

COMPLAINT: Violation of Conflict of Interest Statute

MEETING: Llano Special Called City Council Meeting

MEETING DATE: 2/23/15 at 5:30pm

AGAINST: Mayor Mikel Virdell

SUBMITTED BY: Marc Sewell, Llano Citizen, Property Owner

SUMMARY: In a scheduled city council meeting, Mayor Virdell violated Local Government Code §171.004 by not filing an affidavit of conflict when advocating a lease of real property from Clayton Leveret.

FACTS:

1. Agenda Item D-1 and E-1, Llano City Council approved a 50 year lease of real property from Clayton and William Leveret.
2. Mayor Virdell claims that Clayton Leverett was an “independent agent” and thus no conflict of interest exists.
3. Mayor Virdell openly advocates the property lease.

ASSERTIONS:

Mayor Virdell has violated Local Government Code §171.004. Mayor Virdell claiming Clayton Leverett is an *independent agent* rather than an *employee* is an IRS statute statement¹ and not pertinent to the conflict of interest statute which is concerned with financial relationships and not employee relationships.

Conflict of Interest exists between Mayor Mikel Virdell and Clayton Leverett because:

1. Local Government Code §171.001(1) says that the mayor is a local public official.
2. Local Government Code §171.001(2) qualifies Mikel Ray Virdell, Mikel R. Virdell Real Estate(DBA), Remax Llano(DBA), Virdell Real Estate(DBA), and virdellrealestate.com(DBA) as business entities.
3. Local Government Code §171.002(a)(1) qualifies Mayor Virdell as having substantial interest in Remax Llano as shown in Appendix A.
4. Local Government Code §171.002(a)(2) qualifies Clayton Leverett as having substantial interest in Remax Llano. Appendix A shows that Mayor Virdell is the broker for Remax Llano. Appendix B shows that Clayton Leverett is a salesperson for Remax Llano. Appendix C shows that Clayton Leverett is licensed as a salesperson and not a broker. Appendix C also shows that his broker is Mikel Virdell. In a real estate transaction, the broker gets the commission and splits it with salespeople and listing agents. This demonstrates that “funds are received by” Clayton Leverett from Mikel Virdell. Appendix D shows a sample listing that gives reason to suggest that at least 10% of her income is received from Mikel Virdell.
5. Appendix E, website for the property, shows Clayton Leveret as co-owner of the property and thus qualifies as substantial interest in real property defined in Local Government Code §171.002(b). The lease agreement shows special economic effect.

¹ IRS Code Sec. 3508. Treatment of real estate agents and direct sellers

6. Thus, Mayor Virdell has violated Local Government Code §171.004 because he and Clayton Leverett have a conflict of interest and:
 - a. Mayor Virdell did not file an affidavit of conflict
 - b. Mayor Virdell did not abstain from further participation in a matter requiring an affidavit

REQUESTED ACTIONS:

1. Penalties as required by §171.003.
2. Void the approval of the lease agreement as required by §171.006. Had council members known of the conflict of interest, at least would not have voted for the lease which would have failed the vote.
3. Removal of Mayor Virdell from office based on Local Government Code §21.025(a)(2) and §21.023 or other.

Marc Sewell
108 Summit, Llano, TX 78643
325-247-2508
marcs@simonlabs.com

Appendix A: Mayor Virdell TREC Broker License

TEXAS REAL ESTATE COMMISSION
protecting consumers through programs of education, licensing and industry regulation

my license
online services

Please Note: The information in this Licensee Info Search page is refreshed each night from our main computer system records. For example, if you have changed your mailing address online today, the new address will not show up on this page until tomorrow.

TREC Licensee Info Search
 Tip: A License Number search is faster than a Name search.

License Type: Salesperson or Broker Inspector E.R.W.
 License Number or Name: "LastName, FirstName" or "Business Name"
 164899 (see search tips)
 Optional: any part of name (for name searches only)

Licensee Details for: Salesperson or Broker - "Virdell, Mikel Ray"

Licensee Name	Lic. Nbr	Lic. Type	Lic. Status	Exp. Date	Designated Supervisor	Fingerprint Status
Virdell, Mikel Ray	164899	Broker	Active	11/30/2014		Fingerprinting requirements have been met.

