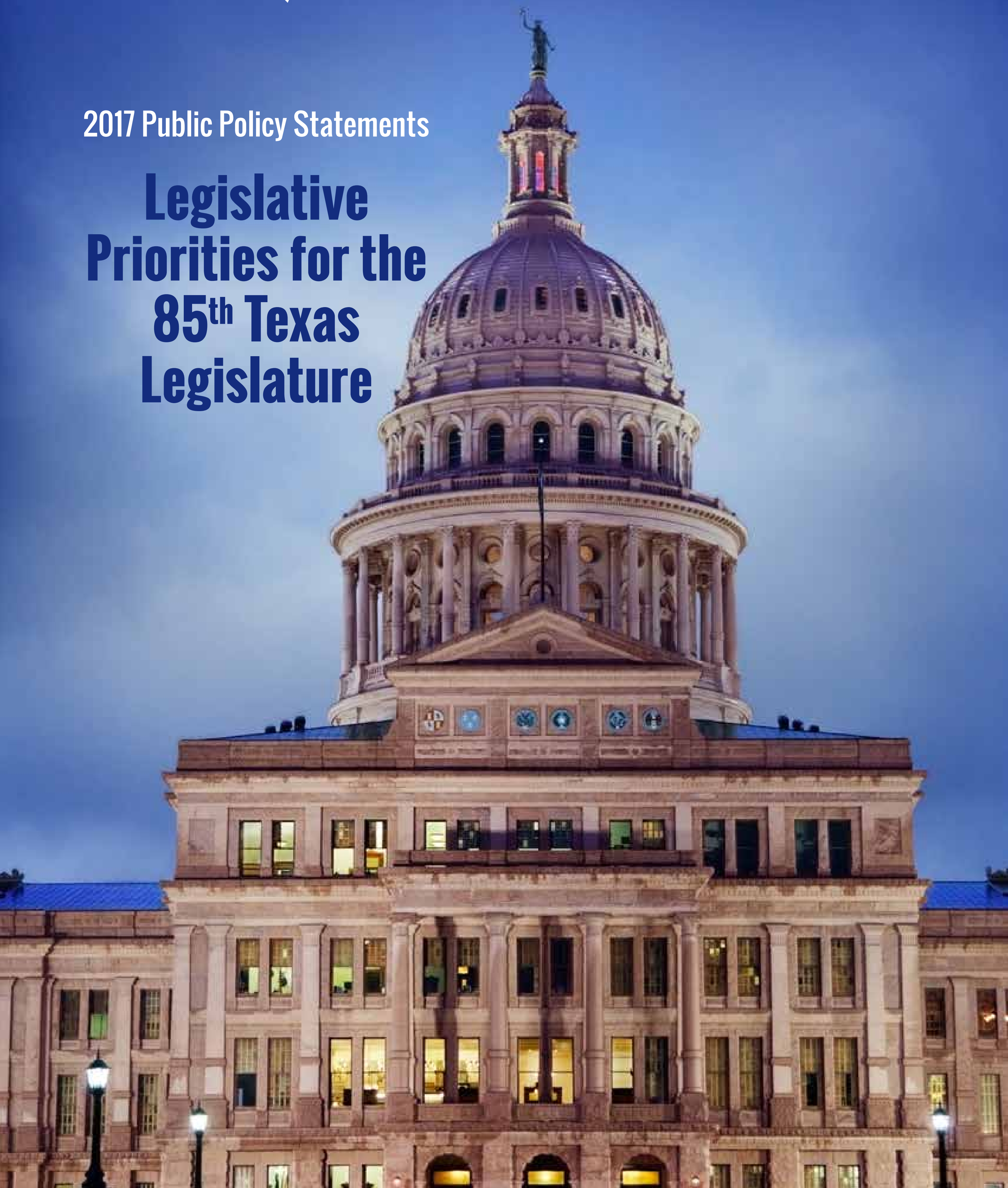
Texas Association of Realtors®

2017 Public Policy Statements

Legislative Priorities for the 85th Texas Legislature



I'm proud to introduce the 2017 Public Policy Statements for the Texas Association of REALTORS®. This publication highlights areas of interest Texas REALTORS® will be monitoring during the 85th legislative session.

