FORECASTING THE NEAR AND FAR FUTURE ON LEGAL AND CLOSING TRENDS

INTRODUCTION:

[slide 2]: "There is nothing permanent except change."
Heraclitus

The way we practice real estate – specifically, the way we buy, sell, and close real estate deals in Texas – has changed so much in the last few decades that many people don't even know or remember how we used to close deals.

And what is more amazing is that these changes to our real estate practices occur *more frequently as time marches forward.* The frequency of change **accelerates** as we spend more and more years in this field.

[slide 3] "If you want to know the future, look at the past."
Albert Einstein

One of the ways to predict the future is to look back in time at all of these changes, and look for trends, patterns, and trajectories of change. To see the future, we must look back at our past.

What I thought I would do today is take a look at the practice of real estate in the State of Texas during several eras – the 1950s, the 1970s, the 2000's, and then finally today – and then see what might be coming in the years ahead of today.

[slide 4] 1950s

[Slide 5] In the 1950s, real estate closings were dominated by attorneys. Even though title companies and title insurance did exist as an industry (title insurance first appeared in Philadelphia in 1876), nearly all residential and commercial transactions closed at the office of a lawyer.

[slide 6] The assurance of title for a buyer was not through policies of title insurance, but instead was made by attorney opinions of the validity of title, based on that attorney's examination and review of recorded title documents, which were then compiled into what was called an "Abstract of Title" – often prepared by a title company.

[slide 7] All contract forms, and all closing documents and loan documents were prepared by lawyers, and those lawyers and their law firms would act as the escrow agent for the deal, disbursing monies and recording documents. Most contracts of sale were 1-3 pages in length, max. Residential loan paper was a promissory note, a deed of trust, and maybe an invoice for loan fees – often 10 pages or less. No truth in lending docs, no oral agreements notice, no correction of documents agreement, no W-9 or IRS forms, no 1003 / URLA, nor any of other conventional loan paper you see today.

Sometimes, the brokers themselves acted as the escrow agent, and would hold earnest money delivered by the buyer as a "good faith" deposit to assure the seller that real money had been delivered to their representative. [I want all of you brokers and agents to imagine holding earnest money under a contract of sale until the closing date, and then delivering it to the seller at closing.]

There was NO significant governmental involvement in these transactions. They were not regulated at the state or federal level, other than perhaps as the practice of law by the State Bar of Texas, state usury laws on maximum interest, and Texas homestead laws.

[slide 8] All mortgage lending was done by a local bank or savings and loan – there were no national lenders, no secondary mortgage market, and Fannie Mae, although it did exist, was not a player in the residential loan market at this time (Freddie Mac was created in 1970).

[slide 9 – may delete or replace] Real estate brokers, most of whom were male, all represented sellers, either as what we now term "a listing agent", or as a "sub-agent" of the listing agent, helping bring a buyer ***they did not represent*** to the deal. There was no such thing as buyer agency, and no such thing as a "Buyer's Representation Agreement." There were ethics rules – NAR's Code of Ethics dates back to 1913.

[slide 10] All listings of real estate were contained in large binders or books created by and controlled by brokers and, sometimes (!!), shared between brokers. The 1950s was really about the time that Boards of Realtors® and Boards of brokers began to form and aggregate, and listings by brokers were ***shared*** between different brokers in what was termed a Service of "Multiple Listings."

[slide 11] There were no computers, and closing statements were done by hand (and often in pencil) to allow revisions (perhaps finalized in ink or on typewriter). A typo on a document meant typing large XXXXs though the typo, or perhaps re-doing the document.

[slide 12] That magical fluid known as liquid paper did not appear until 1956, invented by Dallas TX secretary Betty Nesmith Graham (mother of Monkee's guitarist Mike Nesmith).

[slide 13] The concept of "good funds" did not exist – all funds were good funds. Wires transfers were not used – cash or personal checks were invariably delivered to the closing table. The bank officer would often bring the bank's check to the closing, and it was considered good and legal tender upon presentation. There was no IRS or other federal regulation requiring the filing of a report if the cash delivered was over $10,000.00, nor any 1099 reporting to the IRS of the gross sales price.

[slide 14] Real estate commissions were usually a percentage of the sales price and in the 1950s they did not usually vary – most brokers charged the same formula, perhaps to the detriment of the industry in decades to come.

