



Legislative Priorities
for the 86th Texas Legislature



On behalf of our association's 125,000-plus members, I'm proud to introduce the Texas REALTORS® Legislative Priorities for the 86th Texas Legislature. This publication highlights areas of interest Texas REALTORS® will monitor during the 2019 session.

Ours is truly a grassroots organization driven by local involvement. This is especially true for our legislative priorities, which are created through the association's Public Policy Issues Committees.

Committee members are experienced Texas REALTORS® from across the state who are committed to protecting the real estate industry through strong public policy.

Texas REALTORS® represent our state's diverse population and landscape. The combination of diverse representation and in-depth polling of Texas REALTORS® in all legislative districts allows us to remain diligent in following the various issues affecting Texas real estate and ensuring our local and state economies remain vibrant.

Our ultimate goal is to ensure Texas remains a great place do business, raise a family, and buy, sell, or lease real estate.

We look forward to working with you in the 86th Texas Legislature and beyond to achieve this goal.

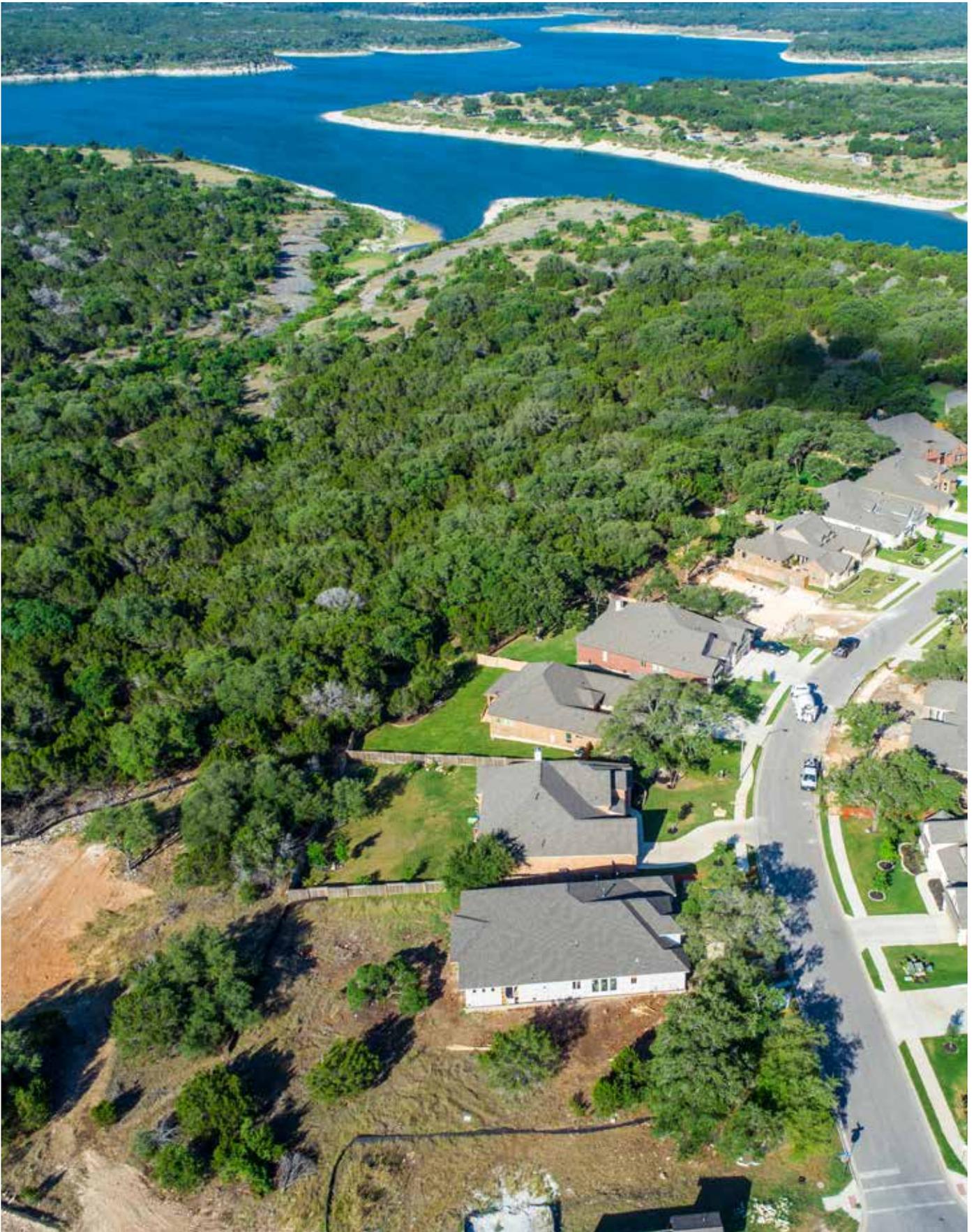
Sincerely,



Tray Bates
2019 Chairman
Texas REALTORS®

Table of contents

Annexation.....	7
County rulemaking authority.....	8
Eminent domain.....	9
Home equity: Mortgage finance.....	10
Homeowners associations.....	11
Infrastructure: Transportation.....	13
Infrastructure: Water.....	15
Local property taxes: Appraisal caps.....	16
Local property taxes: Central appraisal districts.....	17
Local property taxes: Tax rate-setting process.....	18
Property management: Short-term rentals.....	19
Sales price disclosure.....	20
Sales tax on professional services.....	21
Sales tax/Transfer tax on real estate transactions.....	22
Tax assessment.....	23
The Texas Real Estate Commission.....	24
Title insurance.....	25



Annexation

Issue

Texas is one of the few states that allow cities to expand their boundaries through forced annexation. This means a city can incorporate land—which could be one property or an entire neighborhood—into its city limits without the approval of the property owners.

Annexation has pros and cons for affected residents: they may have access to city services, such as utilities and law enforcement, but they will also be subject to city taxes and land use regulations. Texas REALTORS® believe property owners should decide whether their property is annexed into a city.

What does this mean for the real estate industry?

