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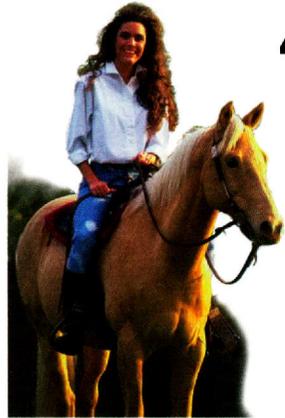


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Texas is constantly being divided and subdivided. With land division, come questions about the government's authority to regulate development in unincorporated areas.

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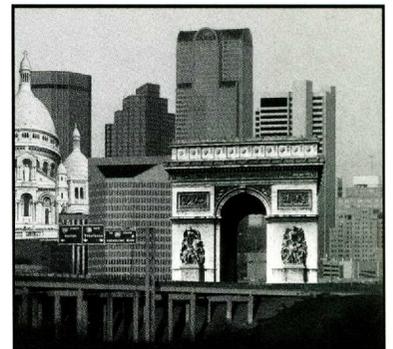
Texans vote Nov. 4 on whether or not the Lone Star State ends its holdout as the last to oppose home equity loans. But the decision is far from a yes-or-no vote. Exactly what is involved in the proposed amendment to the Texas Constitution?

By Judon Fambrough

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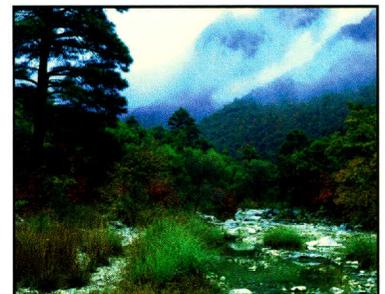
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Wispy clouds envelope fall colors in McKittrick Canyon of the Guadalupe Mountains National Park. Late October and early November are best for viewing Texas' spectacular change of colors. The Guadalupe mountain range stretches 50 miles through southern New Mexico and western Texas. The national park is at the southernmost tip of the range. **Photographer Laurence Parent.**



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# BENCHMARKS



## Housing in the New Millennium

America's residential housing and floorplans in the new century will be determined by trends that have begun to take shape today. At the National Association of Real Estate Editor's annual meeting in Las Vegas, speakers outlined what they see for the years just ahead.

**Big builders even bigger.** Although the number of small builders—those who produce ten or fewer units per year—doubled in the last 30 years, the National Association of Home Builders notes the top 50 U.S. builders accounted for 10 percent of new homes constructed last year.

"That's an incredible statistic when you consider the estimated 131,000 active builders last year," says Stephen G. Bottfeld, executive vice president and senior analyst for Marketing Solutions, a Las Vegas consumer research firm.

Big builders tend to build the same floorplans at several locations within a metropolitan area at the same time. This reduces construction and marketing costs.

"While this strategy generally raises the quality of construction," says Bottfeld, "it also reduces the number of

floor plan choices available to the consumer. Builders will resist market-driven floorplan changes until they absolutely have to change."

**Living room extinction.** As electronic media expand into daily life, the living

room has taken a figurative backseat to the family room, the media room, the great room, the loft and even the patio.

"The living room is almost a vestigial organ, like an appendix," says Bottfeld.

*(Benchmarks continued on page 23)*

### Solving Landlord-Tenant Controversies

#### Test your knowledge of Texas statutory laws regarding landlord and tenant rights

By Judon Fambrough

It is not necessary to own rental property or even be a renter to confront landlord-tenant issues. Eventually, every real estate practitioner gets them.

Most questions are answered by the Texas statutes. If so, the Real Estate Center report, *Landlords' and Tenants' Guide* (publication 866), has paraphrased the statute in everyday terms in a question-answer format. Take this quiz. See how up-to-date you are on landlord-tenant relations. The answers are on page 24.

- |     | True                     | False                    |   |
|-----|--------------------------|--------------------------|---|
| 1.  | <input type="checkbox"/> | <input type="checkbox"/> | The maximum amount that a landlord may demand as a security deposit is regulated by statute.  |
| 2.  | <input type="checkbox"/> | <input type="checkbox"/> | If a tenant breaches the lease by moving out early, the tenant automatically forfeits the security deposit.                                     |
| 3.  | <input type="checkbox"/> | <input type="checkbox"/> | Under the deduct-and-repair statute, the tenant may deduct a maximum of \$500 a month for repairs.  |
| 4.  | <input type="checkbox"/> | <input type="checkbox"/> | Under certain circumstances, a landlord can have a lien on the tenant's property. By the same token, the opposite is true.                      |
| 5.  | <input type="checkbox"/> | <input type="checkbox"/> | A tenant may unilaterally, without penalty, terminate a residential lease if the required security devices are not installed.                   |
| 6.  | <input type="checkbox"/> | <input type="checkbox"/> | Late payments contained in a lease agreement constitute interest. As such, they are subject to Texas usury laws.                                |
| 7.  | <input type="checkbox"/> | <input type="checkbox"/> | If a tenant has damaged property, at the end of the lease, the maximum liability the tenant faces is set by the amount of the security deposit. |
| 8.  | <input type="checkbox"/> | <input type="checkbox"/> | If a landlord has casualty insurance on the premises, the tenant's property is automatically covered by the landlord's policy.                  |
| 9.  | <input type="checkbox"/> | <input type="checkbox"/> | With both residential and commercial leases, the landlord has a duty to mitigate damages if the tenant breaches the lease by moving out early.  |
| 10. | <input type="checkbox"/> | <input type="checkbox"/> | A residential landlord may change the locks and withhold a new key from the tenant until all delinquent rent is paid.                           |

*Fambrough is an attorney, member of the State Bar of Texas, senior lecturer with the Real Estate Center at Texas A&M University and author of the Landlords' and Tenants' Guide.*

### Governor Appoints Goode-Haddock To Center Advisory Committee

Celia Goode-Haddock, majority owner and president of University Title Company in College Station, has been appointed by Gov. George Bush, Jr., to the Real Estate Center Advisory Committee.