[slide 15] Next stop: 1970s

The next 25 years brought a lot of change to the real estate and closing industry:

[slide 16] RESPA: The biggest change was that we now had a national, uniform, residential closing statement called a HUD-1, which was created by a new federal law known as "RESPA" – the Real Estate Settlement Procedures Act of 1974, signed into law December of 1974 and effective June 20, 1975. There was quite a learning curve for title companies, lawyers, bankers and real estate brokers to adjust to this new law. Soon, however, the HUD-1 settlement statement became a standard closing document, often used even in cash transactions when its use was not required by law.

> *Trivia: initial discussions and legislative commentary proposed that a copy of every single signed HUD-1 in the United States would be sent to The Department of Housing and Urban Development (the federal agency charged with implementing and enforcing RESPA), to keep in a permanent repository for complaints, statistical data, or other reasons. This is also why each closing cost has its own line item "number" on the HUD-1. This plan was never implemented.*

[slide 17] Title insurance: As an industry, the title business had grown and was now commonplace in residential and commercial transactions. Title companies also acted as escrow agents and their escrow fees at this time were now $10-15 per side, and perhaps double that for commercial. Attorneys and title companies still did abstracts of title, but they were becoming increasingly rare, and were so full of exclusions and hold harmlesses that the title insurance policy offered better "coverage" than the opinion of an attorney who did not want any liability for error, and often has no errors and omissions insurance.

> Note: The "good funds" rules and regs were still not in place at that time – those would become law in the late 1980s.

[slide 18] Technology: Towards the end of this decade, title companies began to employ computers and software to create, print and revise their closing statements, including the HUD-1. In 1975, however, there were no personal computers at such time, so typewriters and correction tape were still the norm for office practices. Although not in common use, early versions of fax machines and other telephonically-based data transmission devices began to appear in the offices of larger title operations, but most communications were by telephone or in person.

[slide 19] In broker offices, computers were also not in wide use, and brokers kept contract forms in stock for agents to type or hand write their offers. The local associations such as

GDAR (Greater Dallas Area of Realtors®) had created residential and commercial contract forms and originally sold those to brokers for use on large tear-off pads (the contracts were originally 2 pages, double sided). Title companies also had their own contract forms on pads.

[slide 20] Fannie Mae and Freddie Mac: Fannie was created in 1938 as part of FDR's New Deal Legislation, but, as part of the 1968 Housing and Urban Development Act (which also created HUD as a federal agency), Fannie Mae converted to a private, shareholder-owned corporation to be "overseen" by Congress and HUD as a "GSE" – Governmental Sponsored Enterprise. After being removed from the federal budget, Fannie Mae funded its operations through capital raised in the stock and bond markets. In 1970, legislation was enacted to create Freddie Mac as a similar, privately held corporation to act as a "competitor" to Fannie Mae. By the mid 1970s these two entities were big (or bigger) players in the residential mortgage market and they were buying mortgage loans from banks, S&L's and other local originating lenders on the "secondary mortgage market."

[slide 21] MLS: The transition of MLS from books and binders to computers traces back to approximately 1975, but in the 1970s, computers were still very large machines that occupied entire rooms, and were expensive and out of the reach of most brokers, so only the very largest MLSs in the very largest urban areas begin the process of transferring their data to computers at this time. Over the next 25 years, however, this area of broker practice would change dramatically.

[slide 22] Brokers: Brokers themselves were still local operations. The largest local brokers – Paula Stringer and Ebby Halliday, may have had a few hundred agents by the mid 1970s, but most other brokers had significantly less. In 1979, Merrill Lynch acquired a majority stake in Paula Stringer Realtors with, at the time, 450 agents, so the trend toward large national brokerages was just beginning in this era.

[slide 23] Here you see from an advertisement in 1975 that CCAR (or rather its predecessor, the Collin County BOARD of Realtors) had 400 members.

There was still no such thing as exclusive buyer agency or intermediary, and seller's agents, and subagents of those seller's agents, represented all the parties to the deal.

The 1970s were a time of tremendous growth in the residential brokerage industry, and Texas had relatively low barriers to entry as far as educational and licensure requirements, which made this field and this profession attractive to women, many of whom were often shut out of other professions for similar reasons. Many homemakers turned into real estate professionals during this period, and their separate income from this profession created financial independence for many women. Although there were still many men in residential real estate, this decade was the one in which women rose to the top of this profession, and, for those that were full time and dedicated to their craft, income earned in this field could rival that of their spouses in similar office professions. The National Association of Realtors® reflected the growing gender diversity of their members, and began to arrange their policies, procedures and guidelines to become increasingly "progressive" and inclusive.

