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Table of Contents

From the President....................................................................................4
New Members...........................................................................................4
Sustaining Members.................................................................................5
Benchmark................................................................................................ 6
SurPAC Donation Form.............................................................................7
Railroad Crossing Safety.........................................................................10
Heart of Texas Boundary Retracement Seminar......................................13
TSFI 2016 Recap....................................................................................14
Texas Young Surveyors...........................................................................18
An Attorney’s Angle................................................................................20
Professional Listings...............................................................................22
Forums for TSPS Members.....................................................................26
Job Listings.............................................................................................28
Coming Events........................................................................................31
TSPS 2017 Symposium..........................................................................31

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This year is going to be a busy one! To start, the 85th session of the Texas Legislature begins on January 10 and runs until May 29. Senator Don Huffines has prefiled a bill (SB127) that will require the Texas Board of Professional Land Surveying (TBPLS) to live stream their meetings on the internet. The Board has been doing this since the October meeting at Convention. He has also filed a handful of bills to require other regulatory agencies to do the same. So far, I do not anticipate anything in this session that will adversely affect us.

This past September, I visited with Justin Holland, my Representative for District 33 at his office in Rockwall, Texas. In early October, I attended Senator Jane Nelson’s anniversary of her 30th birthday fundraiser, along with Chapter 5 past president Patrick Baldasaro, TSPS legal counsel Mark Hanna and TSPS past president Mickey Nowell. In late October, I attended Representative Jeff Leach’s fundraiser in Plano and then a rally to honor Representative Scott Turner’s service to District 33 – Scott has decided not to run again. While I was there I visited with Representative Matt Shaheen, who is scheduled to be our keynote speaker at Convention in Frisco.

Chapter 4 (East Texas) and the Surveyors Education Foundation of Texas hosted approximately 100 surveyors at a continuing education class in Tyler, Texas on December 3, 2016. Dr. Davey Edwards was the moderator and the panel – composed of Ben Thomson, Nedra Foster, and Bill O’Hara – discussed their favorite riparian surveys. It was an excellent four hour class and I really enjoyed listening to these knowledgeable surveyors.

The 66th Annual Convention and Tech Expo will be in October in Frisco, Texas. Chapter 5 (Dallas) President Shaun Piepkorn is the chairman of the Convention committee and will begin formal planning this month. We have a special treat this year at Convention in that we will be having a joint meeting with NSPS. We will, as usual, have a great choice of classes to attend as well as golf and skeet and the vendors are sure to have amazing products to show as well.

The membership drive had a strong kickoff at Strategic Planning last August and continued into a membership social at Convention. With the beginning of the new year, I know that membership Co-chairs Trisha Lund and Anna Burroughs along with Membership Taskforce Leader Maxey Shepard will have many ideas to entice nonmembers to join. A new benefit we now offer is a surveying “fields of practice” forum to discuss problems, ask questions or offer advice and mentorship to less experienced surveyors.

Lastly, the 1st Quarterly Board meeting is in Round Rock on January 28, 2017. At this meeting we will review and approve the budget. I look forward to seeing you all there.
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As we begin the New Year, the 85th Texas Legislature convened on January 10th. Mark Hanna, TSPS’s Legal Counsel/Lobbyist and Bill O’Hara, Governmental Affairs Chair will be monitoring the session closely by tracking bills, committee assignments, calendars, etc. In the December, 2016 issue of Metes & Bounds, Mr. Hanna covered three highlights for the session.

1. Comptroller Estimates Sales Tax Revenue From Surveying Services
2. Two-year Budget for Fiscal Years 2017-2019
3. Sunset Advisory Commission Staff Recommends Agency Consolidation

To read more, back issues of TSPS Publications are found under the About Us tab on the TSPS website.

TSPS will be working on several new initiatives in 2017. First we will be focusing on membership with the development of a new member brochure. Once the brochure is completed, it will be mailed to all non-member RPLS’s and SIT’s in Texas. The Membership Committee Co-Chaired by Trisha Lund (Chapter 11) and Anna Burroughs (Chapter 13) will spearhead this project and look to current members for their help in following up with this target list. In addition, TSPS will be investigating and evaluating new benefit and discount programs to enhance the current list of services provided by its Affinity Partners. In the last quarter of 2016, Forums were created for members to communicate on five specific fields of practice topics. To view all Member Only resources and to participate in the Forums, visit the Member Resources tab on the TSPS website.

