your inputs to see how changes affect the outcome. For example, shifting the year you retire or adjusting your savings rate can significantly improve or diminish your chances of meeting your retirement targets.

Many large financial firms (mutual fund companies, stock brokerages, financial planning firms, etc.) offer online calculators that anyone can use—not just their clients.



Photo: © Hyejin Kang - stock.adobe.com

Not all financial advisors are fiduciaries. Those who aren't must only ensure an investment is suitable for you rather than put your interests above their own.

Hire A Professional

As in real estate, there are professionals who can help you sift through the information and help you achieve your goals. Make sure you understand a financial planner's credentials. Anyone can call himself a financial planner, but there are designations and certifications that require extensive training and testing.

Also find out if a planner subscribes to a code of ethics and whether that person is a fiduciary. As a real estate license holder, you understand that your fiduciary duty means you must place your client's interests first. Not all financial advisors are fiduciaries. Those who aren't must only ensure an investment is suitable for you rather than put your interests above their own.

Finally, inquire about how the advisor charges. Common arrangements include commissions on financial products you buy, a percentage of the total amount of your account under management, flat fees, or hourly fees. If all you want is someone to assess your situation and provide a plan for the future, a flat or hourly fee may work best.

Get Some Tech Help

Automated investing tools have grown in popularity over the last decade. These "robo-advisors" apply algorithms to your situation to try to optimize your investments. After answering questions about your financial situation and investing goals, the robo-advisor performs tasks like building a plan, rebalancing

your portfolio, choosing investments, and even making trades.

Fees for robo-advisors tend to be lower than working with a person, and some large financial firms offer hybrid models that combine automated and human advice.

Don't Forget Social Security

When to start taking Social Security—especially if you are married—can be confusing. There are advisors and calculators that specifically help you work through various Social Security scenarios.

Don't let long timelines or seemingly unattainable savings goals dissuade you. Planning for retirement and charting your progress will pay off in the long run.

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



There's More Than One Way to Measure a House

How many square feet is a house? It depends on who you ask and how they measure it.



Sometimes, the square footage of a home according to the appraisal district doesn't match up with an appraiser's report. It's not necessarily that the home was measured incorrectly in one instance or another; it's likely a difference in the method each follows when calculating the house's square footage, or gross living area.

The gross living area (GLA) of a home refers to the above-grade, finished living space. Garages and basements—any part below grade and however well finished—do not count toward the GLA. While condos and co-ops use the interior perimeter dimensions to calculate the GLA, for single-family homes, the exterior dimensions are used.

Builders

Builders often use the exterior dimensions of a home before the veneer is applied when calculating livable area. Floorplans might also include parts of the house in the total square footage that would be excluded by others from the GLA, such as garages, finished walk-out basements, or space on an upper level that is open to the level below.

Appraisal District

An appraisal district measures the exterior dimensions of a home outside of the veneer then rounds each measurement—sometimes to the nearest foot—before calculating the area. Appraisal district measurements also may not exclude area where the home's exterior is irregularly shaped, such as around a bay window, or parts of an upper level that are open to the level below. The appraisal district does not inspect the interior of homes and may not know what sections of upper floors are open to below, like a vaulted ceiling or the space for stairs.

WHAT DO YOU TELL CLIENTS?

If you provide the square footage of a property or list it in the MLS, you should always quote the source of the information and let prospective buyers know if you have any reason to know that the information is false or inaccurate. The form *Notice of Information from Other Sources* (TXR 2502) is available to Texas REALTORS® for this purpose.