[slide 24] Commissions: Commissions during the 1970s were still following the same pattern and formula as previous decades and generally were based on a percentage of sales price. There was not a lot of price diversity on broker's fees, but at that time the Federal Government and the DOJ was not focused on this issue.

[slide 25] Also to note: the Fair Housing Act was enacted April 11, 1968. This law prohibited discrimination concerning the sale, rental, and financing of housing based on race, religion, national origin, sex, (and as amended) handicap and family status. State law regulations under TREC / TRELA would soon follow which mirrored these protected classes, and

[slide 26] In 1974, the same anti-discrimination policies were also codified into the ethics provisions of the National Association of Realtors ® in Article 10.

[slide 27] Interest rates: Even though we look back at the 1970s as a time of explosive growth and dramatic change in residential real estate, it is also important to remember that there were several shocks to the US economy that had a direct effect on interest rates. These included two distinct recessions – 1969-1970 and 1973-1975, and several crises related to oil, including an embargo leading to nationwide oil and gas shortages, price spikes, gasoline rationing, and long lines as gas stations. Interest rates on mortgages, per data from Freddie Mac, started around 7% at the beginning of the decade, and climbed to 11-12% by December of 1979. The trend of rising interest rates would continue through the 1980s, ***peaking between 17-19% in early 1981-1982.***

[slide 28] Here is another ad from the Dallas Times Herald showing interest rate quotes in October of 1981. Notice the names of these mortgage lenders and how they are not around anymore.

[slide 29] Closing costs: From https://www.dmagazine.com/publications/d-magazine/1977/january/1977-homebuyers-guide/. On a $75K home in 1977:

Seller		**Buyer**	
Commission:	6%		
Title insurance:	$405.00	Title insurance:	$30.50
Escrow fee:	$15.00	Escrow fee	$15.00
Recording fees:	$3.50	Recording fees	$18.50
Doc prep / attys:	$30.00	Doc prep / attys:	$40.00
		Photos:	$10.00
		Hazard ins:	$389.00 (1 yr)
		Survey:	$65.00
		Pest inspection:	$15.00
		Home inspection:	$60.00
		Credit report:	$18.50
		Loan origination	1%
		Loan discount	1.5%

[slide 30] TREC contracts: Throughout the 1950s and 1960s, the State Bar of Texas harangued and harassed the broker industry for creation of their own contract forms under the belief that negotiating a contract to buy a home, and preparing a contract of sale, was the unauthorized practice of law. The 1970s is when the State Bar of Texas, and the increasingly powerful brokerage industry (including the lobbying efforts of the National Association of Realtors® and its state arm, the Texas Association of Realtors®) came to a truce and began the creation of TREC-based institutions and forms that we know today. The Broker-Lawyer Committee was created by statutes enacted during the 1975 legislative session, and the first TREC promulgated contract was delivered to the state around 1976-1977, according to the best sources I could locate (attys Ron Walker and Chuck Jacobus).

[slide 31] Mortgages: The Truth in Lending Act (TILA) passed in 1968 and required that all consumer mortgage lenders disclose to borrowers the annual percentage rate, or APR, of loans. TILA also required lenders to provide consumers with loan cost information, including the length of the loan and total costs, and mandated that certain loans covered under the Act be subject to a three-day period during which a customer could back out of the loan process. The Act granted regulatory authority to the Federal Reserve Board. (Note: This authority was transferred to the Consumer Financial Protection Bureau in July 2011 as part of the Dodd-Frank Act.)

So, by the 1970s we had two huge federal laws -- RESPA (Reg X) and TIL (Reg Z) that impacted many, many consumer loan closings, increasing the paperwork, knowledge requirements, and liability of lenders, title companies, and brokers.

I will also note the passage of a state law – the Texas Deceptive Trade Practices Act (the DTPA) in 1973, which would see much greater impact upon the real estate industry in the following decade of the 1980s.

As you can see, the real estate business was getting more detailed, more complex, and more regulated.

[slide 32] Add 25 years: The New Millennium – 2000 and beyond

By the 2000s, a host of technological and regulatory changes had transformed how we practice and close real estate. Let's run through a few differences from the last era we visited -- the 1970s:

[slide 33] Regulatory

[Slide 34] On August 1, 1988 the Texas Department of Insurance created its "good funds" rule which required that all closing funds in excess of $1500.00 could only be delivered in limited ways – primarily by federal wire transfer, cashier's check, or in cash. The rule also allowed loan funds to be considered good funds even if not in one of those forms (i.e., a business check from a lender) if delivered with an existing "Immediately Available Funds Procedure Agreement" (form T-37, now called T-37A in the title business).