The newest member of the nine-member committee replaces Houston attorney Andrea Lopes Moore who resigned.

Members normally serve six-year appointments and represent various segments of the real estate industry or the public. Goode-Haddock is one of three public members on the committee. She has served as a volunteer in many local, regional and state organizations.



# County Regulation of Rural Subdivisions

By Judon Fambrough

Urban flight and the resulting division of rural land are Texas realities. The extensive division of rural acreage and the associated problems were among the topics addressed at the 1996 Agriculture Summit III Conference in Kerrville. Summit participants discussed ways to resolve pressures causing land fragmentation, such as declining farm and ranch incomes, increasing suburban developments and reducing both federal gift and estate taxes and Texas inheritance taxes.

With the problems caused by land division comes the question about the government's authority to regulate. The problems created in the Rio Grande Valley by colonias prompted the 74<sup>th</sup> Texas Legislature to pass specific laws regarding their sale. Generally, the power to govern rural subdivisions lies with the commissioners court.

The Texas Local Government Code (TLGC) requires land-owners outside the city limits and outside the extra-territorial jurisdiction of a city who divide land into two or more parts for a subdivision to file a plat when lots or streets or other areas are to be dedicated to public use.

Before a subdivision plat can be recorded, however, it must be approved by the commissioners court in the county where the land is located. For approval, an order must be entered into the minutes after all statutory requirements have been met. After the order is entered and publication of notice made, the court may prescribe standards for streets (width, specifications

and so forth), drainage and water availability and require a bond.

Within limits, the county regulates subdivisions by the standards imposed on the streets, drainage and water availability.

Developers complained that many of the standards were too burdensome and expensive. Others said the standards were impractical, such as requiring a 60-foot easement to the subdivision when a narrower one would be sufficient.

Eventually, challenges reached the courts. The most significant challenge was the 1995 case of *Elgin Bank of Texas v. Travis County, Texas*.

Elgin Bank owned approximately 150 acres in Travis County. The land was not within corporate limits or the extra-territorial jurisdiction of any municipality. Bank officials wanted to subdivide the property for sale in multiple tracts using metes and bounds descriptions, but they did not want to file a subdivision plat. Because the property had access to existing roads and because Elgin Bank did not plan to build streets or roads within the subdivision, bank officials believed the statute did not apply. Travis County authorities asserted that it did. According to the TLGC:

The owner of a tract of land located outside the limits of a municipality who divides the tract into two or more parts to lay out a subdivision of the tract, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the

In 1996, the Texas Supreme Court gutted much of a county's power to regulate development in unincorporated, nonmunicipal areas.

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use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks or other parts must have a plat of the subdivision prepared [emphasis added].

The trial court granted Travis County a summary judgment. Elgin Bank appealed. The question before the appellate court was whether Travis County could require the owner of a tract of land who subdivides—but does not plan to lay out streets, alleys, squares, parks or other parts of the tract for public or private use—to prepare a plat of the subdivision.



As a result of *Elgin Bank*, colonia-type developments are spreading far beyond the Texas-Mexico Border. (It's a fallacy that severely substandard development is just a Border

problem: most urban and high-growth counties can point to a number of developments that are a short step up the development

ladder from colonias.) In the heart of fast-growing Hays County, a half-hour drive south of the state capitol, developers have rushed in to take advantage of the decision—in some instances, says County Commissioner Jefferson W. Barton, literally brandishing a copy of the Third Court opinion as they inform the county that they know how big a loophole Elgin Bank created.

"Barton's precinct in northern Hays County contains some of the prettiest country around Austin—and it is that proximity, as well as its beauty, that makes it so attractive to developers, both ethical and unscrupulous. Last summer, several miles east of Interstate 35, a development called I-35 South Ranches was born as a direct result of the Elgin Bank case.

"Despite the name," Barton dryly noted in a memorandum to the Conference of Urban Counties, "I-35 is nowhere near, and nothing about the lots could be mistaken for a ranchette, much less a ranch." The misnomer is the least of the problems. The dilemma is that the Third Court held that a county doesn't have the power to require an owner of a tract of land to prepare a plat of a subdivision when the owner doesn't plan to lay out streets or parks or other parts of the tract dedicated to public use.

"In nondevelopment-speak, the opinion means that as long as a developer extends part of a subdivision to an existing street, he doesn't have to get subdivision approval from a county. Such lots are often called 'flag lots' because long, thin strips of land, resembling flag-poles, are extended to existing roads. As long as lots are 'flagged' to an existing road, the developer can escape virtually all county supervision.

"The I-35 South Ranches, developed by builder Robert (Bill) Sweeney of Del Valle, are a clear example of what *Elgin Bank* has brought to rural development. Acres of beautiful, rolling Hays County land are dotted with a patchwork of mobile homes and poorly built houses. The aesthetics are not the real problem, however.

The appellate court reversed the trial court and rendered judgment that Travis County could not require the bank to plat the property under the circumstances.