Licensee Email Address ([see disclosure policy](#)) Licensee Phone
[click for email address](#) 325-247-5776

Doing Business As (DBA) Names

- MIKEL R VIRDELL REAL ESTATE
- RE/MAX-LLANO
- VIRDELL REAL ESTATE
- VIRDELLREALESTATE.COM

Permanent Mailing Address **Business Physical Address**

1000 FORD ST 1000 FORD ST
 LLANO, TX 78643 LLANO, TX 78643

Education Information

This licensee may be subject to MCE Requirements - which mandates completion of 15 hours of MCE courses (including the 3 hr TREC Legal Update course and the 3 hr TREC Ethics course). Regarding "duplicate" courses, see [22 TAC Sec. 535.92\(g\)](#). Also, please see our [MCE FAQs page](#).

Completed Courses

Course Date	Course Nbr	Course Name	Provider Name	Total Legal Hrs	Hrs
08/15/2012	24214	BROKER RESPONSIBILITY COURSE	TEXAS ASSOCIATION OF REALTORS	6	0
08/09/2012	22933	CREATING & IMPLEMENTING A BROKERAGE POLICY & PROCEDURES MANUAL	MARIE ROGGOW	6	0
12/11/2008	16497	TREC ETHICS MCE (E)	TEXAS ASSOCIATION OF REALTORS	3	3

Appendix B: Remax Llano Webpage

The screenshot shows a web browser window with the address bar displaying <http://www.virdellrealstate.com/contact-us>. The page title is "Contact Us - Texas Hill Country". The browser's menu bar includes "File", "Edit", "View", "Favorites", "Tools", and "Help".

The main content area is titled "CONTACT US" and features three realtor profiles:

- Mike Virdell**: A black and white portrait of a man. Text: "Mike Virdell has been selling the Texas Hill Country since 1973 when he moved back home after graduating from Angelo State University, and Coaching one year in Killeen, Texas. Changes over the past 30 years in Llano and the surrounding hill country of Texas have been unprecedented, yet the charm and beauty have stayed the same. Mikel has been active in affairs of the City and County of Llano, as well as being the founder of the Llano Buzz Newspaper, and Main Street Antiques located on the Llano Square. Call or come by to visit Mikel at Re/MAX Llano one block from the historic Llano Courthouse, and begin your next path to enjoying the greatest place anywhere one would want to live." Contact info: Office: 325-247-5776, Fax: 325-247-5930, Email: mivirdell@virdellrealstate.com
- Lisa Mueller**: A color portrait of a woman. Text: "My name is Lisa Watkins Miller. I am a new realtor but an old time resident of Llano. In fact, I am of the fourth generation Watkins in our lovely town. My roots are strong here and I am very proud of our wonderful community. My husband is Bryan Miller. He too is a long time generation native. You may have seen him at Miller's Llano Smokehouse. Bryan and I both graduated from the Llano schools. Together we have a large and wonderful blended family....five children, a son in law and two fine grandchildren. We are very blessed. I taught school for seventeen years, twelve of them in Llano. Other than that, my background is sales. I have lived elsewhere and know that not only is Llano a bit of heaven on earth but our people are to be cherished as well. If you would like to be a part of this fine community, have a listing or just have questions, please call me. I would love to be of assistance to you." Contact info: Office: 325-247-5776, Fax: 325-247-5930, Email: lmiller@virdellrealstate.com
- Clayton Leverett**: A color portrait of a man standing next to a white truck. Text: "Clayton graduated from Texas Tech University where he earned a BBA in International Business. He spent a year as a booking agent for Blair Worldwide Hunting located in Flagstaff, AZ before moving to Austin, TX where he worked as a property manager for Industrial Properties Corporation for 7 years. Clayton's father unexpectedly passed away in 2006 and he began running the ranch and turning what was previously an unprofitable enterprise into a thriving hunting and cattle ranch. The move to ranch real estate in 2010 was an easy one for him. Clayton's contagious passion for the land matches his zeal to aid landowners in the marketing and sale of their property. He's got the same sparkle in his eye and penchant for land stewardship that his great-great-grandfather had in 1882 when he purchased the Llano County ranch where Clayton and his family reside. With a knack for marketing and the ability to relate to "all walks of life", he makes