[slide 35] In 1980, FIRPTA (the Foreign Investment in Real Property Tax Act) was enacted. It required buyers of real estate from any seller that was a "foreign person" (as defined by the Act) to withhold at closing 10% of the gross sales price and remit it, as a tax, to the Treasury Department. There was no withholding required if the sales price was under $300,000.00 and the buyer intended to reside there. So, while in 1980 the application of FIRPTA to a residential transaction was a fairly rare thing, it was becoming more common in the 2000s and beyond – not only with escalating home values, but also with the rise of foreign real estate buyers, who were often high wage earning executives working for foreign companies under long term (5 years) work visas.

[slide 36] In the early 2000s, in response to a task force created by TREC to study MCE education for license holders, TREC enacted rules changes to its existing MCE requirements. For the 15 hours of MCE required, 6 had to be legal. TREC broke this 6 hours down into two 3-hour required classes, originally called Legal Update and Ethics Update. Today this mandatory course is 8 hours total and is called "Legal Update I" and "Legal Update II".

[slide 37] Mortgage lending / Fannie / Freddie

[slide 38] In the early 1990s, thousands of savings and loans and banks failed, resulting in the creation of the Resolution Trust Corporation ("RTC"). The RTC was essentially a giant federal government holding company that took over and held the assets of these failed thrifts (both mortgage loans, and even real estate assets after foreclosures) and attempted to salvage these assets for the benefit of U.S. taxpayers, who were funding this bailout.

Eventually, the RTC began selling non-performing loans by packaging them together and selling them in bundles, as bonds, over the capital markets. This led, in turn, to packaging regular and performing residential mortgage loans into securities, and, by the mid 1990s, the

Residential Mortgage Backed Securities (RMBS) market was becoming a significant percentage of the nation's Gross Domestic Product.

[slide 39]

Fannie Mae and Freddie Mac became huge players in the RMBS market and made it their focus to take their many secondary mortgage purchases and sell most of them in huge bundles as certificated, rated securities. The problem: Many of these mortgages in these bundles were not so well underwritten.

During the early 2000s, mortgage lending, perhaps in response to competitive pressures and an accelerating housing market, began to become more aggressive, and the concept of "subprime" mortgages soon became the norm. Prior to this point in time, it was difficult for buyers with poor credit histories or other financial barriers to get a loan for a home. This changed when the demand for packaged mortgage loan-related investments – the RMBS market --- skyrocketed.

Lenders needed to offer more loans to buyers to meet the investor demand for these types of securities, so they began offering risky loans to under-qualified buyers instead. While many of these subprime loans appeared to be a good bet for buyers, these loans were designed to be unaffordable down the road. Still, this easy access to financing caused the housing market to boom.

Can you see where we are going ?

What happened ? This market was not sustainable. There were TOO many people owning homes, and too many people that could not afford those homes, especially in some of the subprime mortgage products that went from low interest-only loans to high interest amortized loans after a few years.

The result

[slide 40] was the great recession of 2008. There was a time when some financial experts feared a decade long, worldwide depression.

[slides 41, 42, 43 and 44] For those that don't remember, here is a selected timeline of various dominoes as they fell

[slide 45] In response: President George Bush and his Treasury department absorbed all of this debt, including the obligations of AIG which was the insurance behind all of these failed investments, and authorized a $700 billion program called "TARP" (Troubled Asset Relief Program) to acquire and hold these "toxic assets."

[slide 46] Another result of a mortgage market that played with fire: The Dodd-Frank Wall Street Reform and Consumer Protection Act – signed July 21, 2010.

[slide 47] This law created the Consumer Financial Protection Bureau (CFPB) and changed the lending and appraisal game.

[slide 48] Appraisal changes as a result of the 2008 Recession

Early audits of troubled loan files by governmental regulators revealed a lot of weaknesses as well as fraud in the appraisal system used to justify values for loans from the 90's through early 2008. Appraisers were often pressured by lenders to "make value" for their loans.

The result was a number of regulations enacted to create a wall between loan underwriters and appraisers. No longer could mortgage lenders choose their favorite (read: compliant, flexible, willing to fudge as needed) appraisers to make value – their appraisers had to be selected through Appraisal Management Companies ("AMCs") that were independent from the mortgage lender. The AMCs had their own slate of appraisers that decided who would appraise the property, not the mortgage lender – often resulting in frustration to brokers when appraisers from a faraway geographical area were asked to appraise property locally.