The court based the decision on legislative history and on the strategic use and placement of the word *and*. "On its face, the plain language of the statute requires a plat **only if** the owner both divides the property **and** lays out streets of other public areas."

Travis County asked the Texas Supreme Court to review the decision. In January 1996, the high court declined, gutting much of a county's power to regulate development in unincorporated, nonmunicipal areas.

Property rights advocates hail the decision as a victory. They believe that Travis County officials were overzealous in interpreting the law. However, the unrestrained use of property may be a detriment to the community as a whole.

The following is an excerpt from a column written by Robert Elder, Jr., a senior editor at the *Texas Lawyer*, a weekly journal for attorneys. He illustrates how an obscure ruling can degrade the quality of life for thousands of people. The views expressed are those of the author, not the Real Estate Center, the Lowry Mays College & Graduate School of Business nor Texas A&M University. The column, "Obscure Appeals Ruling Produces Subdivision from Hell" is reprinted with permission.

"The lots are 'flagged' to two existing public roads, which lets the developer escape virtually all county regulation. In digging septic-tank holes in the region's blacklands clay soil, the developer loaded much of the out-fill into county ditches, which caused flooding, created stagnant pools of water and damaged the abutting county roads.

"Blacklands clay also is a bad surface on which to build and maintain roads. The two existing county roads were already of questionable quality, and the influx of residents has made them worse. Besides crumbling roads, there are no turnarounds for school busses and other large vehicles. And with no streets built inside the subdivision, emergency vehicles have an almost impossible job finding the correct home—assuming, that is, that they can maneuver through the muddy ruts that lead back to resident's houses.

"Sweeney is matter-of-fact about his development's shortcomings. 'We build that way to save us from the expense of building roads. We can offer more for less money,' he says. 'We are targeting the market that is less capable of spending money on a home. County officials,' Sweeney gripes, "'are just social engineers" who need less power, not more.'

"Hays County contains some extreme examples of *Elgin Bank*-type problems, but the county is by no means alone. About two dozen counties have reported similar problems to the Texas Association of Counties and a related group, the Conference of Urban Counties. The two groups sought legislation during the last session that would cure some of the regulation problems caused by the decision.

"What *Elgin Bank* produced is a situation in which market forces are unfettered by regulation, and free-market rule isn't pretty. For one thing, it has put a new twist on the brewing 'property rights' movement in Texas, in which landowners have claimed that governmental actions that adversely affect their land is an unconstitutional 'taking' of property.

"In Hays and other Texas counties, property owners who live near unregulated subdivisions are experiencing their own forms of takings—reduced property values. In a countryside that was fairly pristine, longtime landowners have found that shoddy subdivisions bring eyesore housing—sometimes with malfunctioning septic systems—and county roads that become less passable with increased traffic. The counties, in turn, find their costs skyrocketing in the form of road maintenance.

[continued on next page]

"*Elgin Bank* is a bad decision for a lot of reasons, not the least of which is that it is based on a poorly written statute. Section 232.001(a) of the TLGC governs preparations of plats by landowners who divide a tract of land—and, unfortunately, this part of the code is a masterpiece of run-on sentences and ungrammatical construction. The case hinged on the interpretation of and in the relevant section of the code.

"Travis County District Judge F. Scott McCown, sitting in the 250<sup>th</sup> District, granted summary judgment for Travis County in a case brought by the *Elgin Bank of Texas*, which wanted to subdivide a 150-acre tract without filing a subdivision plat or plan. Travis County officials, as counties across the state have done for decades, read the law requiring a plat to be drawn up for almost any instance where land was being subdivided. The bank's argument was that the statute should be read to require a plat only if two conditions were met: the land was being subdivided and new roads or utility improvements were being constructed in the subdivision.

"Faced with two different interpretations—an unsurprising result, given the vagueness of the statute—McCown did the smart thing: he looked to the legislative history. What McCown found, going back to a 1927 act concerning city land development, was that the legislature always intended to make it unlawful to provide public utilities without approval of a plat. McCown also found that the county statutes were modeled on the city statutes—and that both were intended to give local officials a degree of control over development.

"In its short ruling, the Third Court ignored legislative history and instead interpreted the unwieldy grammar of the statute. The panel of Justices John Powers, J. Woodfin Jones and Mack Kidd sided with *Elgin Bank*, thus giving developers a huge escape clause from county regulation.

"Corrective legislation carried by Rep. Ron Lewis, D-Mauriceville, failed in a House committee. The Texas Association of Builders and the counties were at odds over how much lot acreage should continue to be exempt from county authority. The details were complex, but Andrew Erben, the builders' legislative director, acknowledges it boiled down to this: *the Elgin Bank* decision gave developers a gift that some are reluctant to return. Compromise is possible, Erben says, and his association will continue to negotiate with the counties' association, but he adds that 'some of my members' feel that even a small compromise is giving up a lot.

"The same market forces that drive the creation of colonias—scarcity of affordable housing, developers who offer homeowners little-to-no-money-down deals, proximity to jobs—are at work in Hays County, which is within commuting distance of Austin and even San Antonio. To most city dwellers of at least modest means, the I-35 South Ranches must look like barely habitable eyesores. But the demand for this type of housing clearly exists; the development started with 46 lots last summer and all sold out in a matter of weeks.