On the right side of the page, there is a section titled "Texas Hill Country REAL ESTATE LISTINGS" with a list of categories:

- Ranch/Land
 - Lots up to 9.9 acres
 - Lands 10 acres to 99 acres
 - Ranches 100 acres to 500 acres
 - Ranches over 500 acres
- Homes
 - Homes For Sale
 - Homes For Rent
 - Homes On Acreage
 - Rental Investment Homes
- Waterfront
 - Lake Frontage
 - River Frontage
- Commercial
 - Commercial Vacant Land
 - Commercial With Buildings

The browser's status bar at the bottom right shows a zoom level of 85%.

Appendix C: Clayton Leverett TREC Salesperson License

TEXAS REAL ESTATE COMMISSION
protecting consumers through programs of education, licensing and industry regulation

my license
online services

Home | Contact Us, Agency Info | Forms, Laws & Contracts | News & Public Data | Licenses: Apply/Renew | Education & Exams | Inspector Information | Complaints, Consumer Info

Please Note: The information in this Licensee Info Search page is refreshed each night from our main computer system records. For example, if you have changed your mailing address online today, the new address will not show up on this page until tomorrow.

TREC Licensee Info Search
 Tip: A License Number search is faster than a Name search.

License Type: Salesperson or Broker Inspector E.R.W.
 License Number or Name: "LastName, FirstName" or "Business Name"
 491761 (see [search tips](#))
 Optional: any part of name (for name searches only)

Licensee Details for: Salesperson or Broker - "Leverett, Clayton Thomas"

Licensee Name	Lic. Nbr	Lic. Type	Lic. Status	Exp. Date	Designated Supervisor	Fingerprint Status
Leverett, Clayton Thomas	491761	Salesperson	Active	01/31/2017		Fingerprinting requirements have been met.

Licensee Email Address ([see disclosure policy](#)) | Licensee Phone
[click for email address](#) | 325-247-5776

Broker's Permanent Mailing Address
 1000 FORD ST
 LLANO, TX 78643

Sponsor Name	Lic. Nbr	License Type	Lic. Status	Exp. Date	Spons. Date
Virdell, Mikel Ray	164899	Broker	Active	11/30/2016	1/25/2013

Education Information

This licensee may still be subject to SAE Requirements - [click here for further SAE information](#).
 While under SAE, the same course cannot be taken more than once in a 2 year period.

This licensee may be subject to MCE Requirements - which mandates completion of 15 hours of MCE courses (including the 3 hr TREC Legal Update course and the 3 hr TREC Ethics course). Regarding "duplicate" courses, see [22 TAC Sec. 535.92\(g\)](#). Also, please see our [MCE FAQs page](#).