With more than 110,000 members representing our state's diverse population and landscape, the Texas Association of REALTORS® truly is a grassroots organization.

This dedication to local involvement contributed to the creation of our public policy statements through the association's six legislative subcommittees: Business Issues, Infrastructure and Utilities, Land Use and Development, Taxation, Commercial, and Property Management.

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

This 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 ensure 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 85th Texas Legislature and beyond to achieve this goal.

Sincerely,

Vicki Fullerton
2017 Chairman
Texas Association of REALTORS®

Table of contents

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?

Restricting growth by giving counties more development regulation powers 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. In the past, the Texas Legislature has denied such requests.

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, and 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. The exercise of this power, while considered a necessary tool of government, has been argued to have 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

The Texas Association of REALTORS® 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.

The Texas Association of REALTORS® supports legislation that:

- Reimburses the costs and fees incurred by property owners in eminent domain proceedings if final damages awarded are 125% greater than the entity's offer
- Clarifies that a true bona fide offer should require the condemning entity to provide minimum property rights protection and delineate all uses or restrictions for the condemned property
- Allows for the admissibility in court of freely negotiated comparable easements in condemnation proceedings
- Requires a condemning entity to either pay the jury award or secure a bond in the amount of the jury award in order to guarantee payment to a prevailing landowner at the conclusion of the legal proceedings
- Allows for any written agreement made between the condemning authority and the property owner during a condemnation case to be enforceable and property taxes to cease to be applied on dispossessed property
- Clarifies state law that allows condemning entities and landowners to agree to rental payments
- Requires appraisals or opinions of property value, and damages caused by the condemnation, to be made available to the landowner at the time of the initial and final offer, no less than three business days prior to the special commissioners court hearing.

Legislative outlook

Some issues remain unresolved, including the 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 the first 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).

Such laws allow ample access to capital while at the same time ensuring homeowners do not incur excessive debt. These legal measures 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 current law allows property owners ample access to the built-up equity in their home.

The Texas REALTOR® position

The Texas Association of REALTORS® supports a few select proposed changes related to home-equity loans:

- Redefine what is and is not included in the calculation of the 3% cap on fees associated with a home-equity loan
- Allow for an alternative in refinancing a seasoned home-equity loan with a purchase money loan into one loan with one rate and term
- Maintain the $4,000 draw requirements on home-equity lines of credit (HELOCs) and increase the 50% equity provision to 80%—same as in a home-equity loan
- Allow farm and ranch property owners to acquire home-equity loans while maintaining the agricultural valuation of their properties
- Make technical changes in the Texas Constitution to ensure out-of-date terminology is updated.

In addition, the Texas Association of REALTORS® opposes moving from the Texas Constitution to the Texas Finance Code the 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 the 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. For more than 140 years, Texas did not allow home-equity loans because of the possible repercussions from defaulting on the loan.

Since 1997, some lender groups have tried to change the home-equity provisions of the Texas Constitution to allow a refinance of a home-equity loan to a conventional loan. Currently, once a loan is designated a home-equity loan, it will always be a home-equity loan and subject to all the consumer protections outlined in the Texas Constitution.

In 2003, Texas voters passed constitutional amendments which 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 80th legislative session in 2007 that modified the procedures for obtaining and granting a home-equity loan.

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

The Texas Association of REALTORS® 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 owner's First Amendment rights.

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 did make substantial HOA reforms in 2011, some HOAs continue to restrict certain activities which can violate a person's First Amendment rights. Expect a few bills to be filed to 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 House Bill 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: Energy

Issue

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

What does this mean for the real estate industry?