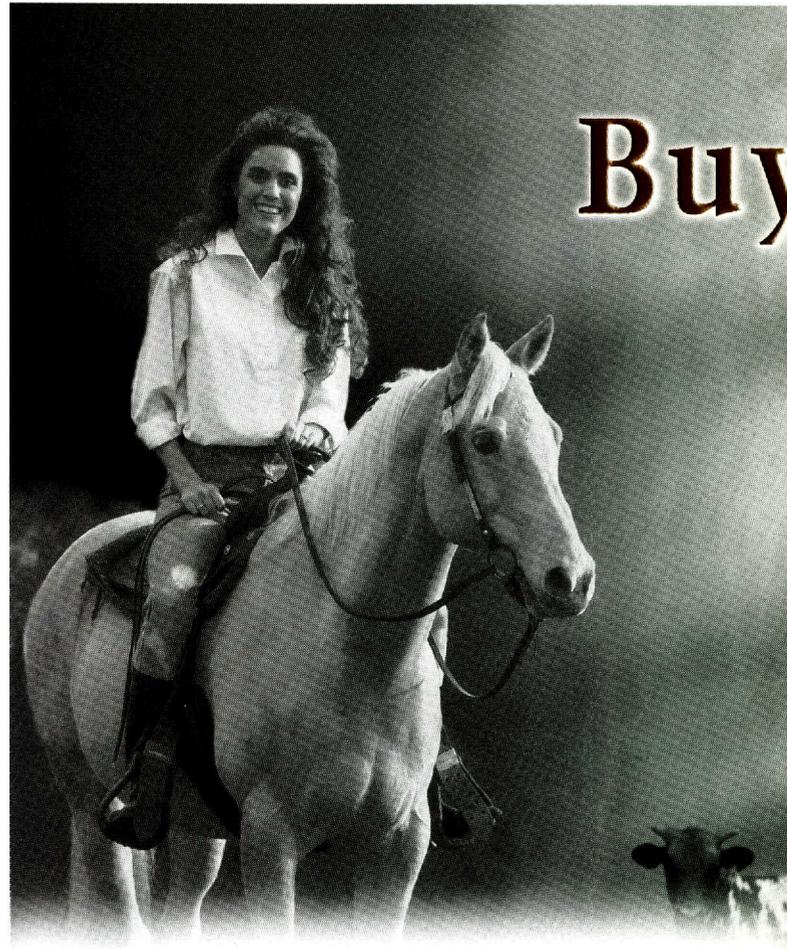
"*Elgin Bank* gives developments like the I-35 South Ranches a chance to proliferate, to be established almost overnight—and to put quality developers at a disadvantage. The legislature did not overturn *Elgin Bank* in the 1997 session. The next opportunity to rein in development will not come again until 1999. When it comes to developing unincorporated areas of a fast-growing county, that is an eternity.

"In the booming 1980s, Hays County's population soared by 62 percent to 65,614 residents in 1990. Already this decade the county population had increased to about 88,000.

"That's a big market for developers who work fast, sell hard and move on to the next parcel of land.



*Fambrough is an attorney, member of the State Bar of Texas and senior lecturer with the Real Estate Center at Texas A&M University.*



By Charles E. Gilliland

**M**any potential buyers find the process of purchasing rural land inherently stressful. Generally, such purchases represent a substantial investment; mistakes are especially costly. Inexperienced buyers may be unaware of possible pitfalls. Because of the underlying financial risks, they may be wise to engage an experienced real estate agent for assistance. In addition, some basic guidelines are useful.

Land buying involves four phases:

- locating the property,
- identifying desired land characteristics and property rights,
- valuing the property and
- completing the transaction.