Completed Courses

Course Date	Course Nbr	Course Name	Provider Name	Total Legal Hrs	Legal Hrs
12/10/2014	26447	TREC Ethics MCE	LONE STAR COLLEGE TOMBALL	3	3
04/18/2014	26645	24th Annual Outlook for Texas Land Markets	REAL ESTATE CENTER	12	0
04/26/2013	24899	23rd ANNUAL OUTLOOK FO RTEXAS LAND MARKETS	REAL ESTATE CENTER	12	0
04/26/2013	23555	TREC Legal Update MCE	REAL ESTATE CENTER	3	3
11/12/2012	23556	TREC Ethics MCE	TEXAS ASSOCIATION OF REALTORS	3	3
11/12/2012	23555	TREC Legal Update MCE	TEXAS ASSOCIATION OF REALTORS	3	3
04/22/2011	22691	21st Annual Outlook for Texas Land Markets	REAL ESTATE CENTER	12	0
07/29/2010	18650	TREC ETHICS MCE (E)	AUSTIN INSTITUTE OF REAL ESTATE	3	3
07/28/2010	18161	CHANGES, NUANCES AND UPDATES	AUSTIN INSTITUTE OF REAL ESTATE	3	0
07/28/2010	17840	ANALYZE YOUR MARKET & FORECLOSURE PROTOCOL	AUSTIN INSTITUTE OF REAL ESTATE	3	0
07/28/2010	18747	MEDIATING REAL ESTATE DISPUTES	AUSTIN INSTITUTE OF REAL ESTATE	3	0
07/22/2010	18649	TREC.LEGAL UPDATE MCE (L)	AUSTIN INSTITUTE OF REAL ESTATE	3	3

Appendix D: Clayton Leverett with RE/MAX Llano

The screenshot shows a web browser window with the URL <http://www.landsofamerica.com/member/45612/properties>. The page features a header with the Lands of America logo and navigation links for Advanced Land Search, Auctions, Buyers, Local, Directory, Magazines, and Blog. A sidebar contains advertisements for BASF and Priaxor. The main content area displays the title "Properties of Clayton Leverett with RE/MAX Llano in Llano, TX" and a link to visit the website www.remax-llano-tx.com. Below this is a "GET DIRECTIONS" button and a "SHARE" button. A navigation bar includes "HIGHLIGHTED", "PROPERTIES", "SOLD", and "ABOUT US". The listing details for "44 acres Llano, TX" are shown, including the price of \$475,000 and 44.00 acres. The listing description states: "Status: Active Type: Acreage w/House 3 Beds | 1.5 Baths | 1500 SqFt. This great little place is tucked away about 16 miles from Llano, Texas. Its secluded and very private. There is a neat 3... Clayton Leverett RE/MAX Llano". To the right, a "PLATINUM SELLER" profile for Clayton Leverett is displayed, featuring a photo of him and a "View Phone Number" button.

Appendix E: Clayton Leverett Ranch

The screenshot shows a web browser window displaying the 'About Us' page of Stillwaters Ranch. The browser's address bar shows the URL 'http://www.stillwatersranch.com/about-us/'. The website header includes the ranch's logo, 'STILLWATERS RANCH LLANG EST. 1860 TEXAS', social media icons for Facebook, Twitter, and Instagram, a phone number 'Call 512-656-2930 | Trip Planner', and a 'Book Your Hunt Today!' button. A navigation menu lists 'About | Whitetail Hunts | Dove Hunts | Off Road | Lodging | Testimonials | Photos | Contact'. The main content area features a large photograph of two black dogs sitting next to a tan Yeti cooler with a rifle resting on top. Below the photo is a breadcrumb trail: 'Navigation: Home > About Stillwaters Ranch'. The first section is titled 'ABOUT STILLWATERS RANCH' and contains a sub-section 'RANCHING LEGACY DATING TO 1860' with a paragraph of text and a small landscape image. The second section is titled '5TH GENERATION OWNERS' with a paragraph of text and a small image of two men in hats. The browser's status bar at the bottom right shows '100%' zoom.

Navigation: [Home](#) > About Stillwaters Ranch

ABOUT STILLWATERS RANCH

RANCHING LEGACY DATING TO 1860

The ranch was first purchased by our great, great grandfather, James Clayton Stribling Sr, who moved to Texas in the 1860's. He began leasing land to graze cattle and eventually saved enough to begin purchasing his own land. Our ranch, Stillwaters Ranch, was purchased by him in 1882. Our great grandfather, Dan Stribling took over the operations of this ranch and raised his family here. Our grandmother and her four siblings were born in a little rock house on Honey Creek.

5TH GENERATION OWNERS

We, Will and Clayton Leverett, are the current fifth-generation owners who own, manage, and continue the long legacy of ranching. We run a cow-calf operation consisting of