Appraisers

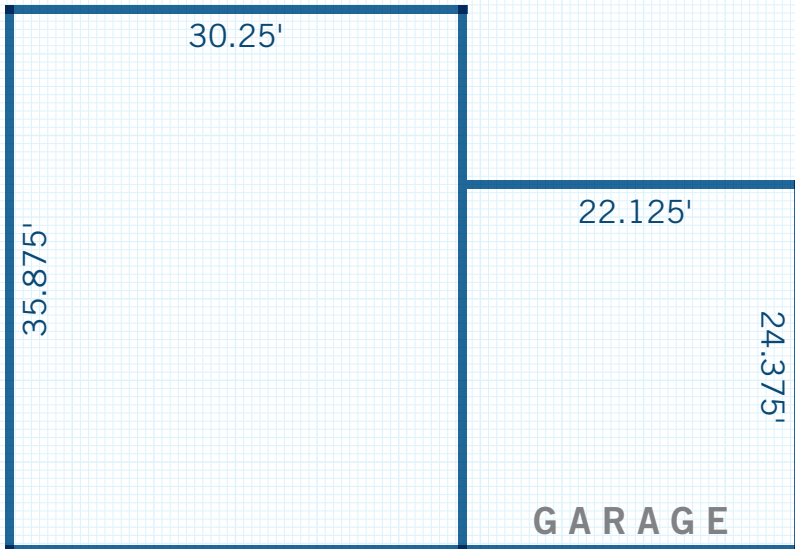
Appraisers follow the American National Standards Institute (ANSI) process and measure the exterior dimensions of a home outside of the veneer exactly and round only the final calculated square footage to the nearest foot. ANSI also requires appraisers to exclude areas that do not contribute to the livable area, such as where stairs open to the floor below and to compensate for the shape of bay windows. Appraisers also report basement or below-grade parts of the home separately from GLA. If any portion of the part of the home is below-grade, such as a walkout basement, it is excluded from GLA.

Sometimes confused with the GLA, the gross building area (GBA) is a measurement used mainly for multifamily properties that uses the exterior dimensions of a building, including all common spaces. For a single-family home, the GBA may or may not be the same as the GLA.

PRACTICE WHAT YOU'VE LEARNED

Find the square footage of this house.

FIRST FLOOR

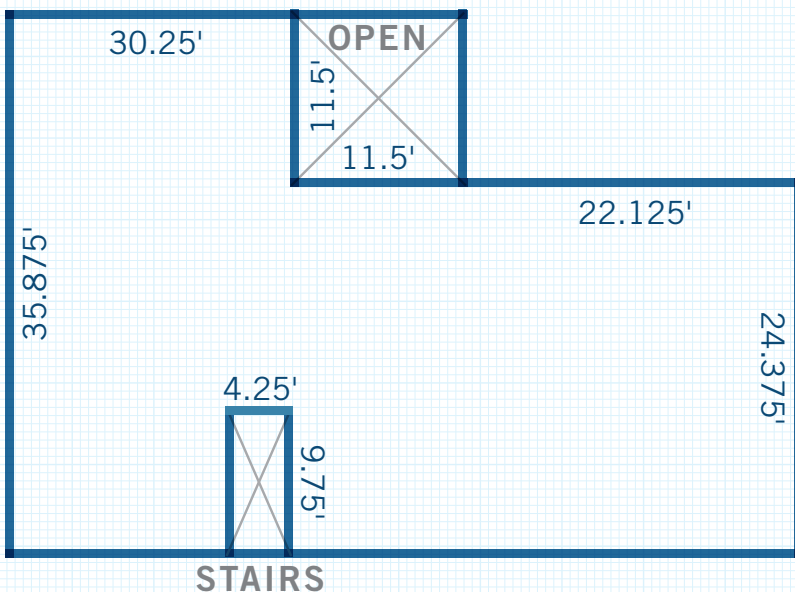


According to the Appraisal District

1. Measure the exterior dimensions
2. Round to the nearest foot
3. Find the GLA of the first floor
4. Find the GLA of the second floor
5. Combine to find the total GLA

TOTAL GLA: _____

SECOND FLOOR



According to the Appraiser using the ANSI process

1. Measure the exterior dimensions
2. Find the GLA of the first floor
3. Find the GLA of the second floor
4. Combine to find the total GLA

TOTAL GLA: _____

ANSWERS:

Appraisal District:

First floor GLA: $36' \times 30' = 1,080$ sq ft

Second floor GLA: $(36' \times 30') + (22' \times 24') = 1,608$ sq ft

Total GLA: $1,080 + 1,608 = 2,688$ sq ft

Appraiser using the ANSI process:

First floor GLA: $35.875' \times 30.25' = 1,085$ sq ft

Second floor GLA: $(35.875' \times 30.25') + (22.125' \times 24.375') - (11.5' \times 11.5') - (4.25' \times 9.75') = 1,451$ sq ft

Total GLA: $2,536$ sq ft

Lawsuit Challenges **Texas Drone**

A lawsuit recently filed in the U.S. District Court for the Western District of Texas challenges the constitutionality of the Texas Use of Unmanned Aircraft statute.