Many Texans purchase property outside of city limits to avoid the regulations and taxes imposed by city government. But allowing a city to have the power to forcibly annex property and subject the affected property owners to new taxes without their approval can increase the cost of owning real estate and price owners out of their property.

This can also limit a buyer's options if they avoid purchasing property near cities because the property is potentially subject to forced annexation in the future.

The Texas REALTOR® position

Our association believes forced annexation is un-Texan. Property owners deserve the right to have a say in whether their property is annexed. Our association supports legislation that extends statewide the right for impacted residents to vote on whether their property is annexed into a city.

In addition, providing property owners the right to vote empowers them to make decisions for themselves, rather than having a local government's decisions forced upon them.

Legislative outlook

We expect to see legislation filed that would extend statewide property owners' right to vote before their land is annexed, no matter the county's population.

Historical perspective

In 2017, lawmakers passed SB 6, which categorizes Texas counties for annexation purposes, based on their population:

- Cities in Tier 1 counties (less than 500,000 residents) are not required to allow a vote before annexing land outside their boundaries. However, the law provides Tier 1 county residents a process to become a Tier 2 county by petitioning to include a proposition on their ballot.
- Cities within Tier 2 counties (500,000+ residents) must allow impacted residents to vote on whether their property is annexed.

In 2018, residents of multiple Tier 1 counties petitioned to include a proposition on their November ballot that would change their county to Tier 2 status. Voter overwhelmingly approved becoming Tier 2 counties, giving their residents the right to vote in the future before their property is annexed.



County rulemaking authority

Issue

Texas cities have the authority to regulate land use, structures, and platting and subdividing land. They also provide and regulate water, sewer, and other utility services to residential property. Texas counties must be specifically granted powers by the Legislature.

Some county governments seek to increase their authority and burden the process with unnecessary regulations.

What does this mean for the real estate industry?

Giving counties more development powers to restrict growth will limit the state's potential for prosperity.

The Texas REALTOR® position

The Texas Association of REALTORS® opposes the wholesale expansion of county rulemaking authority.

Legislative outlook

Many counties will ask state lawmakers for more regulatory authority to limit growth. The Texas Legislature has denied such requests in the past.

Historical perspective

The Texas Legislature, under conservative control, has consistently affirmed its unwillingness to give county governments the same regulatory authority as home-rule cities. However, the Legislature has given county governments some ability to regulate land use, structures, platting and subdivision of land, as well as provide and regulate water, sewer, and other utility services to residential property.



Eminent domain

Issue

The Texas Constitution limits the use of eminent domain by requiring adequate compensation for the land on which eminent domain is used. While considered a necessary tool of government, it is argued that the exercised of this power has been expanded and abused.

Texans continue to struggle with an unbalanced set of laws at odds with a state known for private-property rights.

What does this mean for the real estate industry?

Private-property rights are threatened whenever the government uses eminent domain. Property owners should be treated fairly and protected from abusive eminent-domain practices.

The Texas REALTOR® position

Our association understands the need for legitimate property condemnations; however, landowners should be justly and timely compensated. As the leading advocates for private-property rights, Texas REALTORS® are uniquely positioned to ensure fair treatment of property owners.

Significant improvements can be made to enhance protections on private-property rights for Texans.

Our association supports legislation that:

- Requires pipeline and electric utility easement agreements to include a list of basic terms to protect the landowner during construction and future use of the easement, and requiring these companies to use a standard document provided by the Attorney General that includes these terms.
- Provides landowners with information about the project seeking their land and about their rights by requiring a public meeting in each county where affected landowners can ask questions about the project and the company's eminent domain authority—as is required for public entities with

eminent domain authority—and requiring the landowners to be informed of their rights and how the company will calculate fair compensation.

- Protects the landowner's right to receive a bona fide offer by ensuring a landowner receives an initial offer of fair compensation and information necessary to evaluate whether the initial offer is truly a bona fide offer, and requiring a bad actor that negotiates in bad faith to make an additional "penalty" payment to the property owner.

Legislative outlook

In 2017, lawmakers debated several eminent domain reform bills. We expect to see legislation filed this session related to many of the unresolved issues, including constitutional issues of who should have the burden of proof, what kind of entities have condemnation authority, and the definition of "public use".

Historical perspective

In 2005, during the 79th Legislature's second called session, lawmakers passed SB 7 prohibiting entities with the authority to use eminent domain from condemning private property for economic purposes.

In November 2009, Texans took another step toward strengthening private-property rights against abusive eminent domain by passing Proposition 11 with an overwhelming 81% of the vote.

Eminent domain was one of Gov. Perry's emergency legislative items for the 82nd Texas Legislature in 2011. SB 18, which strengthened property owners' rights in eminent-domain takings, passed and was signed into law. The law limits the purposes for which a property may be condemned and specifies that taken property must be made available for resale to the original owner if it's not used for its intended purpose after 10 years.

In 2013, during the 83rd Texas Legislative session, the Texas Open Beaches Act (HB 3459) granted the public the free and unrestricted right to access state-owned beaches and a right to use any public beach or larger area extending from the line of mean low tide to the line of vegetation bordering the Gulf of Mexico.



Home equity: Mortgage finance

Issue

When it comes to home-equity lending, Texas has some of the most conservative homeowner protections in the country. Key among these provisions is the requirement stipulating a home-equity loan may not exceed 80% of the market value of the homestead (80% LTV). This Texas Constitution protection allows ample access to capital while at the same time ensuring homeowners do not incur excessive debt. This measure helped insulate Texas from the recession that followed the 2008 housing bubble.

What does this mean for the real estate industry?

Some states allow for home-equity loans upward of 120% loan-to-value (LTV), creating a situation where homeowners become instantly upside down because they owe more to the bank than their homes are worth. When real estate values dipped in these states, many homeowners walked away from their obligation. Foreclosures hurt the overall real estate market and lower home values.

The Texas REALTOR® position

Our association supports updating Texas Tax Code statute to reflect the constitutional amendment approved by 86% of voters in 2017 (Proposition 2) to allow home equity loans on agricultural property.

In addition, our association opposes moving from the Texas Constitution to the Texas Finance Code the required consumer protection notice that a home equity loan may not close before 12 days after a borrower submits a loan application to the lender or before 12 days after a borrower receives the notice.