With the population of Texas expected to nearly double by 2060, lawmakers must find ways to support expansion of the system to ensure availability, reliability, and affordability for future generations.

Without expansion of current capacity and development of other generation sources, inadequacy in the current electric system during peak usage will lead to brownouts and blackouts. A state that can't provide adequate and reliable energy to consumers will not be able to support population growth or the expansion of business and manufacturing in the state, which would dramatically affect the vitality of the Texas real estate industry.

The Texas REALTOR® position

The Texas Association of REALTORS® supports the establishment of a comprehensive statewide energy policy.

The policy should recognize use of current sources of energy and include a planning process for diversification of energy sources, evaluating all forms of generation for possible inclusion in the planning process: wind, nuclear, solar, coal, bio-fuels, and geothermal. The policy should include incentives for generation of capacity, security of the system, and management of consumption.

The association also supports the movement toward non-polluting energy sources.

Additionally, the state should evaluate the effectiveness of deregulation and regulation of the electric industry, encourage the expansion and addition of electric generation capacity, and provide incentives for consumer compliance with voluntary green standards for homes and businesses.

Finally, Texas should maintain the electric system independence most of the state enjoys today to ensure system reliability.

Legislative outlook

As the Texas population continues to increase, lawmakers will act to secure the state's energy future.

Historical perspective

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

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 cities in the United States (Houston, Dallas/Fort Worth, San Antonio, and Austin), each of which is growing rapidly.

With 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.

Texas REALTORS® support the following concepts:

- 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 like: roads, freight and passenger rail, waterways, sea and inland ports, and air.

In addition, TAR supports the concept of high-speed rail, but not a specific project. This is consistent with our long-time position of a multi-modal approach to transportation challenges.

Legislative outlook

There will be a number of transportation-funding bills, 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.

We may see proposed legislation related to a privately-funded high-speed rail line between Dallas and Houston. The project is still in the planning phase, but the U.S. Surface Transportation Board determined earlier this year that the project should fall under the state's jurisdiction.