by Tiffany Dowell Lashmet

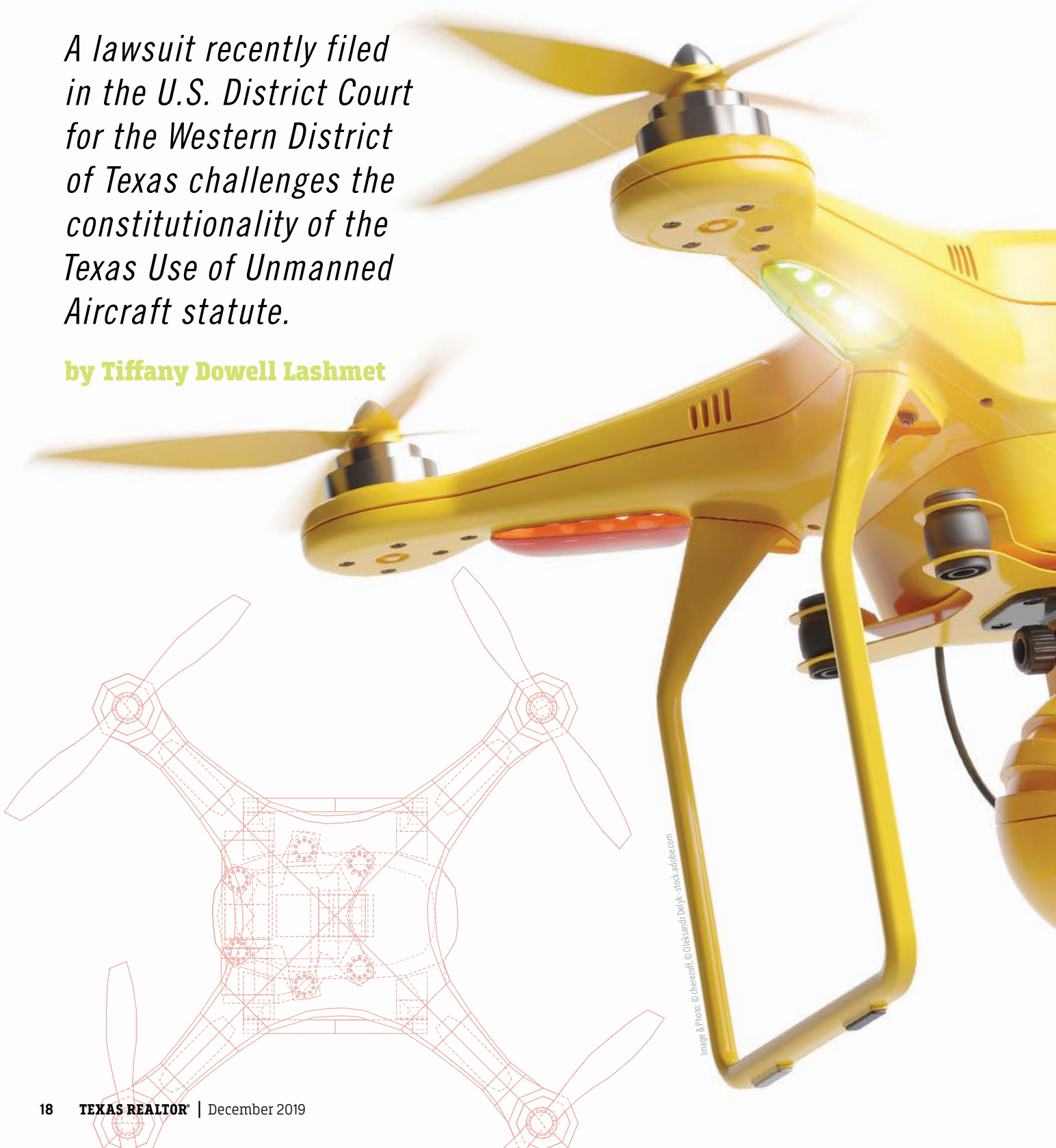


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Drone Law



In 2013, the Texas Legislature passed the Use of Unmanned Aircraft statute, which sought to address various issues related to the use of drones. The statute lists numerous lawful uses of drones and states that certain uses of drones are illegal. One lawful use specifically listed in the statute is “if the image is captured by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image.”