[slide 49] TREC Contracts: By the early 2000s, the TREC 1-4 Family Contract was on in its fourth or fifth revision, and was now about 8 pages in length. Texas Association of Realtors® had by this time greatly expanded its own library of non-TREC forms, and had forms for its members for commercial, leasing, and property management.

Under the 6th revision to the TREC resale contract (form 20-6 effective in 2003), TREC made one of the most fundamental changes to their form with the creation of an option period and an option fee, which mirrored a commercial practice that had been in use for decades prior.

[slide 50] Brokers

[slide 51] By the year 2000, Texas had 48,312 Realtors® and perhaps 110,000 license holders, according to records obtained from TXR and TREC. Brokerages were now larger operations, many with branch offices and managers in each branch office. This slide shows the very direct effect of the Great Recession of 2008 on broker counts in Texas, which began to inch up again around 2012-2013.

Specialization finally came to the brokerage industry in the same way it did for other professions like law and medicine -- the world grew more complex, and specialists in the brokerage industry rose to meet these challenges. The first specialization really began in the 1970s with the split and diversion of residential from commercial. By the Millennium, however, there were residential brokers that specialized in farm and ranch properties, condominiums and hi-rises, and certain suburbs of the DFW or certain pockets of DFW that they "farmed" and worked over and over and over to have a higher degree of familiarity with that one particular area (e.g., Southlake, Plano, Preston Hollow, or the Park Cities).

The rising numbers of brokers from 1975 to 2000 also meant that the increased competition created a greater variety of fee models. It is fair to say that by this time, not all or even most brokers were charging the same flat percentage of sales price that they did in the

1950s or the 1970s. Some brokers employed variable fee models, where they would discount a listing commission if they could also represent the same seller in the purchase of a new home. Some charged 3%, some 4%, some 7% or even 8-9% of the sales price. Some charged a flat percentage plus an additional "transaction fee" of several hundred dollars, ostensibly to cover costs advanced by the broker. So there was a greater variety of commission models, as you might expect in response to several anti-trust investigations against NAR by the USDOJ.

Also, by the year 2000, the concept of separate and distinct seller and buyer representation had been firmly established, with well-defined and detailed listing agreements and buyer representation agreements. I had a hard time finding the exact year or years of when sub-agency began to fade, and be replaced by separate and distinct agents, that represented either seller or buyer only, but it appear to have really taken off by the 1980s.

[slide 52] In 1996, the Texas legislature made significant changes to the Texas Real Estate License Act, codified in Texas Occupations Code, Chapter 1101 – namely, expressly permitting a very limited form of dual agency called "intermediary," whereby a broker could represent both buyer and seller in the same transaction. Dual agency NOT done by the intermediary statutes was still technically legal in 1996, but frowned upon by TREC and most lawyers and experts. By 2005, common law dual agency had been expressly outlawed by amendments to TRELA.

[slide 53] MLS: Most larger metro MLSs were starting to computerize their listing aggregations by 1983, but most individual brokers did not employ home or office computers until perhaps the mid-1990s, by which time the internet age was now upon us all. By the early 1990s, MLS was completely computerized and most brokers were no longer using the books of listings they had employed in the 1970s and for part of the 1980s. NTREIS was formed in 1998 as an aggregation of the MLSs of several associations, when its board of directors approved its first rules and regulations. www.ntreis.net came online in 2003.

[slide 54] Today NTREIS includes 15 DFW Realtor® Associations and covers 58 counties and 40,000 square miles.

It is not unfair or inaccurate to say that from 2000 to today, the rules and regulations of MLS / NTREIS have become lengthier and more complex for brokers to learn and master, and the associated penalties and fines have been become stiffer.

[slide 55] Title insurance: Still used and ever-present in most residential deals, many brokers would be surprised to learn that premiums for title insurance, which by law are fixed by the Texas Department of Insurance, are re-assessed ***every 2 years*** by this agency after reviewing data and input from various industry and consumer groups. As a result, title insurance premium rates have steadily **decreased** by almost 20% over the past 30 years.

[slide 56] Closing costs from residential closing year 2000 [slide 57] TRID

On October 3, 2015, the TILA RESPA Integrated Disclosure Rule ("TRID") became effective. This new federal regulation merged RESPA (Reg X) and TILA (Reg Z) into a single law and created a single disclosure, called the TRID "Closing Disclosure" (or CD). It was intended to create the same form of disclosure *before closing* of various settlement costs as the actual settlement statement *at closing* of those closing costs, so mortgage consumers could see which charges changed and by how much. It also contained limits on how much certain types of charges could change between the initial disclosure and the closing.