Legislative outlook

Some lawmakers will seek to dilute conservative constitutional protections afforded to Texas homeowners. There may be some attempts to pass a joint resolution amending these consumer protections, however, most lawmakers agree that these protections helped Texas avoid much of the national foreclosure crisis.

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.

Since 1997, when the voters of Texas approved home equity lending, some lender groups have tried to tinker with the home-equity provisions of the Texas Constitution to either make them more lender-oriented and a little less consumer friendly or to allow changes to home equity law more easily without having to go to Texas voters for approval.

In 2003, Texas voters passed constitutional amendments that allowed homeowners who currently have one type of home-equity loan to refinance it with another type of home-equity loan to comply with the limitation in the law. Minor revisions were passed during the 2007 legislative session that modified the procedures for obtaining a home-equity loan.

In 2017, Texas voters overwhelmingly approved a constitutional amendment SJR 60 (Proposition 2) that modernized how Texas homeowners can access home equity loans and home equity lines of credit:

- Redefined what is and is not included in the calculation of the 3% cap on fees associated with a home equity loan
- Allowed for a seasoned refinanced loan into one loan with one rate and term
- Maintained the \$4,000 draw requirements on home equity lines of credit (HELOCs) and increased the 50% equity provision to 80%—same as in a home equity loan
- Allowed farm and ranch property owners to acquire home-equity loans, while allowing for continuation of agricultural valuation of their properties
- Made technical changes in the Texas Constitution to ensure out-of-date terminology was updated.

As a result, home equity loans have been made available to more Texas homeowners—all while maintaining the strict consumer protections that have served the state so well. In addition, homeowners with existing home equity loans now have more options when it comes to refinancing.



Homeowners associations (HOAs)

Issue

Homeowners associations exist to enhance neighborhoods and increase property values. Increasingly, though, HOAs are taking on 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
- Lack of responsiveness from the HOA

What does this mean for the real estate industry?

HOAs can provide a great benefit to property owners by enhancing their quality of life and the enjoyment of their property. However, when the HOA is not managed well, marketing and selling homes in those neighborhoods can be difficult.

The Texas REALTOR® position

Our association supports the Legislature's continuing effort to reform HOA laws to ensure HOA operations are transparent and consumer-friendly. Any HOA legislation should seek to provide an appropriate balance between private-property rights and community standards while keeping intact property owners' First Amendment rights.

We support legislation requiring HOAs and related 501(c)3 nonprofits to be registered entities with the real property

records of the county in which the property is located, including relevant and current contact information.

Our association also supports legislation to eliminate the exemption for fees paid to 501(c)3 corporations from the transfer fee subchapter of the Texas Property Code.

Legislative outlook

Homeowner association bills are filed every session, 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.

While the 82nd Texas Legislature made substantial HOA reforms in 2011, some HOAs continue to restrict certain activities which can violate a person's First Amendment rights.

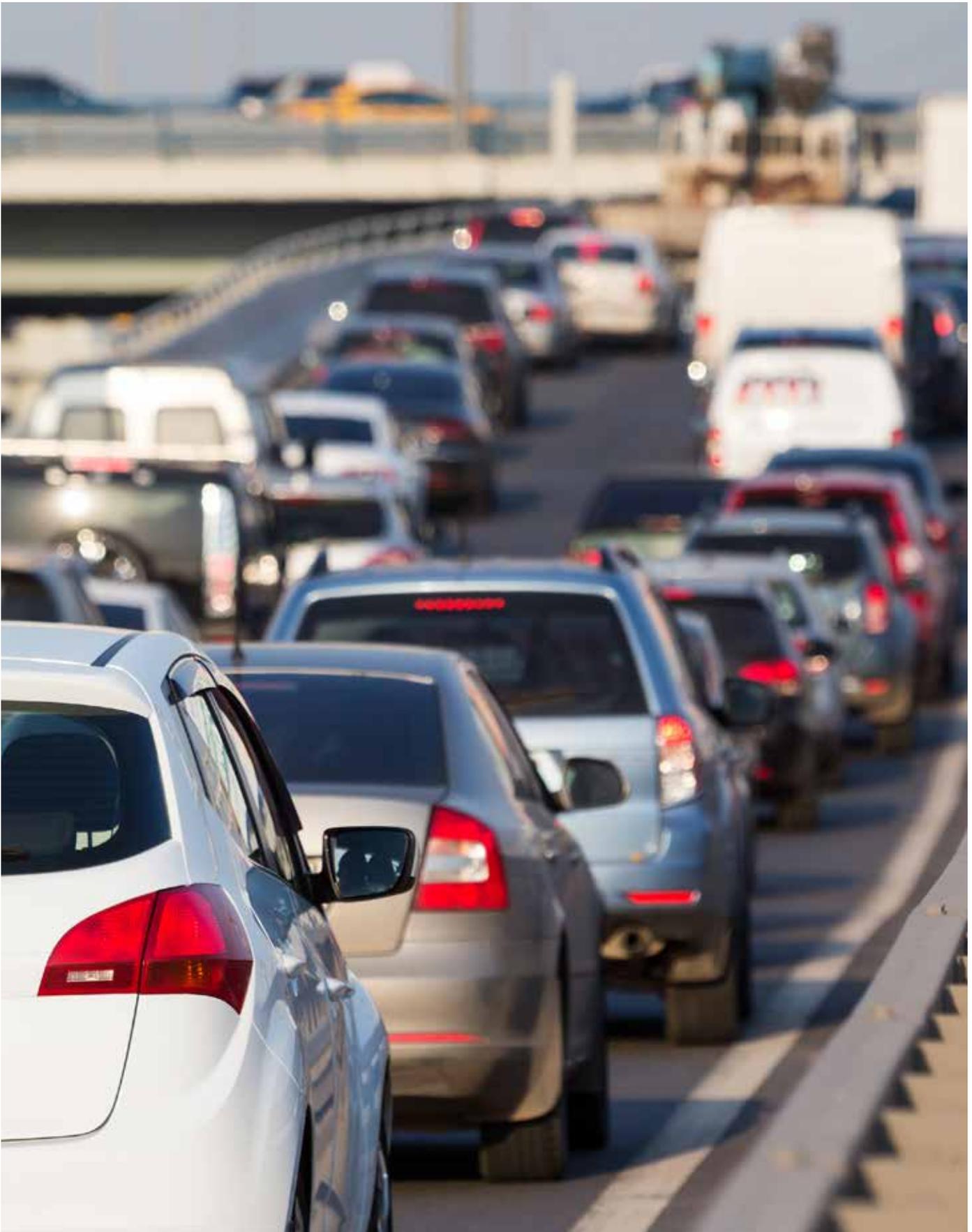
Expect bills to be filed that would protect a property owner's ability to live their life without intrusion from a quasi-governmental entity.