PROHIBITED DRONE USE UNDER TEXAS LAW

Texas law prohibits a drone from capturing an image of an individual or privately owned real property in Texas with “the intent to conduct surveillance” on the individual or property captured in the image. Possessing, disclosing, displaying, distributing, or otherwise using an image captured in this way is also an offense. Both offenses are misdemeanors. Monetary damages may also be sought through civil court.

The statute also prohibits drone operations over a correctional facility, detention facility, or critical infrastructure facility. A “critical infrastructure facility” is defined as including several different facilities, such as

- Petroleum refineries
- Electrical power generating facilities (including substations, switching stations, or electrical control centers)
- Water intake, treatment, wastewater treatment facilities, or pump stations
- Natural gas compressor stations
- Structures used to provide wireless or telecommunications services
- Various transportation facilities
- Certain dams
- Concentrated animal feeding operations.

Additionally, oil and gas drilling sites, tank batteries, production facilities, wellhead, and any

Federal law prohibits all drones from flying above 400 feet from the ground. Practically speaking, this means federal law also prohibits flying a drone over the same types of facilities prohibited under Texas law. Violations of federal law can be either a Class A or B misdemeanor.

facility with an active flare is included if such facilities are fenced or have another type of physical barrier.

Specifically, a person commits an offense if he or she intentionally or knowingly:

- Operates a drone over one of these facilities at a height below 400 feet above ground
- Allows a drone to make contact with a facility including a person or object on the facility
- Or allows the drone to come within a distance close enough to interfere with the operations or cause a disturbance to the facility.

Lastly, the statute prohibits operating unmanned aircraft over a “sports venue,” which is defined as an arena, automobile racetrack, coliseum, stadium, or other type of area or facility that has seating capacity over 30,000 and is primarily used for one or more professional or amateur sports or athletic events. A person commits an offense if they knowingly or intentionally operate the drone lower than 400 feet above ground over a sports venue.

However, there are certain exceptions that do allow flying under the following circumstances:

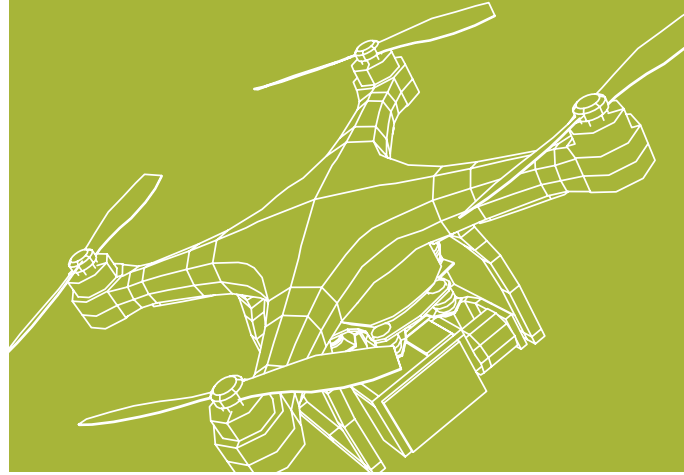
- The drone is operated by the government or person under contract with the government
- The drone is operated by a law enforcement agency or person under contract with a law enforcement agency
- The operator is being used for a commercial purpose and is conducting the flight in compliance with Federal Aviation Administration regulations and authorizations
- The drone is operated by the owner of the venue, acting on the owner’s behalf, or acting with the owner’s written permission.

FACTS OF THE TEXAS DRONE LAW LAWSUIT

The National Press Photographers Association, Texas Press Association, and Joseph Pappalardo filed suit in federal court challenging the constitutionality of the Texas drone law. The plaintiffs claim that the provisions “chill and criminalize speech and news gathering activity protected by the First and Fourteenth Amendments.”

The lawsuit claims statutory provisions related to surveillance on private property violates the First Amendment because it regulates speech based on content without a compelling governmental need that the

Find the full complaint
in the digital version
of this article at
texasrealestate.com/magazine.



Images: © Cherezoff - iStock and iStock.com

statute is narrowly tailored to address. Additionally, they allege a violation based on prohibition of speech based on the identity of a speaker without a compelling governmental need that the statute is narrowly tailored to address. By allowing certain drone uses such as police and academia, for example, yet prohibiting surveillance over private property, the statute is content based, argues the complaint.