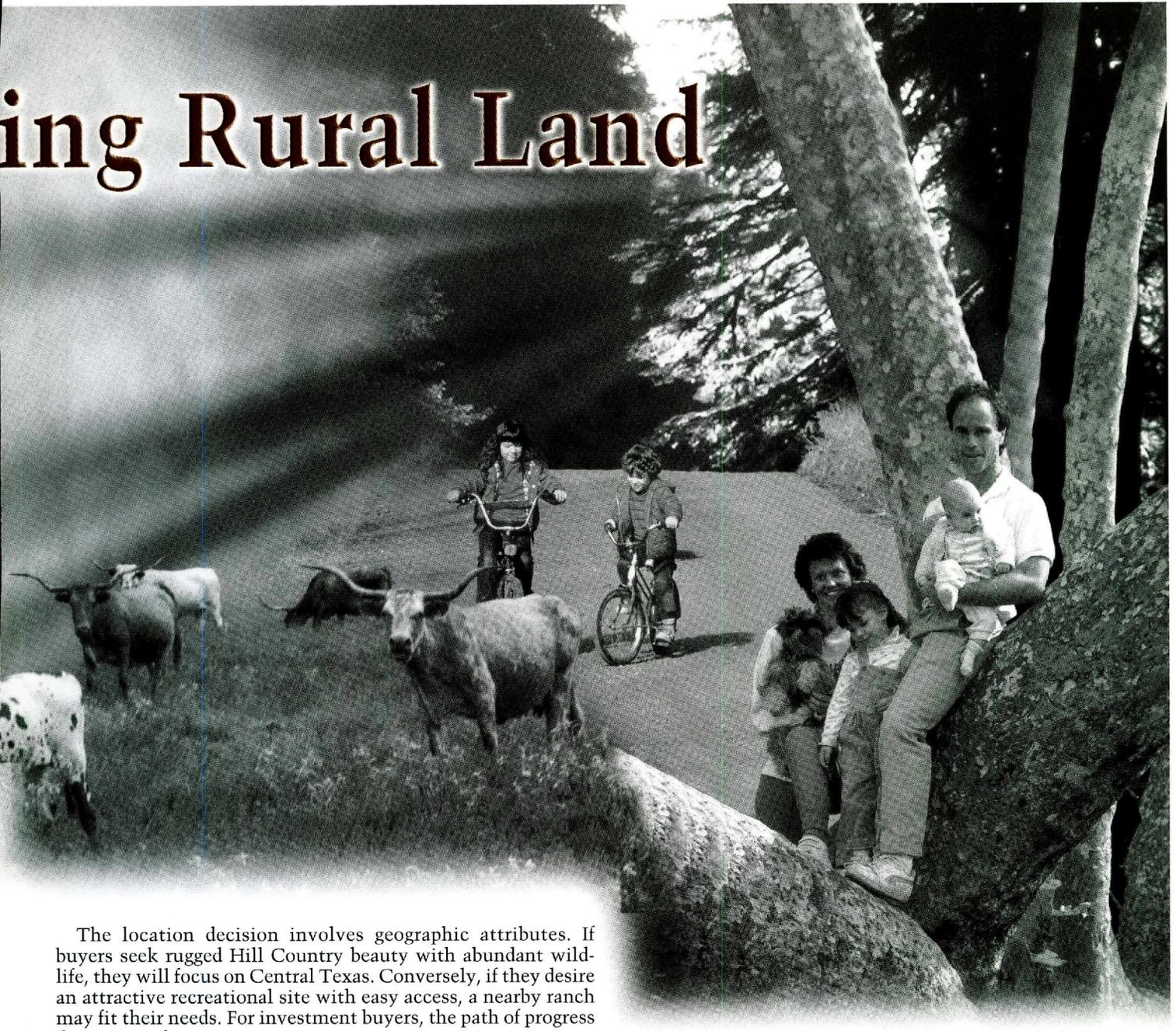
### Focus on Specific Locations

Often cited as the most important attribute of real estate, location identifies the physical features of the property and defines its specific characteristics within the context of surrounding properties. More than any other single influence, location defines the potential uses of a property.

Locating a property begins with a list of specific property attributes sought by the buyer. Buyers should clearly define the major land uses they envision.

How far are they willing to drive to the property? How close should it be to a town? The distance issue also is affected by accessibility. Does the property have frontage on a paved road? Are buyers willing to sacrifice easy access for solitude and scenic beauty? Do they want access to a rural water supply system or are they willing to drill a well? The answers focus the search on specific locations.

# ing Rural Land



The location decision involves geographic attributes. If buyers seek rugged Hill Country beauty with abundant wildlife, they will focus on Central Texas. Conversely, if they desire an attractive recreational site with easy access, a nearby ranch may fit their needs. For investment buyers, the path of progress determines location.

## Identify Essential Features

Next, potential buyers should identify the essential features in their desired property. Do they want trees? Is a running creek a must? How much land is enough? Frequently buyers find that they have acquired too little or too much land to effectively accomplish their desired use. An honest appraisal of needs helps the buyer avoid inappropriate investments.

Often the size question depends on how much the buyer can afford to spend on land. Competing buyers and sellers have set a typical price per acre in the market, and the amount potential buyers can afford depends on their budgets. Other attributes being equal, distance from urban areas plays a determining role in land prices. For example, the closer the tract lies to San Antonio the higher the price per acre and the smaller the property many potential buyers can afford.

If a buyer needs a certain amount of land, for example 600 acres for a hunting property in the Hill Country, then typical price per acre becomes a critical issue. Price can determine size, or size can determine location. To clearly evaluate this

size-distance tradeoff, potential buyers must know how much they can afford to spend. The general levels of land prices in various Texas areas are available in the Real Estate Center land value reports. These reports are published periodically, and the basic information is available at the Center's internet site (<http://recenter.tamu.edu>).

## Understand Property Rights

Property characteristics define potential physical uses while property rights define legal ownership. Combined, the two create a market value for the land. A clear understanding of these influences assists in price negotiations.

Potential buyers should identify both physical attributes and detractions. Potential buyers should view the property as if they eventually intend to sell it. If an attribute repels potential buyers, the impact should be considered for future negotiations.

Property rights are less tangible and encompass issues from verifying ownership to identifying easements. Because they specify the potential legal uses of the land, available property

rights may be more important than physical features. If the structure of ownership prohibits a highly prized use, that defect will exert an impact on the value. For example, an attractive ranch with a pipeline easement through its center is less appealing than one without it. Until the property rights issue has been addressed, potential buyers have little basis for estimating a reasonable price.

*Grazing lease provisions may exert a decided influence on the purchase process. The right-of-first-refusal can complicate matters for the buyer.*



Some significant property rights issues include: existing lease provisions, undivided interests, mineral rights ownership, restrictive covenants, environmental regulations for endangered species, hazardous substances or wetlands, historical preservation regulations and property taxes.

**Lease provisions.** Initially a grazing or farming lease may seem insignificant. Most agricultural leases run for a short period; many are renewed annually. However, lease provisions may exert a decided influence on the purchase process. The right-of-first-refusal, often granted to long-term tenants, can complicate matters for a buyer. Specifically, the potential buyer invests time and effort in negotiating the best price possible only to see the tenant step in to purchase the land. Potential buyers may avoid negotiating for properties with a right-of-first-refusal.