As more and more members use their tablets and smart phones to view the TSPS website, a responsive website was deemed necessary for a better user experience. A responsive website adjusts in size and layout so that it is viewed in whole per the size of the device. YourMembership hosts the TSPS website and will be working on this project in early 2017 with completion expected before the end of the first quarter. A new “SocialLink” feature will also be added to the website to increase social and community collaboration. As these enhancements are completed, announcements (and instructions) will be posted on the website and through email.

The Public Relations Committee, chaired by Jamie Gillis (Chapter 2), is continuing their work on the “Sometimes The Career Chooses You” recruitment campaign by exhibiting at two different statewide conferences this year. They will participate in the 12th Annual Professional School Counselor conference February 12-14 in Arlington and the Texas Family, Career and Community Leaders of America (FCCLA) conference April 6-8 in Dallas.
The two events will expose both school counselors and students to the surveying profession.

Chapter 19 will host this year’s Symposium in South Padre Island at the Pearl South Padre Hotel (an Omni hotel) on February 24-25. Two full days of education that include thirteen different classes are being offered for a possible 16 CEUs. The Chapter is planning a fun Friday night event with games and prizes! Members should have received the official Symposium brochure this week, but if not, the same information can also be found at www.tsps.org/symposium. Be sure to register online today!

At the 66th Annual Convention and Tech Expo, TSPS will host the NSPS Board of Directors and Committee members for a joint meeting. We are excited they choose to meet in Texas and look forward to connecting the two groups. Shaun Piepkorn (Chapter 5) has agreed to chair the Convention Committee and will be joined by Philip Adams, Patrick Baldasaro, Tyler Carter, Travis Crocker, Chris Freeman, Sylvania Gunawan, Kim Hodde (Auxiliary), Harrison Hrobar, Jerry Lehew, Brad Sparr, Angela Strong (Auxiliary) and John Truong to date as committee members. Representative Matt Shaheen (District 66) has agreed to be the Opening Keynote Speaker on Thursday morning, October 5 thanks to member Wayne Terry and comedian Cleto Rodriguez of San Antonio will be the Annual Luncheon speaker on Friday, October 6th. The 2017 Convention will be held on October 5-7 at the Embassy Suites in Frisco, TX. Be sure to Save the Date!

With the New Year already off to a quick start, the TSPS staff would like to take moment to thank our membership for their support and commitment to the association. We’d also like wish you a healthy and prosperous New Year!

Are you a social media savvy surveyor? If so, be sure to follow TSPS on Facebook, Twitter, Instagram and LinkedIn:

facebook.com/TSPS.org
twitter.com/texassurveyor
instagram.com/texassurveyor
linkedin.com/company/texas-society-of-professional-surveyors

See you out and about on the internet!

---

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SurPAC provides TSPS the means to create and maintain a presence in the legislative process. Please help us to continue to promote and protect the surveying profession.

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Do you know that we are 40 times more likely to be killed in a collision with a train than in a collision with another car? Nationwide, a person or a vehicle is hit by a train about every 3 hours (crossing accidents and trespassing into railroad rights of ways). Not good odds the way I see it.

See Tracks? Think Train! – that is the slogan of Operation Lifesaver, a non-profit organization providing public education programs in all 50 states to prevent collisions, injuries and fatalities on and around railroad tracks and highway-rail grade crossings. Of course we think of the possibility of a train running over railroad tracks when we approach them, don’t we? No, surprisingly, that is not always the case. The state of Texas ranked first in the nation in 2015 in at grade crossing collisions with trains with 224. California ranked number 2 in this category. Texas in 2015 also had 19 deaths and 98 injuries. That is not something we should be proud of, but we are down in all of these categories from the previous year.¹

Although we’re told the numbers are down, why are these numbers still so high? It could be complacency, or lack of attention, or distracted driving, or a number of causes. But, I am reluctant to use the word reasons because I don’t buy it that complacency, distraction, or other causes are reasons to gamble with our lives and the danger of having a collision with a train at a railroad crossing. So why do so many collisions still occur? I think that complacency and distraction are major causes. Speaking for myself, I know that I have driven over the same set of tracks daily for a number of years and occasionally didn’t look out for a train. On occasion I had even been stopped by a train so I knew that trains ran on that line. If the arms weren’t down and no lights were flashing, there must not be a train. But I was lucky I guess, and nothing happened. Sadly enough, I know of a family that lost all of their children due to a collision with a train. It happened at a crossing that they drove over daily on their way to school.