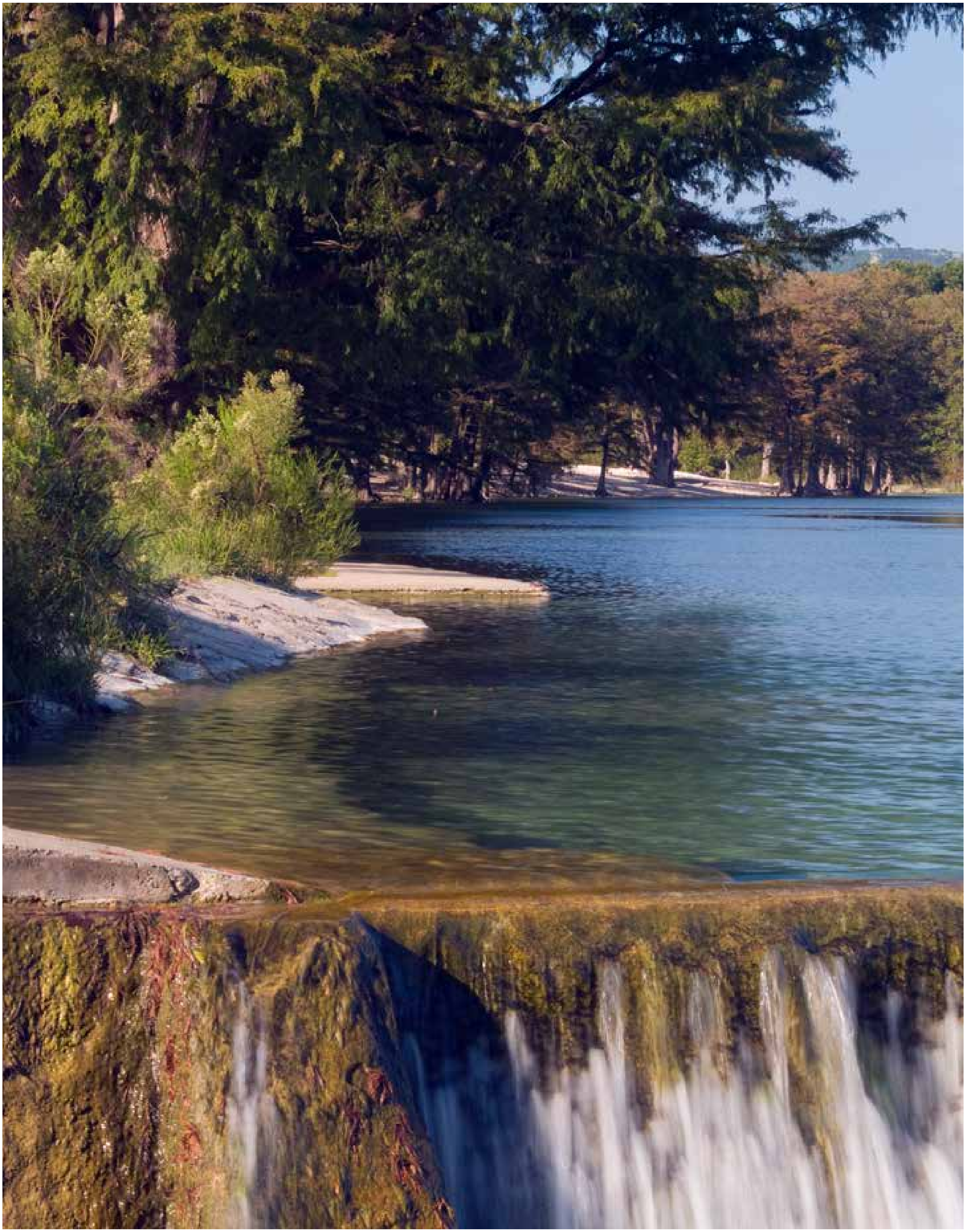
Historical perspective

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) for transportation funding with an overwhelming 80%, signaling to the Texas Legislature 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), 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

Although voters approved landmark funding mechanisms for water infrastructure in 2013, TAR will vigilantly monitor any water-related legislation to ensure all Texans have access to a clean, reliable, and affordable water source.

What does this mean for the real estate industry?

The Texas Water Development Board (TWDB) estimates that present-day annual economic losses from not meeting water-supply needs could result in a reduction in income of approximately $73 billion annually if drought conditions approach the drought of record and as much as $151 billion annually by 2070, with 1.3 million lost jobs.[1]

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

The Texas REALTOR® position

Texas REALTORS® support the implementation of the State Water Plan—a nationally acclaimed document that outlines the state's approach to providing water for the next 50 years. The locally driven plan promotes conservation and outlines infrastructure improvements, while balancing public need, property rights, and water rights.

Legislative outlook

The 85th Texas Legislature will focus on maintaining a sustainable water supply and implementing a State Water Plan.

Historical perspective

Since 1957, the TWDB has been charged with addressing the state's water needs. With the passage of SB 1 by the 75th Texas Legislature, federal and state organizations, political subdivisions, and regional water-planning groups have assumed increased responsibility for ensuring sufficient water supplies for the state.[2]

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

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

The 2017 Texas State Water Plan determined that, in serious drought conditions, Texas would not have enough water to meet the needs of its people, its businesses, and its agricultural enterprises.

The problem is exacerbated by population growth. Demographers estimate the Texas population will increase more than 70% by 2070, from 29.5 million people to 51 million.[4] The TWDB estimated that approximately one-third of that projected population will not have enough water during drought conditions if new management strategies and projects are not implemented.[5]

While funding had been appropriated by the Texas Legislature for various TWDB programs and exceptional, one-time expenses in the past, a dedicated state funding source had never been identified to pay for strategies and projects identified by the TWDB to meet the state's growing need. The strategies and projects identified in the current water plan are estimated to cost about $63 billion.[6]

As a result, in the middle of a historic drought in 2013, the 83rd Texas Legislature addressed the issue, passing SJR 1, which yielded a constitutional amendment (Proposition 6).