**Undivided interest.** Another difficulty can arise when several individuals own undivided interests in the land, such as heirs to a family ranch or farm. Although it does not automatically guarantee problems, undivided interests complicate the negotiation process when all owners do not wish to sell. Purchasing such property may present a negotiating challenge. All owners must be committed to a sale.

**P**urchase of an undivided interest from one owner is possible, followed by action to partition the land. However, the value of a partial land interest is likely to be less than full ownership of only part of the land. For example, a buyer would likely pay less per acre for a 50 percent interest in a 100-acre tract than for full ownership of 50 acres.

**Mineral rights.** Mineral ownership can be important for land buyers, especially when less than half of the minerals transfer with ownership. Mineral owners dominate surface owners. This means that a mineral owner, or the lessee, can enter the property to extract the minerals without obtaining permission from the landowner. Thus, if minerals belong to another person, a landowner has little control over oil and gas drilling. Furthermore, if the current owner has executed a lease with a producer, that lease remains in force even if the minerals transfer with the surface.

Mineral rights have been a fixture in the Texas land market for many years and do not doom a sale. However, a potential buyer should not purchase property without inquiring about the possibility of mineral exploration.

**Restrictive covenants.** Some land titles contain restrictive covenants that constrain use. Restrictive covenants are sometimes called *deed restrictions*, and they typically attempt to ensure a particular level of land use. A commonly encountered deed restriction requires an owner to build a home with a specified minimum area. Restrictive covenants have an effect similar to zoning. However, enforcement of restrictive

*“Potential buyers should inquire about the possibility of mineral exploration.”*

covenants for rural land generally depends on legal action by individuals rather than on government enforcement.

Most problems with restrictive covenants occur when a buyer is uninformed. The solution lies in identifying possible restrictions before completing the transaction. Then both buyer and seller can take the restrictions into account.

**Environmental regulations.** Environmental regulations may signal potential problems for landowners. Consequently, buyers should identify possible issues prior to closing. Like restrictive covenants, endangered species regulations or the presence of wetlands can limit land uses. The presence of hazardous substances may create an onerous liability for anyone taking title to land. The Real Estate Center has several publications on such issues.

Known endangered species are protected under federal law, including required preservation of their habitat. Owners of land harboring an endangered animal likely will find severe restrictions on land use. In some cases, restrictions have halted most human activity in endangered species habitat.

No one can predict whether a particular property may become the home of an endangered species as more endangered plants and animals are identified. However, the buyer's awareness of existing endangered species habitat and of the identity of threatened species that may acquire endangered status is helpful.

**Historic preservation regulations.** Like environmental regulations, historic preservation regulations can affect owners of historical sites. When a land sale includes a historical structure, owners often regard the site with pride. However, buyers may find historic preservation restrictions troublesome. Historical sites need not prevent a transaction if buyers know the implications before purchase and negotiate price accordingly.

**Property taxes.** Another potential stumbling block for land buyers that could affect price negotiations is the appraisal method used to determine taxes. If the current owner has been taxed under the Texas open-space provision, the liability for a potential rollback tax passes to the new owner.

Open-space treatment depends on establishing a record of past and continuing land use for agriculture or timber production. Providing wildlife habitat qualifies as an agricultural use under certain conditions. When the land receives open-space treatment, property tax liability depends on agricultural use value rather than market value. Often, open-space status results in a substantial tax reduction. However, when land use changes, the *Texas Property Tax Code* imposes an additional tax equal to the difference between taxes based



*Historical sites need not prevent a transaction if buyers know the implications before purchase and negotiate accordingly.*

on market value and taxes based on use value for the past five years. It also imposes a liability for interest on the rollback taxes.

**F**requently, open-space tax treatment creates no difficulties, but potential problems emerge when the seller has benefited from reduced taxes and a buyer adopts a nonqualifying land use soon after purchase. Changing the use triggers the rollback and imposes a tax lien on the land for the rollback tax plus interest. Despite the seller's receiving the benefit, the land buyer typically assumes this added tax burden.

This situation may generate law suits between buyers and former owners. Buyers point to the reduced tax enjoyed by the seller for the years preceding the change. Sellers contend that they have no control over a buyer's land-use decisions and did not anticipate the change to a nonqualifying use. After litigation, the owner still must pay the rollback tax to clear the land title. If open-space rollback taxes are a potential outcome of the purchase, buyers should resolve the issue during negotiations.

## Valuing the Property

Valuing land is a specialized activity requiring knowledge of local markets and the influence of property features on prices. Landowners know about the positive features of their land and usually hope to receive more than top dollar. Land buyers may have little access to information about local prices. The specific price essentially summarizes a property's current condition and its future value in a competitive market.

Land price reports (see page 23) may assist buyers as they begin to formulate an offering price. However, these reports reflect general market conditions rather than particular farms or ranches. Buyers negotiating in unfamiliar markets may find an informed real estate professional's assistance valuable.

## Completing the Transaction

After negotiating a price, a land purchase normally culminates in a contract. Typically, the buyer commits to buy and the seller promises to provide a deed, indicating a satisfactory transaction. However, all deeds are not equal, and some apparent sales are not sales. For example, a young couple wanted a particular tract and inquired about the property of a nearby homeowner. The homeowner offered to provide a deed for a cash payment. The couple paid the cash, and the homeowner delivered the deed.

The buyers, however, discovered that their deed was a *quit claim deed* instead of the more familiar *warranty deed*. The quit claim deed simply stipulates that the person providing the deed relinquishes any claim to the property in favor of the person receiving the deed. It does not guarantee or warrant that the person executing the deed even had a claim to the property. Had the homeowner owned the tract of land, title would have passed with the quit claim deed. However, in this

case, the homeowner did not own an interest in the property, and the deed conveyed nothing.