Texas law requires motorists to yield the right of way to trains. This means at all railroad crossings, with or without lights and with or without crossing arms/gates that block the crossing. It is also a violation of state law to cross a train track if a train is visible or by going around crossing arms after they are lowered. Once the crossing arms are down, the road is closed, even if there is no train! Most public road crossings of a railroad have flashing lights and the large X and RR symbol painted on the pavement. Some small or private roads only have the crossbuck sign and no flashing lights. Regardless of the markings, there is always a danger of a train coming when there are railroad tracks.

Think about this, that according to the Texas Department of Insurance the average train weighs 12,000,000 lbs (12 million). Put that mass up against a typical car or truck weighing 4,000 lbs (even a few thousand lbs more) and guess which is the winner. The car/truck gets smashed by the train. A train traveling at 50 miles per hour, pulling 100 cars will take about a mile to stop. And surprisingly, many train/car collisions occur during the daytime, with the car hitting a train that is already crossing the road.

So what does one do to prevent having a collision with a train? When railroad tracks are present, always expect a train. And don’t count on hearing the train’s horn, either. Your car may block out sound well, your music may be loud, or your conversation with passengers could easily block out a distant train horn. More and more cities and towns are passing no train horn ordinances that prevent the train from sound its horn when passing through certain parts of town. The residents have come to think of the horn as a nuisance.

Paying attention is the first thing that comes to mind. Always be alert for the warning signs and warning devices that indicate a railroad crossing. Even before the tracks can be visible, often a round yellow sign with xXR in black is the first indicator. Many crossings also have a large RXR painted in white on the pavement, in advance of the tracks, and may have an additional white stop line located just before the crossing. Many low vehicle traffic crossings have the familiar crossbuck sign posted on either side of a set of tracks. This is a white X sign with Railroad Crossing in black letters along with a smaller sign showing the number of sets of tracks, if more than one set exists.

Higher volume crossings can have the crossbuck sign with additional red flashing lights. At any crossing once the lights begin flashing, you must stop. Once a train passes, be sure to wait for the lights to stop flashing before proceeding. Also be alert if there are multiple sets of tracks, for another train that could even be going in the opposite direction.

Crossing arms or gates and red flashing lights are placed at the more critical crossings. Gates or crossing arms lower and the lights begin flashing in advance of a train. Again, this type of warning device requires that the driver wait until the arms are raised before crossing the tracks. Keep in mind that it is against the law to go around lowered crossing arms/gates, even if they...
malfunction. The only exception to going around lowered crossing arms is if directed by a law enforcement officer or an employee of the railroad.

Examples of typical railroad markings and warning devices posted before and at railroad crossings are:

- **Advance warning sign**
  (before a crossing)

- **Pavement markings**
  (before a crossing)

- **Crossbuck sign**
  (at a crossing)

- **Warning signs/devices/lights**

- **Gates and flashing red lights**

What can we as responsible drivers do to increase our safety and prevent these collisions, accidents and deaths? Here are some suggestions to help us stay safe with respect to trains and railroad crossings:

- Always look both ways before proceeding to cross railroad tracks. A train could come from either direction and with multiple tracks, there could be more than one train at the same time.

- Never stop or get “stuck” on the tracks. Always stop before the tracks or proceed completely across the tracks, allowing clearance for the extra width of the train on the tracks. Remember that a train is 3 feet wider than the tracks, on each side, 6’ wide plus the outside width of the tracks. And every surveyor should know the width of standard gauge railroad tracks. Even when in a line of cars stopping for a traffic signal or stop sign on the other side of the tracks, or for any reason, don’t stop on the tracks. Think about your vehicle being stopped on the tracks and between others where you can’t move off of the tracks. You can only imagine what the consequences could be.

- If your car or truck stalls on a railroad crossing, get out and get away. Run away and call local law enforcement. One recommendation is to run in the direction from which the train is coming so that if your vehicle is hit, you won’t get hit by flying debris. Be sure to get away from the crossing.

- If you see a train coming, wait. Don’t try to beat it. Trains and cars/trucks don’t mix and you may be the big loser.

- Trains cannot stop quickly. Refer to the earlier mention of how long a train could take to stop – up to a mile, even if the train’s engineer sees you and tries to stop.

