

# The Latest Verdict

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## Ask A Lawyer

### QUESTION:

Kelly: During a recent storm (In Dallas? Imagine that!), high winds knocked over our oak tree, which had been healthy but was rather large. It destroyed our neighbor's garage. No one was hurt, and our insurance (as well as theirs) paid for the damage. But now these neighbors are sending me threatening letters saying they want compensation for suffering. Can I be sued for this?

### ANSWER:

Hopefully your neighbors are throwing themselves fully into their martyred role -- wringing their hands, sleeplessly pacing the floor during the wee hours, and dabbing at their eyes with a handkerchief. But theatrical value is about all they're going to get out of this.

## About Our Organization -

Kelly M. Davis & Associates is a general / civil full-service law firm with its principle office in Lewisville, Texas, providing cost-effective legal representation to individuals and business entities throughout Texas. Areas of practice include Business, Consumer and Construction Litigation, Family Law, Estate Planning, and Probate.

KMDA's family-type atmosphere and honest, dependable representation sets KMDA apart from other law firms. Kelly Davis adds also that she's a "hometown Lewisville girl" who prides herself in her businesses and, while others are here today gone tomorrow, Kelly says "we're here to stay."

If we can help you with your legal needs, please give us a call.

## "One Time Close" Mortgage Financing

Summer is the time when many of us think about building a new home or consider

a major renovation project on our existing home, such as kitchen or bath update, a home



For starters, a person is normally liable for damage to someone else's property only if they caused that damage through negligence or an intentional act. Negligence is a legal term meaning the person failed to act with reasonable care under the particular circumstances. Owning a healthy tree is a normal thing to do; it's not negligent. And you probably weren't the one who caused the storm.

So your neighbors should count themselves lucky that insurance money paid for the basic damage, because they might not have gotten compensation from you in court.

Now as to your neighbors' claim that they should be compensated for "suffering" over and above the cost of the damages to their garage. From what you've said, this sounds like a no-go. First, your neighbors would have to prove that you were negligent or that you intentionally tried to cause them harm. As mentioned above, you don't seem to be at fault here.

On top of that, they would have to show proof of the actual harm they've suffered. It's not enough if they've experienced a couple of sleepless nights -- they would have to prove, for instance, that this experience raised their blood pressure or caused them back spasms. This isn't to say that your neighbors can't walk up to the courthouse door and file such a claim -- anyone can file suit for just about anything -- but it would give any reasonable judge a good laugh.

*KMDA welcomes legal questions to be submitted for upcoming issues at Firm@KMDALegal.com.*

theater, outdoor kitchen, or pool and major backyard landscaping project. Many times the last thing we think about is how we are going to finance this type of project.

There is an innovative financing program available to cover many of these scenarios called "One Time Close". This program allows you to build a new home, purchase-rehab an existing home, or do a major remodel of your existing home and recognize the "as completed" appraised valuation of that home. This valuation is then used to structure the final mortgage solution up front at competitive market rates, and many times with little or no cash out of pocket. The buyer or homeowner closes on the permanent financing before starting the project, and can utilize the permanent finance rate as their interim construction rate as well. With current market conditions, this program can save the homeowner many thousands of dollars in interim financing costs as well as eliminating duplicate closing costs. The One Time Close program also provides the peace of mind of knowing that your permanent mortgage rate is locked in before the project is even started.

Most builders and remodeling contractors appreciate the One Time Close program as well because they know their client does not have to re-qualify for permanent financing at the end of the project, and it minimizes them having to use their credit lines to pay for materials and sub-contractor labor throughout the project.

To learn more about how the "One-Time Close" program could be the solution to your financing needs, for both builders and borrowers, please contact **David J. Myers** of **Premier Nationwide Lending** at 972-537-

## Creative Appraisal Definitions

**Band of Investments** - A group of financial officers who hold jam sessions in the back room of the NYSE.

**Capitalization Rate** - The number derived by dividing the number the client wants by the net operating income.

**Eminent Domain** - From the Latin. Eminent, meaning big or prominent. Domain, meaning where one lives. Hence, a big house.

**Fair Market Value** - The value of items sold at a county fair.

**Highest and Best Use** - Whatever the person who is paying for the appraisal wants to do with the property.

**Internal Rate of Return** - An often used but seldom understood term of questionable meaning and doubtful significance. Also, the inverse of External Rate of Return.

**Marginal Utility** - Many appraisals.

**Market Value** - Formerly, one sentence which covered the bases pretty well. Now, a page of explanation, some of which appears to be contradictory and imprecise.

**Depth Tables** - Charts used by SCUBA divers and fishermen.

**Purpose of the Appraisal** - To make a living in the appraisal business.

**Functional Obsolescence** - That state of many older appraisers.

**The Subject** - A term police use to identify the victim of a crime.

**Subject Property** - A term police use to identify the belongings of a victim of a crime.

**Jury** - Twelve people who determine which client has the better lawyer.

**Trapezoid** - A device for catching zoids.

0666 *or* 972-537-0600. Dave is a **Construction Lending Specialist** who has helped many clients with their construction and renovation projects. Dave is backed by **Premier Nationwide Lending**, a recognized mortgage lender with over 200 loan products to choose from. **Premier Nationwide Lending** has a wide array of mortgage products available under this program. Dave and his team are focused on establishing long-term relationships with their clients that offer increasing levels of value and convenience while reducing stress during every stage of the One-Time Close process. Call Dave today at 972-537-0666 for your free consultation about the One-Time Close program or any other financing need you may have.