Buyers frequently enter a transaction through a *land contract* or *contract for deed*. These documents typically obligate the land owner to give the buyer a deed after a specified number of payments. These documents essentially represent installment sales contracts and normally include interest payments. They also provide for cancellation of the seller's obligation if the buyer defaults on scheduled payments. When that occurs, the buyer has no claim on the land, and the owner can sell it to another party.

A land contract is a legal way to provide owner financing. Difficulties arise when buyers mistakenly believe that they have purchased the land. However, they will receive a deed only when they have made all payments. This detail was pivotal in the 1980s when homebuyers purchased houses from a certain builder on a land contract. They paid the builder who had borrowed against the homes. The home sales market collapsed, and the builder ceased to pay the lender holding a lien on the houses. The homebuyers believed that they were making mortgage payments until the real mortgage company foreclosed on the homes.

These difficulties by no means represent all problems for land buyers. Buyers unfamiliar with different properties in their target area, property values and different legal documents should avoid completing a transaction without competent assistance. Because land investment represents a substantial financial commitment, buyers should reduce risk by gathering facts and seeking assistance from competent legal and real estate professionals, preferably those who specialize in rural land. ☐

*Dr. Gilliland is a research economist with the Real Estate Center at Texas A&M University.*

*Land buyers may have little access to information about local prices.*





# Research in Review

## Toxic Waste, Baseball, Mobile Homes

By Ted C. Jones

**M**any factors influence real estate values—livability, perceptions and the overall landscape. The following focus on selected issues and research findings presented at the American

Real Estate Society's 1997 annual conference in Florida. While not all findings directly apply to Texas real estate, they may provide insight into current issues.

### **Toxic Waste Sites: Permanent Stigma?**

What is the impact of a toxic superfund site on nearby residential properties? When first identified, is it possible to sell property near these sites? Does the economic stigma remain with the property even after some remediation?

Analysis of 1,300 homes near an Ohio landfill found a negative economic impact on properties as much as 6,750 feet

away. Damages typically decrease value from 5 to 15 percent, with those closest having the greatest diminution. Contamination of ground water that supplied the residences was the principle concern.

The study found that after intense media coverage sales volume plunged and marketing periods lengthened. Prices declined but eventually stabilized, and liquidity returned.

The stigma still affects market values of some houses nine years later, even though uncontaminated city water is available. Homes more than 3,375 feet from the landfill that have been switched to a contamination-free water source appear to

have lost the stigma. Closer homes, even with a new water source, still appear devalued by the negative impact of the landfill. Even with remediation, the value remains reduced.

*Alan K. Reichert, Cleveland State University*

## Income Earnings: Real Estate Sales, Securities and Insurance

Who earns the highest incomes? Real estate, insurance or security sales individuals? Does a gender gap influence incomes in these fields? Combined, these professions account for 6.8 million U.S. jobs. A national study by U.S. Bureau of the Census from 1994 data clarifies the differences and similarities.

The average full-time real estate salesperson earns \$41,489, although men (\$48,629) make 51 percent more than women (\$32,158). Security sales workers have an average income of \$67,313, but males are paid 107 percent more than their female counterparts, averaging \$78,097 and \$37,695, respectively. The typical insurance sales agent makes \$43,549, with women (\$25,979) earning less than half as much as men (\$52,328).

Women barely outnumber men in real estate sales (50.1 percent) but lag in both insurance (35.1 percent) and security sales (27.8 percent). The part-time real estate salesperson makes just more than one-half (52 percent) of a full-time worker; insurance part-timers earn 60 percent, while less-than-full-time workers in security sales fare best at 61 percent. The top 5 percent of real estate sales professionals earn 10.5 percent of

the total income in the industry, compared to 8.5 and 9.5 percent for insurance and security sales, respectively.

Analysis of the gender differences after allowing for education and experience still reveals a profound difference in earning capacity.

*G. Donald Jud and Daniel T. Winkler, University of North Carolina at Greensboro*