TRID was a massive learning curve for mortgage lenders, loan officers, title personnel, and brokers -- the biggest since RESPA. It resulted in numerous retirements or career changes in those same industries by folks who had been in the business for decades, and were not willing to invest the time in learning the new changes.

[slide 58] Fraud and cybersecurity:

By the late 1990s and early 2000s, title company personnel were using email to communicate and deliver information to and between each other, mortgage lenders, surveyors, attorneys, sellers and buyers – and their brokers. There was a LOT of private financial, legal banking, and identity information that was transmitted between parties to a transaction via email.

[slide 59] Foreign investor wire scams

The very first scams and frauds of the Millennium were "foreign investor wire scams" which relied on geographic distances, lack of face to face interaction and communication, and email in an attempt to re-direct wire proceeds out of escrow and out of the US banking system. For example a broker would receive an email from a stranger:

> "Hello, we have never met but I am in England and want to buy this house you have listed, sight unseen. Please find me a title company and lawyer and I will send you $450,000.00 for this home."

The broker or agent would be very excited at this prospect that seemingly came from no where. They would draw up a contract, find a title company, and communicate with this person exclusively by email. A contract would come back signed electronically

[sidenote: Beginning in 2005, Zipforms, the exclusive vendor for TREC and TAR forms for members of the Texas Association of Realtors® (nka Texas Realtors®), partnered with a company created in 2003 called Docusign. This move and integration enabled remote parties to ink a TREC contract "electronically," without ever seeing each other or the broker. Because of its convenience and ease of use, Docusign became standard practice and custom, and nowadays very few broker directed contracts are signed in wet ink.]

When it came time to deliver earnest money (or a variant: closing funds), the scammer would always send a cashier's check to the broker or the title company. This cashier's check would have two things in common:

1. It was always for significantly MORE funds than what was required of the buyer.

2. It would be bogus, forged, and counterfeit. It was usually completely indistinguishable from a true and valid cashier's check from the bank it was allegedly drawn from.

The buyer would then email and say "oops, sorry, sent too much, can you please WIRE BACK to these instructions the excess."

Title companies would usually have surplus funds in their escrow accounts to cover this sum (what we call a "float" in the title business), and since a cashier's check is considered "good funds" upon presentation, dutiful title companies would deposit the bogus cashier's check as good funds, wire back the excess funds prior to confirming receipt of those "good funds" funds from the cashier's check, and then, days later – SURPRISE -- NO FUNDS FROM THE CASHIER'S CHECK.

A large DFW area law firm was scammed in a similar manner concerning a lawsuit settlement they were handling, to the tune of $500,000.00 in lost funds.

[slide 60] Social engineering and spear phishing

As title companies and other companies that handled large sums of money began to catch and learn the red flags of a foreign investor wire scam, the scammer began to get more sophisticated. They began to use **social engineering** to locate real estate transactions and their various players, implant malware into the computers of one of these parties, and then impersonate one of the parties to the transaction. These very targeted attacks, which involve watching and reviewing numerous emails that have been hacked into, to see what is going on, is called "spear phishing."

Example 1:

1. Email comes to buyers agent, whose name, email and social media presence are well known and advertised.
2. It purports to be from zipforms: Please login your info to access your contract.
3. It has an embedded hyperlink
4. There are red flags that the busy agent or their assistant do not notice:
    a. email was sent at 3:31 am
    b. the link to hit for zipforms, when you hover over it with the cursor, displays an unknown / unfamiliar website
    c. you don't really recall any current or pending transaction, but oh well

d. You have never received an unsolicited email like this from zipform realty before
e. the email itself has some minor spelling and grammar mistakes
f. there is another person copied on this email that you don't know

5. The buyer's agent hits the link and it takes them to a site that looks legit, and asks for the agent's information: email, zipforms login, password, etc.
6. The agent or assistant enters the info thinking it will open zipforms and reveal a contract or other info
7. The site locks, or does nothing. The agent or assistant gives up, logs out, and moves on to other duties.
8. The fraudster has implanted malware on the users computer to:
    a. hack into the agent's email account and read all of their emails
    b. Create a duplicate / fake email account for the agent
    c. get familiar with the agent's pending deals and details for those deals, including the email addresses of the buyer client, the lender, and the title company
9. The scammer send out a bogus email to the buyer, using the agent's logo and other identifying marks from other legit emails form the agent
10. Email from fraudster to Buyer:

"Hey buyer, its me, your agent. We have a deal on 123 Main Street !!! I am so excited and happy for you !! I need you to wire the earnest money ($10,000.00) to the title company today. Here are their wire instructions. Let's move on this, quick!!!