The complaint also claims that the surveillance provisions are overly broad, thus violating the First Amendment in that way as well. They claim that by prohibiting “surveillance” but not defining that term, it may prohibit protected activities such as newsgathering. Along these same lines, the complaint alleges the statute is unconstitutionally vague due to the lack of definition, because an ordinary person could not know what activity

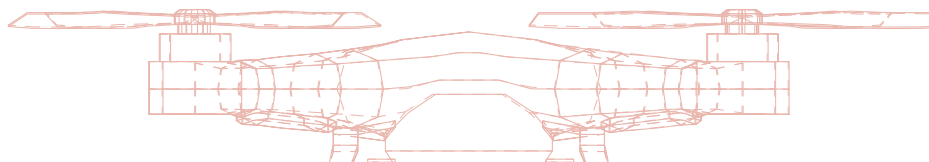
was permitted versus prohibited as “surveillance.”

With regard to the provisions related to critical infrastructure and sport venues, the plaintiffs argue this violates the First Amendment by singling out journalists and prohibiting news gathering, while allowing commercial and governmental use of drones. This “discriminatory treatment of the press burdens news gathering activities protected by the First Amendment” and the State has not articulated a compelling reason for doing so, argue the plaintiffs. They also claim the use of the term “commercial purpose” for which flying is allowed is overly broad and unconstitutionally vague, as it could be interpreted in arbitrary and discriminatory ways absent a statutory definition.

Additionally, plaintiffs allege a Supremacy Clause violation—the argument being that the federal government should have exclusive authority over regulating the national airspace and the state should not be allowed to regulate related to safety (although they admit the state does have the ability to regulate related to privacy, trespass, and voyeurism).

The complaint requests the court to declare these portions of the statute unconstitutional, enjoin Texas from enforcing the statute, and award attorney’s fees and costs. Find the full complaint in the digital version of this article found at texasrealestate.com/magazine.

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



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DATASHOCK: ARTIFICIAL INTELLIGENCE, CONNECTEDNESS, AND READYING FOR THE BIG DATA FUTURE

Don't miss this dynamic, thought-provoking presentation by Jennifer Golbeck, Ph.D. Goldbeck is director of the Social Intelligence Lab and a professor in the College of Information Studies at the University of Maryland, College Park. She also writes for *Slate* and *The Atlantic*, frequently appears on NPR, and had attendees of last year's NAR Broker Summit in Texas buzzing for weeks about how technology is changing our businesses and our lives.

Jennifer Goldbeck, Ph.D.

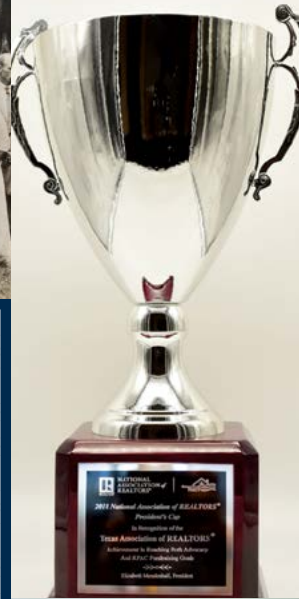
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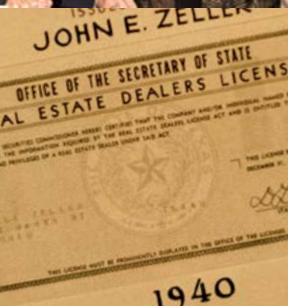
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How an Ag Land Sale and Grazing Lease Went Wrong

Learn about a recent court ruling that involves a land transaction, an agricultural lease-back, and the Texas Deceptive Trade Practices-Consumer Protection Act.

by **Tiffany Dowell Lashmet**

The facts underlying the Austin Court of Appeals decision in *Marek v. Lehrer* are an agricultural real estate deal gone terribly wrong. This case is a great example of why it is so important to have every agreement put into writing and timely signed by the parties.

Additionally, this case is interesting because of the application of the Texas Deceptive Trade Practices-Consumer Protection Act (DTPA) to a grazing lease—something that rarely happens in Texas law.

FACTUAL BACKGROUND

R.L. Lehrer, a cattle rancher in San Saba County, decided to sell 257 acres of his property and to lease the property back to continue grazing his cattle. He planned to use the proceeds from the property sale and selling calves from the cows he ran on the property to cover his living expenses and to allow him to travel.