Historical perspective

In 2011, the 82nd Texas Legislature made the most significant pro-homeowner changes in a decade. The most significant applies a priority-of-payment structure, so that a delinquent homeowner's payments are applied in the following order: delinquent assessments, current assessments, HOA attorney fees, fines, other past-due amounts. There were also changes to HOAs' foreclosure and notification-of-foreclosure proceedings.

Other laws touch on everything from access to meetings, homeowners' voting rights, solar panels, rain-harvesting systems, religious displays, flags, and resale certificates.

In 2015, the 84th Texas Legislature passed HB 2489, which keeps HOAs out of the property-management business. The resulting law protects property owners' rights by clarifying that HOAs don't have the authority to screen, approve, or deny prospective tenants. The law also explicitly states that prospective tenants don't have to provide a credit report or lease application to the HOA.



Infrastructure: Transportation

Issue

Despite statewide Proposition 1 passing in 2014, highway and road construction in Texas remains underfunded. The shortfall is due mostly to an underperforming gasoline tax and an unwillingness to adjust the tax or increase other transportation-related fees.

The problem is magnified by a population boom, mostly in and around urban population centers. In fact, Texas has four of the 11 most-populous metro areas in the United States (Houston, Dallas/Fort Worth, San Antonio, and Austin), each of which is growing rapidly.

Due to an insufficient revenue stream, the Texas Department of Transportation (TxDOT) has been forced to over-rely on bond debt to fund roadway maintenance and new transportation projects. However, TxDOT's main bond programs (State Highway Fund bonds, Texas Mobility Fund bonds, and general-obligation highway bonds) are effectively exhausted. Additionally, the agency currently pays approximately \$1 billion per year (about 10% of its annual budget) in interest payments on the outstanding bond debt—which exacerbates the funding shortfall.

With the uncertainty of future federal dollars, diminishing revenue, and depleted bond capacity, TxDOT has also resorted to a large number of public/private partnerships, i.e., toll roads.

Clearly, bonds and toll roads are important pieces of the transportation-funding solution, but they will not meet the growing demands on transportation infrastructure by themselves.

What does this mean for the real estate industry?

An insufficient transportation network impedes commerce, increases the costs of goods and services, and creates air-quality issues. Furthermore, poor infrastructure limits Texans' viable housing options and decreases quality of life.

The Texas REALTOR® position

The state of Texas must ensure its citizens the right to a safe and efficient transportation system.

In doing so, the state must address numerous 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.

Failing to pay for infrastructure needs will ultimately cost state taxpayers an extraordinary amount of money in the future.

Our association supports the following:

- The Texas Transportation Commission and Texas Department of Transportation should ensure accountability, transparency, and public involvement in the transportation-planning process
- A statewide, multi-modal transportation system that facilitates safe and efficient movement of people and goods, including sufficient transportation choices such as roads, freight and passenger rail, waterways, sea and inland ports, and air.
- Local option transportation funding sources, in addition to state funding, which may include toll roads.
- A study on transportation funding sources needed to create infrastructure at or above the state's current levels of service.
- TxDOT's efforts to secure BUILD grant funding for rural roadways near energy sectors.
- The concept of high-speed rail as a mode of transportation in Texas.

Legislative outlook

We expect to see a number of transportation-funding bills filed, including proposals to send proceeds from the motor vehicle sales tax to the State Highway Fund, increase the annual registration fee, and apply a vehicle-miles-traveled surcharge.

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 result of this is a decrease in the tax's purchasing power.

In 2014, Texas voters passed a Texas constitutional amendment (Proposition 1) with an overwhelming 80%, signaling to lawmakers that funding for transportation is an important issue and must be addressed.

In 2015, the 84th Texas Legislature ended diversions from the Texas Highway Fund, decreasing bond debt, and allocating motor vehicle sales taxes to the state highway fund (HB 1), and ended diversions from the Texas Highway Fund and prioritized future TxDOT projects based on safety, maintenance, and congestion (HB 20).

In addition, in 2015 voters approved Proposition 7, a constitutional amendment authorized by SJR 5 to dedicate \$2.5 billion of sales tax revenue and 35% of motor vehicle sales taxes to the Texas Highway Fund when revenue milestones are met.



Infrastructure: Water

Issue

In 2017, Hurricane Harvey's devastating impact on the Greater Gulf Coast brought to light many of our state's failing infrastructure needs. Furthermore, Texas has seen unprecedented flooding across all regions in recent years, including West Texas, the Panhandle, and the Hill Country.

Beyond flood mitigation, water infrastructure updates are overdue throughout the state, and failure to address those issues could negatively impact our water supply.

What does this mean for the real estate industry?

The Texas Water Development Board reminds us that "anywhere it rain in Texas, it can flood," and estimates that coastal and riverine flooding combined are expected to cause more than \$6.87 billion in property losses over the next five years.¹

Property owners need assurances that they are as safe as possible from floodwaters. And if disaster does hit, property owners need efficient and affordable insurance and access to contractors and other skilled workers.

Landowners must also be able to rely on secure private-property rights to ensure water availability as the state works on management plans and conservation goals.