- Watch out for vehicles that must stop at railroad crossings. By law, buses – whether a school bus or a passenger bus – must stop and look for a train before proceeding across railroad tracks.

- If you see a problem at a crossing, call and report it. Each railroad crossing is typically identified by a unique U.S. Department of Transportation (D.O.T.) Inventory Crossing Number consisting of six numbers and a letter, as well as the railroad’s emergency contact telephone number. Contact the railroad company or local law enforcement.

Railroad crossings can pose a serious danger to vehicles crossing railroad tracks. Don’t cross railroad tracks without slowing down, paying close attention and carefully looking both ways before proceeding. Don’t rely on the warning lights, crossing arms or train horns. Be alert and always expect a train, every time. SEE TRACKS? THINK TRAIN!

**To learn more about Operation Lifesaver, Inc. and download a FREE safety awareness toolkit, visit www.oli.org.**

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Heart of Texas Boundary Retracement Seminar

March 16-18, 2017 – Brady, TX

The Heart of Texas Boundary Retracement at Wulff Cedar Creek Ranch in McCulloch County will be a modern day search for original survey corners. By utilizing county record information, GLO field notes, working sketches and aerial photos, the original surveys can be positioned within a small search area. Licensed State Land Surveyors will be party chiefs to guide you through the process using information found on the ground. This area has not been bulldozed, chained or root plowed like many of the ranches in Texas, therefore providing a rare opportunity to find several of the original corners.

16 CEUs
includes 1 hour Ethics & 2 hours Rules

Topics to be discussed
- Key elements of gradient boundary
- Survey, grant, and deed retracement
- Records search
- Preparation of working sketches
- Previous surveyors and their methods
- History of the area at the time of original survey
- Identify GLO symbols
- Principle ruling of selected court cases

Requirements
Each seminar participant should bring:
- Clothing/footwear suitable for rough terrain
- Personal field gear
- Calculator (any type)
- Scratch pad
- Triangles/Scale/24 in. straight edge
- Comfortable, casual wear for evenings

March weather in Central Texas is unpredictable, please be prepared for any eventuality. Those having personal GPS equipment may bring portable units if they so desire.

Accommodations
The cost of registration includes two nights lodging at the Cedar Creek Lodge located on the Wulff Cedar Creek Ranch between Brady and Brownwood. “Bunkhouse” style lodging is available at the lodge Wednesday & Saturday evening for an additional charge of $70.00 per night. All accommodations will be handled directly through the TSPS office. It is highly recommended you not bring pets.

Schedule of Events

Thursday, March 16
9 am - 12 pm  Check-in/Registration
12 pm - 1 pm  Lunch
1 pm - 6 pm  Program
6 pm  Dinner

Friday, March 17
7 am - 8 am  Breakfast
8 am - 12 pm  Program
12 pm - 1 pm  Lunch
1 pm - 6 pm  Program
6 pm  Dinner

Saturday, March 18
7 am - 8 am  Breakfast
8 am - 12 pm  Program
12 pm - 1 pm  Lunch
1 pm - 3 pm  Wrap up & Departure

Topics to be discussed

Instructors
- C.B. “Ben” Thomson, RPLS, LSLS
- Bill O’Hara, RPLS, LSLS
- Davey Edwards, RPLS, LSLS, CFedS
- Don King, RPLS

Register online at www.tsps.org/HeartofTX17
or complete the form below and fax or email to Brenda at 512-327-7872 or BrendaN@tsps.org.

The TSPS Cancellation Policy allows for a refund less a $50 processing fee. Cancellations must be sent via email or in writing, and received in this office by Monday, March 13.

TSPS Members: Registration (16 CEUs)  $535  $685
Paraprofessional (no CEUs)  $305  $380

Non-Members: Registration (16 CEUs)  $685  $735
Paraprofessional (no CEUs)  $380  $405

Registration includes lodging and meals on Thursday, Friday, and Saturday, plus breaks. Meals will not be available at the lodge Wednesday or Saturday evening.

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Payments made to TSPS are not deductible as charitable contributions, however, they may be deducted as a trade or business expense. Consult your tax advisor.
The Trustees of the Texas Surveyors Foundation, Inc. had a busy year in 2016. Our Trustees this year were Shane Neally, Chairman; Chester Varner, Vice-Chairman; Shane Isbell, Secretary; Robert “Bob” Seipel, Treasurer; Riley Griffith, TSPS Appointee; Anna Burroughs, Trustee at-large; John Nall, Jr., Trustee at-large; Jim Gillis, TSPS Past-President; and Jerry Lehew, TSPS President-Elect. I would like to thank these folks for serving and for waking up for the 7 am breakfast meetings.