Tom Marek, who lives in Austin, expressed an interest in the property. Marek visited the land. He and Lehrer verbally agreed that Lehrer would sell the land for \$200,000 down and carry an \$800,000 note for five years at 3% interest with no principal payment required for the first five years. Marek would lease the land back to Lehrer for grazing and hunting. Subsequently, prior to closing, Lehrer received another offer for \$100,000 more than asking price and 4% interest. Lehrer refused the offer because he had already made a deal with Marek.

On June 9, 2014, Marek and Lehrer signed a *Farm and Ranch Contract* that included a provision stating that “Seller and Buyer agree that at closing, Seller shall lease the Property from Buyer for grazing purposes for the sum of \$2,500 per year for a period of five years. The lease will



be payable annually in advance, with the first payment of \$2,500 being due at closing and the payments for each succeeding year of the lease term being due on the anniversary date of closing.”

Prior to the August 21, 2014, closing date, Lehrer proposed a one-paragraph lease that mirrored the term in the *Farm and Ranch Contract*. Marek refused to sign it. Instead, he had his ex-wife, Mary, an attorney, prepared a draft lease. The initial draft by Mary provided a five-year term but allowed Marek to terminate with 180-day notice. Marek did not like that lease, saying it was too long and complicated, and told her to draft another version.

Mary then drafted a shorter lease with a one-year term, the possibility of renewal for another year, and a 90-day termination right for both Marek and Lehrer. This lease was given to Lehrer at closing, but his attorney was not present due to a family emergency, so Lehrer refused to sign the lease until his attorney could review it. Because there was no agreed-upon lease at closing, the parties signed a document that said the provisions in the *Farm and Ranch Contract* related to the lease would survive closing. The land deal closed, and Lehrer provided Marek with the deed to the land and continued to graze his cattle on the property.

A few months later, Mary wrote another draft lease that had only a one-year term and allowed only Marek to terminate the lease with a 30-day notice. Marek did not remember if he ever gave the lease to Lehrer, but it was not signed. In December, Marek presented Lehrer with another lease with a one-year term and the right for only Marek to terminate with a seven-day notice, along with his payment for the following year. Lehrer told Marek he would read the lease when he got the chance but did not sign it. Marek asked Lehrer to sign a receipt that listed the payment made by Marek that

day, which Lehrer did.

When Marek presented what he said was a copy of that receipt to the jury, it contained two paragraphs about the grazing and hunting rights, saying that if the parties did not enter into a lease, Lehrer would remove his cattle upon five days’ notice from Marek. Lehrer testified that language was not on the receipt he signed.

Five days later, Marek called Lehrer’s attorney and said if the lease was not signed by 5 p.m. that day, he would remove all of Lehrer’s cattle the next day. The attorney said that Lehrer would be happy to meet with Marek sometime in January to discuss the issue and was interested in cutting ties with Marek. The attorney also explained that there was already a written lease in place from what the parties signed at closing and that Marek had even accepted the lease money. Marek’s position was that there was no current lease in place until Lehrer signed an additional document.

A couple of weeks later, Marek locked Lehrer’s cattle up in a four-acre turnout patch and, in the process of doing so, separated some baby calves from the cows. The calves died. For several days, Lehrer had to climb over the fence to care for his cattle. Lehrer removed the cattle from the property and took them to his ranch, which was already fully stocked with cattle, so he was forced to sell several cows.

LITIGATION BACKGROUND

Lehrer sued Marek for breach of contract and for violating the DTPA by committing deceptive and unconscionable acts. Marek counterclaimed for breach of contract based on the alleged agreement from the receipt that Lehrer signed.

A jury trial was held, and the jury found in favor of Lehrer, awarding \$2,695.41 in expenses, \$45,982.85 in lost profits, and \$50,000 in additional damages under the DTPA. Marek appealed

only the jury’s DTPA verdict and the award of lost profits. He did not challenge the breach of contract verdict.

APPELLATE COURT OPINION

The appellate court affirmed the trial court’s verdict. The DTPA provides consumers with a cause of action for a false, misleading, or deceptive act relied upon by the consumer or for an unconscionable act. A mere breach of contract, without more, does not constitute a DTPA violation.

FALSE, MISLEADING, OR DECEPTIVE ACT

In order for Lehrer to recover under the DTPA’s false, misleading, or deceptive act standard in this case, he had to show that Marek “did not intend to perform the contract at the time the contract was made.” The court found sufficient evidence to uphold the jury verdict that Marek did not intend to perform the agreement at closing to allow Lehrer to lease the property for five years.