11. The buyer wires the money. The scammer then moves funds to an offshore bank, and they are gone forever.
12. Variation: The email from the scammer to the buyer is not an instruction to wire in earnest money. ***It is an instruction to wire in the purchase proceeds.***
13. As you can see, this is a very detailed, informed, and targeted attack.

Example 2

1. Email comes to escrow assistant and closer for a large and well known title company.
2. It is from Citibank: We are having problems with your account. Please access our secured page and follow the instructions to re-log in your credentials.
3. The email looks legit and contains a hyperlink.
4. The assistant, who has a Citibank credit card account, hits the link.
5. Nothing happens, but, unknown to the assistant, a program executes which embeds spyware on to and into the assistant's machine.

6. The spyware allows the scammer to see, read and review and even divert all emails to and from the closer and his or her team – emails to and from agents, seller, buyer and lender. The entire transaction is laid out.
7. The scammer sends a spoof email to the title company closer, pretending to be Seller or Seller's agent:

"Please wire my / his closing funds to the following bank"

9. The title company closes, funds, wires the $$.
10. Seller calls a few days after closing:

"Where is my money ?"

11. Variation: Same as above, but the bogus email sent to the closer pretends to be from the listing broker: Here is our CDA, please wire all funds as instructed.

Listing broker and selling broker: "Where is our commission ?"

[slide 61] Lessons learned from these scams and new "best practices"

Fortunately, most of us escaped without great harm this period of time when cyberscammers were running wild. From 2010 to 2015, most title companies, banks, mortgage lenders, and larger corporate brokers (those who had large networks and dedicated IT professionals) had implemented controls and procedures to reduce their liability. After all, if a cybercriminal scams a buyer or seller out of hundreds of thousands of dollars, and a subsequent forensic audit after the crime reveals the break in security came from and through the email of the broker – who do you think is the defendant in the lawsuit ?

Closer attention to cybersecurity and NPI (non public information) became the norm. Corporate cybersecurity training began to get implemented with some title companies even developing internal programs to send their own employees fake "scam emails" full of red flags in an effort to reduce their own employees' "click rate." Agents and customers often discovered that information and services they used to routinely obtain from title companies decades ago was now cut off in the name of security risk or NPI.

"Can you tell me when that deal on 2301 Elm Street closed ?"

"Can you tell me who the broker was on 2301 Elm Street ? I need to call and ask them a question ?"

"Can I get a copy of the Seller's side of the Closing Disclosure ? I am a buyer's agent and my broker needs it."

Wire instructions are now routinely confirmed by phone, and any CHANGE in wire instructions by any party is viewed with suspicion.

Email and file retention policies began to be created and implemented, which required regular, periodic destruction of files and data, and the sensitive NPI contained within them. These polices mirrored changes in state and federal law which encouraged the same practices.

[slide 62] The Future: 2023 and beyond

Did you notice any trends from our hops through time ?

Obviously, the overall theme and feeling you get is: things used to be so simple. The world of residential real estate got really, really complex, didn't it ?

But more specifically, let's make some observations:

[slide 63] Governmental regulations increase

I think it is not unfair to expect the future to hold more laws, regulations, restrictions, and rules that brokers, title companies, lenders, and others in the industry will have to follow.

[click each one]

Federal laws and regulations

This means not only at a federal and national level (and federal laws and agency rules these days are thousands of pages in length), but also

[click each one]

State laws and statutes
TREC rules and regulations
Realtor® ethics and Standards of Practice
MLS / NTREIS rules and regs
Rules and requirements of Fannie, Freddie, and other TRID regulated lenders
Rules and requirements of title and escrow agents / Texas Department of Insurance

[slide 64] Closing and transaction costs will escalate (EXCEPT)

[click each one]

Premiums for title insurance are likely to stay flat or decrease. The regulatory environment in Texas is (and always has been) very pro-consumer, at least as to insurance rates and premiums. NOTE: escrow fees could rise as transactions become even more complex and riskier.

Commissions: Sadly, unless there is a huge exodus of brokers from the industry, competitive forces, and anti-trust concerns from NAR and the USDOJ, will work to flatten or decrease commissions and fee structures for brokers and agents. One might expect a rise in transaction fees, or other flat fee structures designed to reimburse costs incurred by the broker for marketing and advertising, which might be set outside of the basic commission structure.

The bright side: for those commissions that are a formula based on sales price: Sales prices will also likely rise in the near and far future.