A report from the Governor's Commission to Rebuild Texas, appointed by Gov. Greg Abbott to document Hurricane Harvey's effect on Texas and make recommendations for future preparedness, determined that Hurricane Harvey damaged or destroyed more than 200,000 structures.² Many property owners faced challenges when rebuilding, such as lack of insurance affecting their ability to secure financing, worker shortages, and inconsistent or confusing regulations.²

The Texas REALTOR® position

Our association supports the development and implementation of a broad range of flood mitigation technologies, such as flood warning systems, improved levies, and innovation in construction techniques.

In addition, our association supports a more streamlined permitting process for water projects through the Texas Commission on Environmental Quality.

Legislative outlook

In 2019, legislators will make hurricane relief a high priority. Discussions regarding funding rebuilding/recovery efforts, including use of the Rainy Day Fund, have been in progress since Harvey hit in August 2017.

Going a step further, lawmakers will likely have interest in legislation that will help update our aging infrastructure and do what is possible to mitigate future flood damage.

Historical perspective

In December 2018, the Texas Water Development Board released its *State Flood Assessment* for the 86th Texas Legislature. The report proposes strategies to prepare for future floods, such as improved flood modeling and mapping and coordinated watershed-based planning. The report estimates the state needs up to \$36 billion for flood mitigation. The report points out that Texas has never conducted a statewide assessment of flood risks and needs.

In November 2013, Texas voters approved Proposition 6 by a 3:1 margin. This amendment authorized the transfer of \$2 billion to the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT). These funds enable cities, counties, and water districts to apply for low-interest loans for water projects that align with the state water plan.

In November 2014, TWDB approved rules that open the door for those local entities to begin accessing those dollars.

¹ *State Flood Assessment*, Report to the 86th Texas Legislature, Texas Water Development Board, January 2019.

² *Eye of the Storm*, Report of the Governor's Commission to Rebuild Texas



Local property taxes: Appraisal caps

Issue

Texas real estate is in demand, and the increase in value is what makes property in our state such a great investment. However, some legislators want to lower the current 10% appraisal cap rate to 3% or 5% under the guise of limiting the property tax bill of a residential homestead. Further artificially limiting the appraisal value of a home through a government overreach program sets a dangerous precedent.

Unfortunately, these proposals guarantee an automatic annual increase in a property tax bill. Appraisal caps also shift the property tax burden of higher-valued properties to middle-class homes, which typically do not appreciate in value as much as higher-priced homes.

What does this mean for the real estate industry?

Vilifying appraisal increases is dangerous rhetoric and can lead younger populations to shy away from homeownership. Value increases in real property are signs of a robust local and state economy and lead to greater building of wealth.

In fact, a 2018 *Journal of Economic Perspectives* article that focused on U.S. homeownership and financial benefits concluded that "... homeownership is a valuable institution. On average, it allows families to build wealth and serves as a measure of financial security."

The Texas REALTOR® position

Our association opposes efforts to reduce the property-tax appraisal cap from its current level of 10%.

Legislative outlook

Expect several bills to be filed relating to lowering the appraisal cap for homestead properties. These bills may also try to extend the appraisal cap to all real property in Texas. These efforts are attempting to rein in increasing property tax bills, but legislators should instead focus their attention on the process to set tax rates at the local level.

Historical perspective

A limit on appraisals was enacted by the Texas Legislature in 1997, and was fully implemented for the 1998 property tax year. The cap on appraised values is currently applicable only to residential homesteads. Past legislatures have wisely turned away these types of ill-advised proposals guaranteeing an automatic increase in local property tax bills.

While the political pressure to lower the appraisal cap percentage may be great, there are consequences. Appraisal caps do not address the underlying problem with our current property tax system. Appraisal caps would merely limit the increase in value a residential homestead could experience and do not prevent annually increasing property tax bills.

Lowering the property-appraisal cap also creates havoc within the appraisal system.

A recent report from the Real Estate Center at Texas A&M University outlines the detrimental impacts various tax plans following this model would have on the Texas economy.²

According to the report, "[a] proposal to cap value increases at 5% per year similar to the California Proposition 13 model offers a promise of relief from climbing taxes, but the cure could produce undesirable side effects in the long run" and "... would work to distort housing purchase decisions by keeping property taxes low for long term residents."³

The report's conclusion found that the prospect of appraisal caps "threatens to impact the marketability of new homes and retard demand for new development by increasing the burden of purchasing new homes or even moving to another existing home. As time passes that impediment would continue to grow into a sizable distortion of the housing market."⁴

¹ "Homeownership and the American Dream," *Journal of Economic Perspectives*, Vol. 32, No. 1, Winter 2018. <https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.32.1.31>

² "Property Taxes: The Bad, The Good, and The Ugly," Real Estate Center at Texas A&M, 2013. <https://assets.recenter.tamu.edu/documents/articles/2037.pdf>

³ Ibid

⁴ Ibid



Local property taxes: Central Appraisal Districts

Issue

Property appraisal is one of the elements that determine tax liability for real property in Texas. However, the appraisal process and local taxing-jurisdictions' budget processes have become increasingly convoluted and difficult for property owners to understand.

In addition, many commercial and residential property owners believe the processes to appraise property and protest appraisals are not transparent, fair, or uniform across central appraisal districts (CADs).

Recent public comment has demonstrated a lack of understanding of CADs' role, leading many property owners to believe CADs either work for or collude with local taxing jurisdictions.

What does this mean for the real estate industry?

A transparent and improved appraisal process for commercial and residential property means a more stable and reliable real estate market.

The Texas REALTOR® position

Our association supports:

- More state oversight of central appraisal districts and appraisal review boards;
- The repeal of the “estimated property taxes” statement from the appraisal notice of value; and

Our association opposes:

- The creation of government programs that will require property owners to disclose the sales price of real property purchases;
- The creation of a new financial penalty on property owners who do not divulge the sales price of a real estate transaction to the government; and
- Any changes to the “equal and uniform” appraisal laws, to ensure property owners are treated fairly during the ad valorem appraisal process
- The election of chief appraisers and appraisal review board (ARB) members.

Legislative outlook

Several interim hearings were held to address many of the issues property owners in Texas have about the appraisal process. Many reforms in the appraisal process will ensure property owners have more trust in the appraisal process.