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 The 2017 Texas State Water Plan - Texas Water Development Board

2 81st Legislative Session – Legislative Priorities, Texas Water Development Board, Executive Summary

3 81st Legislative Session – Legislative Priorities, Texas Water Development Board, p. 2

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

5 The 2017 Texas State Water Plan - Texas Water Development Board

6 Ibid

Local property taxes: Appraisal caps

Issue

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 recent editorial in *The New York Times* that focused on homeownership and wealth creation cited research from the Joint Center for Housing Studies at Harvard University, concluding, "As a means to building wealth … there is no practical substitute for homeownership."[1]

The Texas REALTOR® position

The Texas Association of REALTORS® opposes efforts to reduce the property-tax appraisal cap from its current level of 10%.

Legislative outlook

Several legislative bills will 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 trying to rein in higher property tax bills, but legislators should focus their attention on the tax-rate-setting process at the local level.

Historical perspective

A limit on property-tax 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 correctly 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 cap the increase in value a residential homestead could experience.

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 wealth creation," *The New York Times*, Nov. 30, 2014. http://www.nytimes.com/2014/11/30/opinion/sunday/homeownership-and-wealth-creation.html

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 to understand.

Additionally, many commercial and residential property owners believe the appraisal and protest processes are not transparent, fair, or uniform across central appraisal districts (CADs). Many property owners also believe CADs either work for or are in cahoots 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

The Texas Association of REALTORS® 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
- Allowing for expedited discovery in appraisal value lawsuits.

The Texas Association of REALTORS® 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.

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, chaired by Sen. Bettencourt, travelled across the state in the interim to hear from Texans about this critical issue and to propose solutions.

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

From 2004 to 2013, local property taxes increased dramatically. For example, local property tax revenue for Special Purpose Districts (MUDs, PUDs, hospital districts, etc.) increased by 64%—or $2.16 billion—over this time period. Similar increases can also be attributed to counties, cities, and school districts. Overall statewide, local property tax revenue increased by 46%—or $14.29 billion—for property owners over this same period.

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. A more honest and transparent conversation needs to occur so taxpayers completely understand why more tax revenue is needed. 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 the states' 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."[1]

The Texas REALTOR® position

The Texas Association of REALTORS® supports various measures to ensure a more transparent and honest conversation occurs at the local level. These measures include supporting:

- The reduction of the rollback rate from 8% to a lower percent, with support contingent on ensuring the new rollback rate is not an automatic property tax increase for property owners;
- An automatic tax ratification election if the rollback rate is exceeded;
- Updating the calculation of effective and rollback rates to include state-funded matters such as state-paid road maintenance;
- Requiring all taxing entities' 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 tax will be filed during the 85th legislative session. 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 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. Despite having the best local property tax system, several improvements have been enacted over this same time period.

1 "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: Rental property registration

Issue

Many cities in Texas have adopted—or are seeking to adopt—ordinances requiring property owners to pay an annual fee to register all 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 purposes are 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 choose not to 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 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 to prohibit the passage or enforcement of rental-registration ordinances, and 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.

Not only do rental-registration ordinances infringe on a property owner's ability to conduct business without government intrusion, they are often duplicative, ineffective, and intrusive to owners and tenants of rental properties.

Legislative outlook

Some legislators have expressed interest in protecting the ability of a property owner to rent a property without unnecessary government intrusion.

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

Historical perspective

As of November 2016, more than 20 Texas cities, including most major metropolitan areas, have enacted a wide variety of rental registration ordinances.