In particular, the court relied upon the fact that Marek had never presented Lehrer a lease to sign containing a five-year term, and that Marek had refused to sign the five-year lease drafted by Lehrer, despite it being identical to the terms in the *Farm and Ranch Contract*.

Further, Marek testified that he did not think any lease had been entered into despite the signing of the document at closing. This indicated that Marek did not intend to comply with the contractual obligations that document did create.

Additionally, the court found intent not to comply by Marek because with each successive draft of lease he presented, he shortened the time frame on his right to cancel the lease. The court reasoned that had Marek really wanted to get a lease signed, he would not have made the terms more onerous with each subsequent draft.



UNCONSCIONABLE ACT

The court also found that Marek committed an unconscionable act under the DTPA. An unconscionable act is “an act or practice which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience or capacity of the consumer to an unfair degree.” Lehrer argued, referring to the receipt, it was unconscionable for Marek to criminally alter a legal document and use it for grounds of eviction. The court found sufficient evidence to uphold a jury verdict on this issue as well.

LOST PROFITS

Lastly, the court held that there was sufficient evidence to support the jury’s lost profit award of \$45,982.85. The jury calculated lost profits by relying on expert testimony that determined the value of calves Lehrer could have sold each year less expenses like lease and commission, times the five-year lease term. The court found there was sufficient evidence to support this verdict.

No appeal was filed.

WHAT’S THE TAKEAWAY?

This is a good reminder that there could be potential legal claims beyond just breach of contract that may allow for significantly larger damage awards in a lease dispute. Every agricultural lease agreement should be reduced to writing before the lease begins, and this case is a perfect example of why this is so important. Had the parties waited to close until they had agreed upon a lease and signed it, this whole fiasco might have been avoided.

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

There could be potential legal claims beyond breach of contract that may allow for significantly larger damage awards in a lease dispute. Every agricultural lease agreement should be reduced to writing before the lease begins.

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WHAT TO CONSIDER BEFORE BUYING A VACATION HOME

Is there a spot that you visit so often you'd like to purchase property? Or are you thinking of buying a vacation home to that you will rent out when you're not staying there? Whatever your motivation, there are a few considerations to make when you're purchasing a second property.



BE REALISTIC ABOUT ITS USE

Does your dream of second-home ownership match the reality of the time and investment you'll make? If the second property is primarily for your vacation use, factor in the costs of traveling to the location and how often you'll be able to take advantage of it.

THINK ABOUT MAINTENANCE

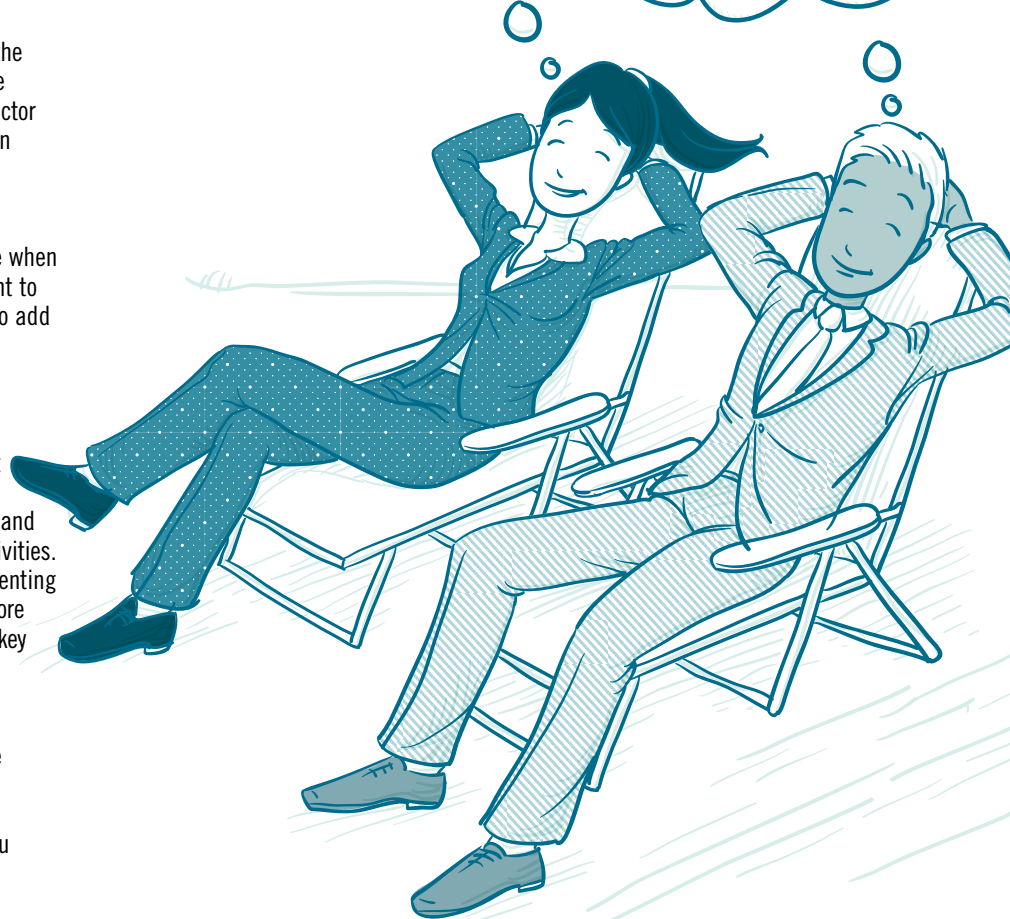
Who will take care of issues with your second home when you're away? If it's a rental property, you might want to hire a property management company, so be sure to add those costs to your second-home budget.