Historical perspective

Texans' property tax bills are skyrocketing, and the state is looking at ways to provide relief. The Senate Select Committee on Property Tax Relief and Reform continued to hold public hearings across the state this year to hear from Texans about this critical issue.

The select committee heard many potential solutions, including increasing the state's share of public education funding, lowering the rollback rate, requiring an automatic election if a taxing entity exceeds the rollback rate, lowering the appraisal cap on residential homesteads, and expanding the appraisal cap to all real property.



Local property taxes: Tax rate-setting process

Issue

Local property taxes in Texas have increased dramatically over just the past few decades. From 1998 to 2017, the total property tax levy statewide increased more than 211%—or \$40.35 billion—according to the latest data from the Texas Comptroller.¹

Part of the increase in local property tax revenue can be attributed to new property added to the appraisal roll and higher property values. However, an increase in property value should not be an automatic increase in property tax revenue. If a local taxing entity needs more revenue, a more honest and transparent conversation needs to occur at the local level so taxpayers completely understand why. But the current system is confusing, and it ends up with more Texans seeing a hidden property tax increase.

What does this mean for the real estate industry?

Texas has been a dominant force in the national economy and housing affordability has been a contributing factor. But the increase in property taxes threatens this affordability.

According to the *Houston Chronicle*, “. . . the lack of affordable housing is being viewed as a crisis that affects Americans of all ages, races and income groups.”²

The Texas REALTOR® position

Our association supports various measures to ensure a more transparent and honest conversation occurs at the local level when tax rates are set. These measures include supporting:

- The reduction of the rollback rate from 8% to 5%;
- An automatic tax ratification election if the rollback rate is exceeded;
- Requiring all effective and rollback tax rate worksheets to be filed with the State Comptroller and requiring a certain percent of worksheets to be audited;
- Enhancing property tax notices (e.g. eliminate last year’s tax rate from notice, as including last year’s rate leads to confusion and inaccurate comparisons of tax rates); and
- Simplifying the calculations of effective and rollback tax rates.

Legislative outlook

Many bills relating to local property taxes will be filed during the 86th Texas Legislature. It is anticipated that the Legislature will take action to improve the local property tax system and bring more transparency and honesty to the process.

Historical perspective

The 85th Texas Legislature proposed several truth-in-taxation measures that would better inform taxpayers about the processes used to set local tax rates and appraise property.

The current local property tax system has been in place for over three decades and is revered as the best property tax system in the country. Texas Legislature continues to make improvements to the system; however, the system still needs improvement to best serve Texas taxpayers.

¹ *Biennial Property Tax Report* for 2016 and 2017, Texas Comptroller of Public Accounts, <https://comptroller.texas.gov/taxes/property-tax/docs/96-1728.pdf>

² “Affordable housing: Now it’s a problem for the middle class, too,” *Houston Chronicle*, June 29, 2015. <http://www.houstonchronicle.com/local/gray-matters/article/Affordable-housing-It-s-a-problem-for-the-middle-6356250.php>



Property management: Short-term rentals

Issue

Many cities in Texas have adopted—or are seeking to adopt—ordinances requiring property owners to pay an annual fee to register rental properties with the city or ordinances banning short-term rentals altogether.

The cities argue that rental-registration ordinances give them tools to address code violations and contact property owners.

However, cities across Texas already have code-enforcement divisions whose sole purpose is to identify, deter, and remedy code violations on properties. Additionally, property owners are readily identifiable and accessible through existing government records.

What does this mean for the real estate industry?

Many property owners cannot rent their homes because of rental-registration ordinances.

In addition, property owners who choose to rent their homes are forced to increase monthly rental rates to pay for additional regulation from city governments. This increased cost is passed on to the tenant, which adds to affordability and availability issues at a time when many real estate markets across Texas are experiencing high prices and lack of rental inventory.

The Texas REALTOR® position

Texas REALTORS® support legislation declaring that a municipality may not adopt or enforce a local law that expressly or effectively prohibits the use of a property as a short-term rental.

Texas REALTORS® believe cities should use the tools already at their disposal to combat nuisance properties and bad actors and protect the health and safety of tenants, property owners, and community members.

These ordinances infringe on a property owner's ability to conduct business without government intrusion. In addition, they are often duplicative, ineffective, and intrusive to owners and tenants of rental properties.

Legislative outlook

Some legislators have expressed interest in protecting a property owner's ability to rent out a property without unnecessary government intrusion.

We expect to see legislation proposed that would prevent a local entity from prohibiting short-term rentals.

Historical perspective

In 2017, lawmakers proposed legislation that attempted to regulate short-term rentals at the state level; however, none of these bills were ultimately passed.

As of November 2018, more than 20 Texas cities, including most major metropolitan areas, have enacted a wide variety of short-term rental registration ordinances.



- 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 tax liability for the transfer of real estate

Legislative outlook

Central appraisal districts may seek full sales price disclosure of all real estate transactions in Texas. This includes residential, commercial, industrial, raw land, and farm and ranch.

The Texas Legislature has consistently stated expanding government intrusion into the private lives of Texans is not an option.

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. CADs 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.

In 2006, Gov. 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.”

During the 81st Texas Legislature in 2009, lawmakers passed comprehensive appraisal reform in the form of numerous bills aimed at reforming the process. Specifically, the Legislature passed HB 8, which enacted a Methods and Procedures Audit on all 253 appraisal district in Texas. The comptroller’s office was tasked with implementing the bill and has completed the audits.

In 2009, the 81st Texas Legislature also passed (and voters approved) a constitutional amendment which allows for uniform appraisal standards to be used in all appraisal districts.

The Texas Comptroller of Public Accounts, in the 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.

Sales price disclosure

Issue

Some appraisal districts, cities, and counties argue for full disclosure of all real estate sales prices to establish the value of real property in Texas.

There are numerous problems with basing value, especially taxable value, on the sales price of a real property. In many cases, central appraisal districts (CADs) do not consider seller concessions, which can lead to artificially high tax-appraisal values in the year-of-purchase and beyond.

There is also a problem with subdivisions that feature unequally sized lots or 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, value of long-term leases, and properties where mineral rights are included or excluded from the sale.