Our first meeting was held back in January and we were already planning on the Ray Wisdom Dinner and Auction move from the second quarter TSPS Board meeting to the third quarter Board meeting. This was a bold move because the auction has always been held after the second quarterly board meeting and only time would tell if it was a good move. During this meeting we also reviewed 10 scholarship applications and awarded all 10 applicants with scholarships that totaled $7,400.

Our second meeting of the year was held in April. During this meeting we continued work on the dinner and auction by settling on the dinner option and assigning duties for the trustees that needed to be done at the auction. We reviewed 2 scholarship applications and awarded both for a total of $1,350.

Our last meeting this year was held during the TSPS Convention. During this meeting we discussed the outcome of the Ray Wisdom Dinner & Auction and planned the TSFI booth at the convention exhibit hall. We also reviewed 12 scholarship applications and awarded 11 scholarships that totaled $8,750. We raffled off two awesome cooler packages at our booth this year and raised $2,955, which I believe is a record!

TSFI had a great year in 2016! I would like to thank everyone involved in making this year a success!

**2016 Ray Wisdom Dinner & Auction**
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If you’re looking for great deals on equipment then call our experts or stop by one of our many locations and see for yourself what products and services GeoShack has to offer. We have everything you need to get the job done accurately and right the first time.

Don’t forget to ask us about our GeoShack Advantage programs – where you can get support, training, and other services along with your equipment purchase.

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This is the start of a new year, with new momentum and new opportunities. This year our focus is to bring young surveyors together, no matter where you are located in the state. I have come up with the Top 5 Resolutions for the New Year and I have to say these are much easier than the more common resolutions everyone breaks after January each year. Young surveyors, don’t break these!

Top 5 New Year Resolutions for the Young Surveyor

1. **Join the Texas Young Surveyors today.** If you have already signed up, guess what... you’ve got a head start for the year! If you have yet to sign up, what are you waiting for? It’s free and easy. Sign up online at http://www.nsps.us.com/page/YSNetwork using the membership form today and be free to move onto your next resolution.

2. **Follow the Texas Young Surveyors on social media.** Did you know that the Texas Young Surveyors are on Facebook, Twitter and LinkedIn? Follow us today and move onto #3. Yes the first two resolutions are that simple!

3. **Attend a Texas Young Surveyor meeting.** We will have several meetings across the state starting in January. Watch for more information on social media and through email.

4. **Save the date!** October 5th, 2017 in Frisco, TX, the NSPS Young Surveyor Network will be having its Fall Meeting in Texas. Let’s represent this great state in welcoming surveyors from all over the country.

5. **Spread the word.** Tell a friend, bring a friend, get involved and get connected! Yes, I’ve added several things to Resolution #5, but I know you can handle it. We are excited about what the future holds for young surveyors and hope that you are too!

The only way for a network to grow is to gain interest and build on that interest through active participation. This group is a by-you, for-you type of organization. We represent young surveyors at the local, state and national levels, helping to bring opportunities to build connections that can improve your career and the future of the surveying profession.

Top 5 New Year Resolutions for the Young Surveyor Supporter

1. **Encourage your employees to check out the Texas Young Surveyors and sign up today.** Did you know that you can also sign up as a supporting member? We need your support!

2. **Follow the Texas Young Surveyors on Social Media.** We welcome supporting members of all ages!

3. **Encourage young surveyors in your area to attend a Texas Young Surveyor meeting and/or bring them to a TSPS Chapter Meeting.** Give them an opportunity to see the benefits of connecting and learning from other surveyors in the state.

4. **Support young surveyors in participation of events like the TSPS Symposium and the TSPS Convention.** These are two great opportunities for education and networking for surveyors of all ages. In October 2017, TSPS and NSPS are having their joint conference during the annual TSPS Convention. If you can only attend one event this year, you don’t want to miss this one. Be sure to bring along a young surveyor!

5. **Spread the word to others in your area.** Do you know any young surveyors? We are still looking for a few more regional officers.

The Texas Young Surveyors needs the support of all generations of surveyors and while our focus is on those in the profession who are ages 35 and under or within 10 years of graduation from a college program, we welcome all ages to help build the young surveyor network. Everyone is welcome to attend a meeting or follow us on social media as well!