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 property-tax increase of more than $250 million 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

The Texas Association of REALTORS® opposes all legislative efforts to require the disclosure of sales-price information because:

- Sales price is not necessarily a good indicator of taxable value
- Disclosure is an unnecessary invasion of privacy
- Disclosure 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 transaction.

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 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, the average home sale in Texas in October 2016 was $260,012, which would mean, depending on commission rate and local options, the tax could add well over $20,000 due at closing.

The Texas REALTOR® position

The Texas Association of REALTORS® 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, which plays an important role in 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.

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

The Texas REALTOR® position

The Texas Association of REALTORS® has conducted exhaustive, multi-year studies on the local property tax and believes applying sales tax to real estate is a short-sighted and flawed approach to property-tax relief.

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.

Legislative outlook

Property taxes continue to be a burden on Texas property owners. The Texas Legislature will no doubt see many proposals that seek 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.

The Texas Real Estate Commission

Issue

The 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.

What does this mean for the real estate industry?

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

The Texas REALTOR® position

We support TREC's efforts to enhance ethics, consumer protection, and transparency in the real estate process. Additionally, we support legislation that facilitates the administration of the commission and eliminates certain inefficient provisions in the law, when identified.

Legislative outlook

The Texas Association of REALTORS® works closely with TREC to identify inefficient and outdated real estate law. A housekeeping bill may be filed to ensure TREC remains an efficient and effective state agency.

Historical perspective

In 2011, during the 82nd legislative session, two bills were passed relating to the Texas Real Estate Commission (TREC).

The first one, SB 1000, designated TREC as a self-directed, semi-independent state agency. This status means TREC is no longer subject to the legislative budget or appropriations process at the Legislature—instead, the agency conducts business using the licensing fees it collects.

The second bill, SB 747, was a reform bill relating to TREC. The reform 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 others 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.

Title insurance

Issue

Title insurance is a unique insurance policy that protects your 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

The Texas Association of REALTORS® 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 the 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.

Windstorm insurance

Issue

The Texas Windstorm Insurance Association (TWIA) is a quasi-governmental state agency that serves as the insurer of last resort for wind and hail damage for property owners in 14 Gulf Coast counties.

The problem is a big one: TWIA does not have the resources it needs to be actuarially sound. With the lack of private-market insurers in those counties, TWIA has become the only option—and that is not sustainable.

What does this mean for the real estate industry?

In order to secure mortgages, borrowers must have adequate insurance. Since fewer and fewer insurance providers will write windstorm policies in this area, the viability of this key sector of the real estate market is in jeopardy.

Furthermore, the Texas Gulf Coast is a vital component of the Texas economy. Any coastal catastrophe caused by acts of nature would have a devastating effect on the fiscal stability and viability of the entire state.

The Texas REALTOR® position

The Texas Association of REALTORS® believes all property owners in Texas should have access to risk-related property insurance. Because the Gulf Coast is such an important part of the Texas economy, the association also believes TWIA policyholders should not bear the entire financial burden associated with insuring against these catastrophic events.

Additionally, any solution should include better underwriting rules, adequate rates, liability limits, and more stable funding strategies, as well as incorporate the private insurance market in some capacity.

Legislative outlook

Lawmakers will deal with windstorm insurance this session. Stakeholders are exploring options for a long-term, comprehensive, viable, and reasonable solution.

Historical perspective

The 84th legislative session in 2015 saw significant progress on windstorm insurance reform, thanks to SB 900, which:

- Implemented actuarially sound insurance principles by mandating that TWIA have enough funding every year to pay Probably Maximum Loss on a 100-year event;
- Ensured administrative accountability by giving the Texas Department of Insurance Commissioner the ability to privatize TWIA management, if necessary;

Provided equal representation of all stakeholders on the Board of Directors by changing the composition of the Board of Directors from 5/4 industry/coastal representation to 3-3-3 (with new representation from inland areas); and

- Promoted private-market solutions by requiring biennial studies of market incentives to promote voluntary participation in the wind- (and hail-) insurance market.

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