What does this mean for the real estate industry?

According to conservative estimates, sales price disclosure will lead to a more than \$250 million property-tax increase for Texas property owners.

High property taxes are already a barrier to homeownership and the relocation of businesses to Texas. Increasing property taxes would be a disincentive to homeownership and enterprise, hurting the real estate market and the Texas economy.

The Texas REALTOR® position

Our association opposes all legislative efforts to require the disclosure of sales price information because:

- Sales price is not necessarily a good indicator of taxable value
- It’s an unnecessary invasion of privacy



Sales tax on professional services

Issue

The state of Texas imposes a sales tax on retail sales, leases and rentals of most goods, and some taxable services. All local governmental entities have the option of imposing an additional local sales tax for a maximum combined state and local tax of 8.25%.

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.

What does this mean for the real estate industry?

According to the Real Estate Center at Texas A&M University, the average home sale in Texas in October 2018 was \$278,280, which would mean, depending on concessions, commission rate, and local options—the tax could add well over \$20,000 due at closing.

The Texas REALTOR® position

Our association steadfastly opposes efforts to expand the sales-tax base to include professional services. Furthermore, the association believes any taxing structure should not place an undue burden on the real estate industry or hamper the continued economic recovery in Texas.

Most people are willing to pay their share of taxes as long as the system is perceived as reasonable—meaning the largest number of taxpayers paying the smallest possible dollar amount and people in similar circumstances paying similar taxes.

Legislative outlook

Several groups have already released proposals calling for an expansion of the sales-tax base to include real estate services as part of a larger state tax restructure.

Historical perspective

Studies from the National Association of REALTORS®, the Real Estate Center at Texas A&M, and other industry think-tanks confirm that adding a tax on real estate commissions would have a detrimental effect on the housing industry—one study indicates an overall 3% drop in the real estate market.



Sales tax/Transfer tax on real estate transactions

Issue

The state of Texas imposes a sales tax on leases and rentals of most goods, retail sales, and some services. All local governmental entities have the option of imposing an additional local sales tax for a maximum combined state and local tax of 8.25%.

Under the guise of property-tax relief, there are groups proposing a restructuring of the state and local taxing system. Their proposal includes eliminating (or greatly reducing) property tax and replacing lost revenue with an expanded sales tax that would include a dramatic increase in the sales-tax rate and an expansion of the tax base to include the sale and lease of real property.

Other entities seek to add a transfer tax to real estate transactions.

What does this mean for the real estate industry?

Any tax on real estate transactions would wreak havoc on the real estate market, an important part of the Texas economy.

A sales tax on real estate would initially destroy the first-time homebuyer sector. But the problem would quickly extend throughout the entire real estate market. Without the first-time

homebuyer component, existing homeowners would have a difficult time selling their property, which would preclude them from moving up.

The Texas REALTOR® position

Our association has conducted exhaustive, multi-year studies on local property taxes and believes applying sales tax to real estate is a short-sighted and flawed approach to property-tax relief. Reducing property taxes with another tax does not achieve the true property tax reform that our state's taxpayers deserve.

Not only would adding real estate to the sales-tax base destroy the state's real estate economy, it would disproportionately affect lower- and middle-class Texans.

Our association agrees with the 86% of Texas voters in 2017 (Proposition 2) who opposed a tax on real property by approving a constitutional ban on real estate transfer fees.

Legislative outlook

Property taxes continue to be a burden on Texas property owners. The Texas Legislature will no doubt see many proposals seeking to reduce the property tax burden.

Historical perspective

In 2015, 86% of voters approved statewide Proposition 1, which constitutionally banned transfer taxes on real estate transactions and provided a \$10,000 increase in the state-mandated homestead exemption. This overwhelming response is proof that Texans are demanding relief from burdensome property taxes.

Similarly, adding a transfer tax to a transaction would add another barrier to homeownership and impede the real estate market.



Tax Assessment

Issue

Central Appraisal Districts are responsible for determining and applying the taxable value for all properties in their respective counties. Because we have a variety of property types, we don't have a one-size-fits-all appraisal approach.

For example, much of Texas' land is used for agricultural purposes, and our state allows property owners to have their land appraised based on the land's capacity to produce agricultural products rather than the land's market value. This often provides a substantial reduction in the appraised value that is used for ad valorem taxation.

However, the Texas Tax Code allows that when land that has qualified for agricultural appraisal changes use to non-agricultural purpose, the property owner who changes the use will owe a "rollback tax" for each of the previous five years when the land had the lower appraisal (with some exceptions). This rollback tax is the difference between the taxes paid on the land's agricultural value and the taxes that would have been paid if the land had been taxed on its higher market value.

Another unique appraisal consideration is related to communities near Texas' international border with Mexico, known as "colonias," that lack infrastructure such as water, wastewater, and paved roads. All Texas counties within 50 miles of the border are subject to "Colonias Laws" that intend to assure infrastructure exists for new residential developments. However, existing state law effectively makes these properties unsalable.

What does this mean for the real estate industry?

Both of these circumstances are currently resulting in unfair and unjustified ad valorem taxation on property owners.

"Model subdivision laws" that are making colonia properties unsalable were put into place to address important issues; however, the practical effect then sets the market value at zero.

For agricultural property, a significant future tax burden can deter potential property owners from seeking to use their property as they see fit, which violates their private-property rights.

The Texas REALTOR® position

Our association supports repealing or reducing the five-year rollback tax collection imposed when land that has qualified for agricultural appraisal changes use to non-agricultural purpose.

Our association supports legislation that states if a parcel of real property that is subject to "Colonias Laws" and located within 50 miles of an international border is not improved and therefore is not marketable or saleable due to existing state or local regulations, then it shall be deemed to have a minimum value for the purposes of eminent domain, which shall be fully exempted for ad valorem tax purposes.

Legislative outlook

We expect to see legislation addressing these issues as the Texas Legislature continues to focus on reducing property tax burdens statewide.

Historical perspective

Texas has two constitutional provisions that value qualified property based on its agricultural use rather than on its market value.