## Request a Speaker

We can deliver one of our informative and practical seminars at no cost. These sessions are available to you and your customers and/or employees. KMDA topics can include:

- Estate Planning
- Choosing a Guardian for your Children
- Construction Issues
- In's and Out's of Mechanic's Liens
- Corporate Entity Formation
- Partnership Pitfalls
- How to transfer Assets prior to your death?
- The In's and Out's of Community Property Law in the State of Texas
- What to Do When a Loved One Passes Away (Trust Admin/Probate)
- Checklist for Getting Your Financial Affairs in Order

To request a seminar, phone **972-434-8009** or send an email to [Firm@KMDALegal.com](mailto:Firm@KMDALegal.com)



## Debunking the Top 10 Myths when Picking a Lawyer Part "1"

Potential clients sometimes select lawyers and law firms for the wrong reasons. Here are my top ten myths about picking a lawyer.

### 1. Bigger is better.

Not always. If you are a small or modest sized client at a big firm or a big client at a modest sized firm, where do you think you are more likely to receive better service?

### 2. Go with the lower hourly rate.

Those that favor the lowest price will get what they pay for. Lower rate means nothing if the less experienced/specialized lawyer takes more time to solve a problem that could have been solved in less time by a more experienced lawyer with a higher rate.

### 3. Find the silver bullet.

Clients often think that by hiring the "latest and greatest," their case will suddenly become easily winnable. Sadly there is no super-lawyer or "silver bullet" that can guarantee a win. The truth of the matter is that no individual lawyer, no matter how skilled, is going to make a difficult case easy, and there are probably plenty of lawyers knowledgeable in that area who could handle it well.

### 4. Go for the gray hair.

While the judgment that comes from gray (or no)



Seven Selling Mistakes You Don't Want to Make!

### Mistake #1 -- Pricing Your Property Too High

A high listing price will cause some prospective buyers to lose interest before even seeing your property. Also, it may lead other buyers to expect more than what you have to offer. As a result, overpriced properties tend to take an unusually long time to sell, and they end up being sold at a lower price.

### Mistake #2 -- Mistaking Re-finance Appraisals for the Market Value

Your best bet is to ask your REALTOR® for the most recent information regarding property sales in your community. This will give you an up-to-date and factually accurate estimate of your property value.

### Mistake #3 -- Forgetting to "Showcase Your Home"

When attempting to sell your home to prospective buyers, do not forget to make your home look as pleasant as possible. Make necessary repairs. Clean. Make sure everything functions and looks presentable. A poorly kept home in need of repairs will surely lower the selling price of your property and will even turn away some buyers.

### Mistake #4 -- Trying to "Hard Sell" While Showing

Buying a house is always an emotional and difficult decision. As a result, you should try to allow prospective buyers to comfortably examine your property.

### Mistake #5 -- Trying to Sell to "Looky-Loos"

hair is often beneficial, you may want someone who is interested in working hard to establish their reputation, rather than one who made theirs decades ago.

## **5. Pick a fighter.**

Many clients want to hire an obnoxious bulldog, thinking that one must be super-aggressive to get results. Yet the most successful lawyers are those who build relationships and know "when to hold them and when to fold them." Lawyers like to resolve matters with other lawyers who are reasonable and trustworthy. Hiring a "bomb-thrower" will often yield a poor net result after payment of fees in a protracted battle.

*See Part "2" of this Series in the next installment of KMDA's newsletter.*

A prospective buyer who shows interest because of a "for sale" sign he saw may not really be interested in your property. Often buyers who do not come through a REALTOR® are a good 6-9 months away from buying, and they are more interested in seeing what is out there than in actually making a purchase. They may still have to sell their house, or may not be able to afford a house yet. They may still even be unsure as to whether or not they want to relocate.

## **Mistake #6 -- Not Knowing Your Rights & Responsibilities**

It is extremely important that you are well-informed of the details in your real estate contract. Real estate contracts are legally binding documents, and they can often be complex and confusing. Not being aware of the terms in your contract could cost you thousands for repairs and inspections. Know what you are responsible for before signing the contract.

## **Mistake #7 -- Limiting the Marketing and Advertising of the Property**

Your REALTOR® should employ a wide variety of marketing techniques. Your REALTOR® should also be committed to selling your property; he or she should be available for every phone call from a prospective buyer.

*By Carolyn Hagen, GRI  
Century 21 Evans Realtors*

*Carolyn Hagen is one of the most dedicated and committed real estate agents in the area. Carolyn is backed by Century 21, which has over 7000 offices world wide, and whose sales associates sell one out of every 10 homes throughout the United States. Visit [www.carolynhagen.com](http://www.carolynhagen.com) for tips on investing, buying a home, financing or call Carolyn at 214-507-7511.*

**KMDA**  
**Kelly M. Davis & Assoc.**

Davis Professional Bldg.  
550 Edmonds Ln., Ste. 201  
Lewisville, TX 75067

PHONE:  
(972) 434-8009

FAX:  
(972) 434-2969

E-MAIL:  
[Firm@KMDALegal.com](mailto:Firm@KMDALegal.com)



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We're on the Web!  
See us at:  
[www.KMDALegal.com](http://www.KMDALegal.com)

## KMDA Upcoming Speaking Events

Kelly has been invited to speak at the **Greater Lewisville Realtor Association** on **September 13, 2007** at **8:30 a.m.** Kelly will speak about the In's and Out's of Oil and Gas Rights and how area Realtors and Brokers can effectively represent their clients regarding these issues.