VISIT MORE OFTEN BEFORE YOU BUY

If you only visit the beach every year from Memorial Day to Labor Day, do you have a good sense for what your second-home city is like during slower months? Make sure you visit the location throughout the year and get to know everything from the weather to local activities. If you are purchasing property with the intention of renting it out, be sure you know the seasons travelers are more likely to come and that you won't be missing out on key moneymaking times when you plan to stay there.

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TAKE 5



AVOID THESE MISTAKES WITH YOUR LEADS

Leads are the lifeblood of your real estate business. If you don't carefully work your leads, you will lose out on future business. Here are some common missteps.

WAITING TO FOLLOW UP

How quickly do you respond when a lead comes in? Texting or calling within a few minutes of the lead coming in exponentially increases your chances of converting that lead.

IGNORING PEOPLE WHO AREN'T READY NOW

Even leads from people won't buy or sell for many years are valuable. Sure, you may manage leads differently for people planning to buy or sell now versus those who have no immediate plans to move, but you want to be at the top of the list for both groups.

FAILING TO SYSTEMATICALLY WORK YOUR LEADS

There are many ways to effectively work leads, but "winging it" is not a path to success. Whether you use an existing lead-generation system or create your own, consistency and follow-through will pay off. Even with a system, though, be sure to track your results and make tweaks when you see ways to improve.

NOT GIVING LEADS WORTHWHILE CONTENT

Are you providing your leads something they value—market data or buying/selling tips or meaningful, welcome interactions? Although your goal is to convert leads to clients, if you focus solely on what *you* want rather than what your leads value, people will tune you out.

LETTING PAST CLIENTS SLIP OFF YOUR RADAR

Seventy-five percent of buyers say they would use their real estate agent again or recommend that agent to others. Another 14% say they probably would do so. The percentages are also high for sellers. Treating past clients as leads for future deals can pay off handsomely.



Find your escape.

Every day, we work with our fellow Texans to help them buy the land they've always envisioned. And as a cooperative, we share our profits with those same customers. Last year alone, we paid our customers more than \$57 million in dividends. So when you're ready to secure a property loan for the perfect place to retreat, try a **partnership that really pays.**

Together we're better.



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PROPERTY TAXES WAY TOO HIGH!!!



DEADLINE AHEAD!!!

IF THE 2019 ASSESSED VALUE OF YOUR PROPERTY WAS AT LEAST 1/3 MORE THAN ITS TRUE VALUE, YOU STILL HAVE TIME TO LOWER YOUR TAXES.

**THE LAST DATE TO
PROTEST A 2019 VALUE:
JANUARY 31, 2020**

Texas Property Tax Consultants, Inc., is a professional property tax consulting firm with the simple goal of reducing your tax payments. Through our careful planning, evaluation, and presentation of appeals, we have saved property owners thousands of dollars. Every analysis is backed by years of successful, aggressive property tax appeals. TAX REFUNDS may also be available, so call today.

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Info@PropertyTaxDFW.com

www.PropertyTaxDFW.com