Voters first added agricultural valuation to the Texas Constitution in 1966 as Article VIII, Section 1-d. Property qualified if it was used for agricultural purposes and was owned by a family or individual whose primary occupation was farming or ranching. The primary purpose was to keep land in agricultural use. As Texas became increasingly urbanized and ownership shifted from the family farm to other ownership structures, this approach became increasingly ineffective.

In 1978, voters added Article VIII, Section 1-d-1 to the Constitution. This approach focuses entirely on the use of the land and does not consider ownership structure or occupation. This approach is now used for most agricultural valuation in Texas.

The two provisions contained a rollback penalty to discourage changes from agricultural property and avoid holding property in agricultural use simply to avoid paying taxes on market value. The deduction from market value for agricultural use property is estimated at more than \$210 billion.

It now appears that after 40 years of history and stability in the land use process, the rollback penalty has served its purpose and has become counterproductive to development and a limitation preventing needed value additions to taxing unit tax bases.



Texas Real Estate Commission

Issue

Our association is committed to ensuring the highest standard of service by Texas real estate license holders. Each legislative session, the association helps update and modernize consumer-protection standards and the Texas Real Estate License Act, which allows for a more efficient system.

In 2018, the Texas Real Estate Commission underwent review by the Texas Sunset Commission. The Sunset Commission issued a report in October listing recommendations to improve the service TREC provides to license holders and consumers.

What does this mean for the real estate industry?

The Texas Real Estate Commission (TREC) licenses and regulates real estate brokers, salespersons, inspectors, and other related professionals. High standards for real estate professionals ensure the industry's continued success.

The Texas REALTOR® position

Our association supports legislation that facilitates the administration of the commission and eliminates certain inefficient provisions in the law, when identified. We agree with the Sunset Commission's recommendations.

Legislative outlook

Our association works closely with TREC to identify inefficient and outdated real estate law. We expect lawmakers to consider legislation to address the Sunset Commission's recommendations.

Historical perspective

In 2011, during the 82nd legislative session, lawmakers passed SB 1000 designating TREC as a self-directed, semi-independent state agency. This status meant TREC would no longer be subject to the legislative budget or appropriations process at the Legislature—instead, the agency conducts business using the licensing fees it collects. Also in 2011, SB 747 focused on better preparing license holders to represent consumers in real estate transactions and ensuring education for applicants and license holders is targeted and of the highest quality.

In 2013, HB 2911 amended the law to require real estate inspectors to have the same education and license-renewal requirements as the Texas Real Estate Commission's other license holders and addressed issues regarding errors and omissions insurance coverage and the real estate inspection recovery fund.

In 2015, SB 699 clarified TREC regulations, explained situations that would require license revocation, created procedures for actions brought against real estate brokers and sales agents, and amended the requirements for licenses, fees, and education.

In 2018, Sunset Commission staff evaluated TREC and made recommendations to the Sunset Advisory Commission. The commission adopted recommendations for the full Legislature to consider.



Title insurance

Issue

Title insurance is a unique insurance policy that protects the holder's ownership in real property — in most cases, your home. Unlike other policies, title insurance is a one-time fee policy which protects the owner from past errors related to ownership history. Title coverage is based on the careful research of past ownership records and is designed to address any overlooked or outstanding issues prior to your taking possession of your property.

There is a push by some groups calling for comprehensive reform to the title insurance industry in Texas, similar to states like California, New York, Massachusetts, and New Jersey.

What does this mean for the real estate industry?

Texas property owners benefit greatly from having a stable and reliable title insurance industry with competitive rates, which, in fact, have dropped 15% over the last decade. Texas offers one of the most transparent and complete sets of coverage in the nation, with consistent rates applied evenly to all purchasers, residential and commercial alike.

The Texas REALTOR® position

Our association supports the current title insurance consumer protections which ensure competitive rates and comprehensive coverages.

Legislative outlook

A few bills may be filed relating to comprehensive reform of the title insurance industry. Just as in past legislative sessions, the Texas Legislature more than likely will not upend our state's stable title insurance market.

Historical perspective

The Texas Department of Insurance (TDI) is charged with oversight of title insurance. When you purchase a title policy in Texas, you should know that the rates, terms, and coverages are set by the TDI and all title professionals are legally bound to those requirements. Since title professionals do not compete on price or product, they instead compete on the quality of service provided.

Governmental Affairs Contacts

Mark Lehman

Vice President of Governmental Affairs

Office: 512.370.2141

Mobile: 512.658.1067

mlehman@texasrealtors.com

 @markglehman

Daniel Gonzalez

Chief Lobbyist/Director of Legislative Affairs

Office: 512.370.2143

Mobile: 512.771.1920

dgonzalez@texasrealtors.com

 @txdan_gonzalez

Julia Parenteau

Associate Director of Legislative Affairs

Office: 512.370.2102

Mobile: 512.751.2028

jparenteau@texasrealtors.com

 @juliaparenteau

Tanner Long

Legislative Affairs Specialist

Office: 512.370.2176

Mobile: 817.239.7706

tlong@texasrealtors.com

 @tannerllong

Brandon C. Alderete

Director of Political Affairs

Office: 512.370.2124

Mobile: 512.952.8480

balderete@texasrealtors.com

 @TAR_bca

Jaime Lee

Governmental Affairs Communications Manager

Office: 512.370.2152

Mobile: 512.712.8788

jlee@texasrealtors.com

 @jaikil

Jami Sims

Governmental Affairs Coordinator

Office: 512.370.2145

jsims@texasrealtors.com

 @simsjl14



@txrealtors



@TAR_GA

Save the Date

March 26, 2019

**REALTOR® Day at the
Texas Capitol**

**On March 26, 2019, Texas REALTORS®
from around the state will unite at the
Capitol to meet with their lawmakers,
talk real estate, and eat some
great barbecue.**

**Make plans now to attend the 2019
REALTOR® Day at the Texas Capitol
... you don't want to miss the most
important grassroots political event of
the year!**

(Did we mention the barbecue?)





TEXAS REALTORS®

1115 San Jacinto Blvd., Suite 200
Austin, TX 78701-1906

512-480-8200
TexasRealEstate.com