Anna Burroughs, SIT works for McGraw & McGray Land Surveyors, Inc. and is the Director for the Texas Young Surveyors. Anna also serves as the Secretary/Treasurer for TSPS Chapter 13 and is active locally and nationally in TSPS, NSPS and the Young Surveyor Network.
Texas Young Surveyors' Officer Team

**Director:** Anna Burroughs

**Region Coordinators:**
- Brady Stanford, West Region
- Nick Vann, East Region
- Julianne Henson, Central Region
- Richard Neubauer, III, South Central Region
- Stuart Warnock, North Region

TYS is still looking for coordinators for the Panhandle, Coastal and South Region. If you are interested, please contact Anna via email: annaintx@hotmail.com.

To learn more about Texas Young Surveyors, visit [www.tsps.org/TYS](http://www.tsps.org/TYS).

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- **1/14** Midland/Odessa/Abilene
- **1/28** Round Rock - *Happy Hour*
- **4/22** Waco/Temple – *Lunch*
- **4/29** Round Rock - *Happy Hour*
- **5/13** Midland/Odessa/Abilene
- **6/10** Tyler
- **6/24** Houston
- **8/3** San Antonio
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The following is a summary of the recent Texas real estate law cases as prepared by the Real Estate Section of the State Bar of Texas. For more information regarding these cases or other legal issues of significance to the surveying profession, contact TSPS Legal Counsel, Mark J. Hanna, 900 Congress Avenue, Suite 250, Austin, Texas 78701; telephone: 512-477-6200; facsimile: 512-477-1188.

1. Vendor and Purchaser


The Rivercenter Mall and the ground underneath the Marriott Riverwalk hotel in San Antonio were both owned by Keystone-Texas. Keystone leased the hotel land to Host, who owns and operates the Marriott Riverwalk. The lease contained a sort of modified ROFR they called a “right of first negotiation” that allowed Host to negotiate a deal to purchase the property should Keystone ever propose selling it to a third party.

Keystone wanted to sell to a third party and notified Host, asking it to make an offer pursuant to the lease provision. Host indicated that it might be interested, but did not actually make an offer. Host was suspicious that Keystone was monkeying with the sales price allocations in a way that would discourage it from making an offer. Host sent a letter accusing Keystone of failing to comply with the lease by already having its deal lined up with the third party. In the letter, Host demanded an extended negotiation period that would focus on establishing the fair market value of the property not based on Keystone’s previously negotiated deal with a third party. The letter made its way to proposed title insurers. The title insurers required a waiver from Host to issue clean policies to the third party.

Although Keystone asked Host for such a waiver, Host did not provide one, and it is undisputed that the lease did not obligate Host to do so.

By the time Host sent its letter, the deal with the third party had been split into two parts, one for the hotel and one for the mall. The mall deal closed, but the hotel did not. Host sued Keystone for breach of the lease. Keystone counterclaimed for slander of title and tortious interference with contract, arguing that the letter, which had made its way to the title companies, scuttled the sale. The trial court held in favor of Keystone and awarded $39 million in actual damages. The court of appeals upheld the award and also awarded $7.5 in punitive damages.

Host argues that because the title insurers required a waiver both before and after Host sent its April 18 letter, the letter could not have caused the deal’s collapse. At most, it simply communicated that a waiver was not forthcoming. The outcome would have been the same regardless of how Host communicated its position to Keystone, or if it had said nothing at all.

The supreme court noted that the court of appeals summarized testimony of several witnesses, many who blamed Host’s letter for killing the deal, and concluded the evidence was sufficient to support the jury’s findings that Host’s letter proximately caused the deal’s demise. The court of appeals did not, however, point to any evidence showing how the ultimate outcome would have been different had Host not sent the letter.

2. Adverse Possession

2.1 Frazier v. Donovan, 420 S.W.3d 463 (Tex. App.—Tyler 2014, no pet.).

A tenancy in common is a tenancy by two or more persons, in equal or unequal undivided shares, where each person has an equal right to possess the whole property, but with no right of survivorship. Because cotenants in an undivided estate have an equal right to enter upon the common estate and a corollary right to possession, a cotenant seeking to establish title by adverse possession must prove, in addition to the usual adverse possession requirements, an ouster of the cotenant not in possession or repudiation of the cotenancy relationship.

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