[slide 65] Broker consolidation and nationalization / Localization and "boutique-ization"

Already large brokers will probably tend to get larger and larger. We may someday see a national brokerage with one or more offices here in DFW that attains a local agent count of 2500 to 3000 agents.

Very large, multi-state brokerages will be attracted to Texas and will plant offices here. This has already started happening (and by the way, this has already been occurring in the large law firm arena for the prior 10 years), but expect more out-of-state competition to move to Texas and DFW, as the very attractive real estate markets here, and the miracle of the Texas economy (which seems to buck many national trends) both beckon.

As brokerages become larger and larger, there will be less and less tolerance within these companies for the independence and freedom of the independent contractor. Agents under these companies will have more rules and guidelines to follow, more private corporate training, more manager supervision and reporting, and perhaps more fees to pay for services that their broker provides. Some of these larger brokerages may move toward a Redfin model of salaried employees working for their employer, rather than independent contractors that are sponsored by a broker.

At the same time, we might see a backlash against consolidation and nationalization, as brokerages become so large that they may lose some of their customer service focus. Some brokerages might actually become smaller and smaller, and more focused and specialized on certain geographical areas or certain types of transactions, as the increasing complexity of a deal requires such familiarity and expertise that only repeated experience can bring.

[click] ***So at the same time we watch a rise in huge national brokerages, we may see a rise in smaller, boutique firms, who will intentionally market themselves as different form their larger competitors.***

[slide 66] FinCen and money laundering

Currently, title companies and financial institutions have various federal regulations on them which are designed to prevent the flow of illegal money into real estate (i.e., money laundering). Under ***FinCen*** (the Financial Crimes Enforcement Network, which is a bureau of the U.S. Treasury Department), the scope of reporting on title agents is presently focused and small (restricted to certain counties and certain cash transactions over $300K).

However, new laws, including the Corporate Transparency Act, are currently pending finalization with the Treasury Department which may require disclosure of lots more information to our federal government, such as private ownership of corporations, LLCs, and partnerships, including names, home and business addresses, and driver's license numbers.

[click] ***We can expect a reduction in the privacy of our real estate transactions, at least to one or more federal agencies.***

[slide 67] Information will become more protected and locked down

The free flow of information is vital to a smooth, efficient and successful closing. However, increasing regulations and laws on privacy and financial information could make it harder to obtain that information, except as released to certain designated parties through secure and encrypted channels. Expect this lockdown of info to increase.

This may lead to a compartmentalization of information, so that each of the many players in a real estate deal only have a small slice of information to operate with, and few, if any, players have the global picture. This will require greater cooperation, patience, and professionalism to work with more and more partners in a real estate transaction.

[click]

This is an opportunity for certain companies to focus on service – to help shine and coordinate and keep the information circuit flowing smoothly and efficiently.

<u>In other words, service will become a critical element of whether your real estate deal is a success or failure.</u>

<u>[slide 67-68] Final thoughts</u>

Is the future of residential real estate doom and gloom ? It sure seems that way:

- Governmental regulations increase
- Closing and transaction costs will escalate
- Commissions will stay flat
- Brokerages will get bigger and bigger and more national in scope, with out of state national companies coming into Texas to compete
- Overall reduction in privacy of financial and corporate ownership information as far as the federal government is concerned

However, all of these negative, challenging things are actually opportunities.

These changes flush your competitors out of business. People who are not dedicated to their craft, who are in it for easy money, will leave the business, resulting in more business for those that rise to the challenge.

The future is an opportunity to shine above **<u>those that cannot hack it</u>**

When we at look at any business from a consumer's point of view, there are two distinct, alternative models that are demanded by those consumers:

Model 1. A ***commodity-based business***, where the product provided to the consumer is merely a commodity to be purchased for the lowest possible price;

OR

Model 2. A ***service-based business***, where the product is chosen not on the basis or price, but on the best service rendered to the consumer, in terms of efficiency, communication, and counsel during the process.

If the future of residential real estate is trending towards increasing complexity, which model do you think a lost and bewildered customer is going to want ? A do-it-yourself model of real estate for a cut rate fee ? Is a buyer or seller of a home going to want to be that person at the grocery store, scanning their own items and paying a machine, in order to keep prices down ?

Personally, I think the future means that the service model of real estate is here to stay.

Be thankful, fall on your knees, that real estate is complex, and that special expertise is required to navigate the complex minefield that lies between inking the broker representation agreement, and the funding of the purchase and sale.

Do you really want your job to be something anyone can do ?

All of you out here are the masters of your craft.

Go show the world that.