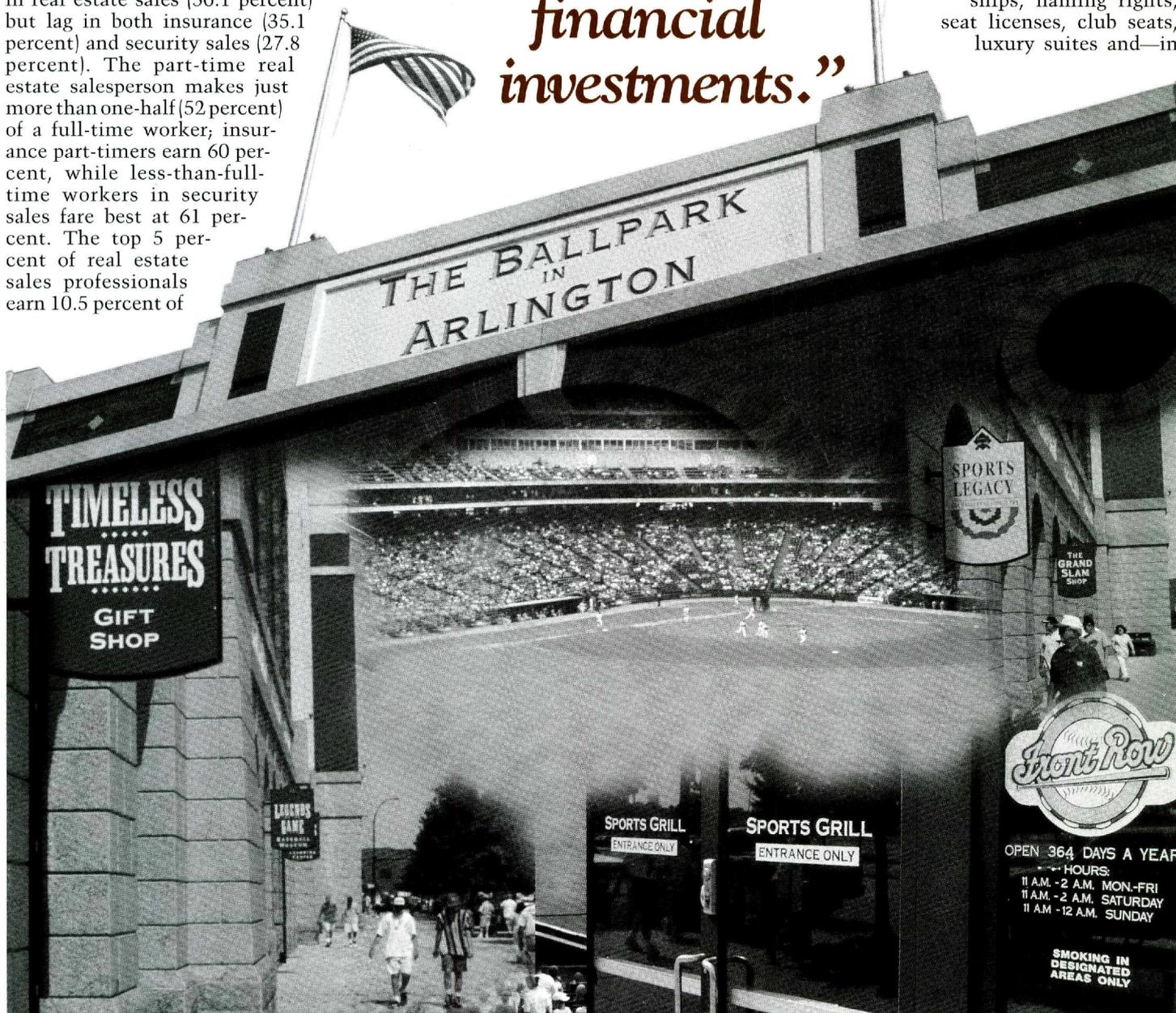
## Baseball: New Stadium or Winning—What Counts?

New athletic stadiums generate considerable talk, hype and votes. What is the impact of a new stadium, and what happens to team performance? A national study examines these relationships through major league baseball (MLB) attendance from 1970 to 1996.

Without question, these structures attract other events.

But what about community economics? Revenues include admissions, parking, concessions, advertising, sponsorships, naming rights, seat licenses, club seats, luxury suites and—in

**“Stadiums are typically poor financial investments.”**



some new facilities—year-around hotels, offices, retail and restaurants. But considering the 30-year financing necessary to build a stadium, should taxpayers be concerned about future revenues? The answer is *yes*, according to this long-term study.

**N**ew stadiums have a positive effect on attendance, at least initially. The five new American League baseball stadiums built since 1989 each filled at least 11,500 more seats per game. When teams win, most stadiums have great attendance. Winning is the key variable in projecting attendance. A close race or a pennant is the single most significant correlation with attendance.

Is it possible to build too many seats? *Yes*, according to the analysis. Large stadium teams—typically dual-sport enterprises—even if they are winning, generally do not fill all seats.

Beyond the external economics of the surrounding communities, financial risk is ever-present. In the last 27 years, MLB has recorded nine work stoppages including strikes and lockouts. That is an average of one every three years. Each work stoppage resulted in lower attendance the following year, and in some instances, the attendance drop lasts even longer.

The authors conclude that stadiums are typically poor financial investments. Stadiums are not economic decisions but rather are based on promotional and emotional factors. This was the case for all but four MLB franchises where the team also owns the stadium. The greatest risk is that the economic determinants of a stadium's success come from outside real estate. Historically, a typical sports dynasty lasts a maximum of six years; publicly funded sports ventures include risk.

*William N. Kinnard, Jake W. DeLottie and Mary Beth Geckler, Real Estate Counseling Group of Connecticut*

## Baseball: An American Tradition

Baseball stadiums have evolved across three eras from the classic field to mega-stadiums (typically dual-sport and mixed-use) to the classic revival ballpark. Big is not necessarily better in the baseball world, as even winning teams in mega-parks fall short of high capacity.

Until recently, owners were more likely to be political investors than capitalists. Average fan distance from players is directly related to attendance: the greater the distance, the lower the attendance. Hence, dual-sport mega-stadiums have a problem.

So why do taxpayers still pay for these facilities? The most-cited reason is that a stadium results in jobs and economic development. Research shows, however, that the preponderance of new community salaries at ballparks is tied to the seasonality of sports and usually involve lower-income jobs.

The public's dilemma is apparent. A recent poll of Minnesota voters found that, while 74 percent wanted the Minnesota Twins to remain in the Twin Cities, 81 percent rejected the proposition of using state income taxes to retain the team. Almost six out of ten voters (57 percent) opposed using a hotel-motel-alcohol tax to underwrite a new stadium to retain the team. Another study found that the baseball team pays on average 20 percent of the cost of the facility, with the remainder falling on the public.

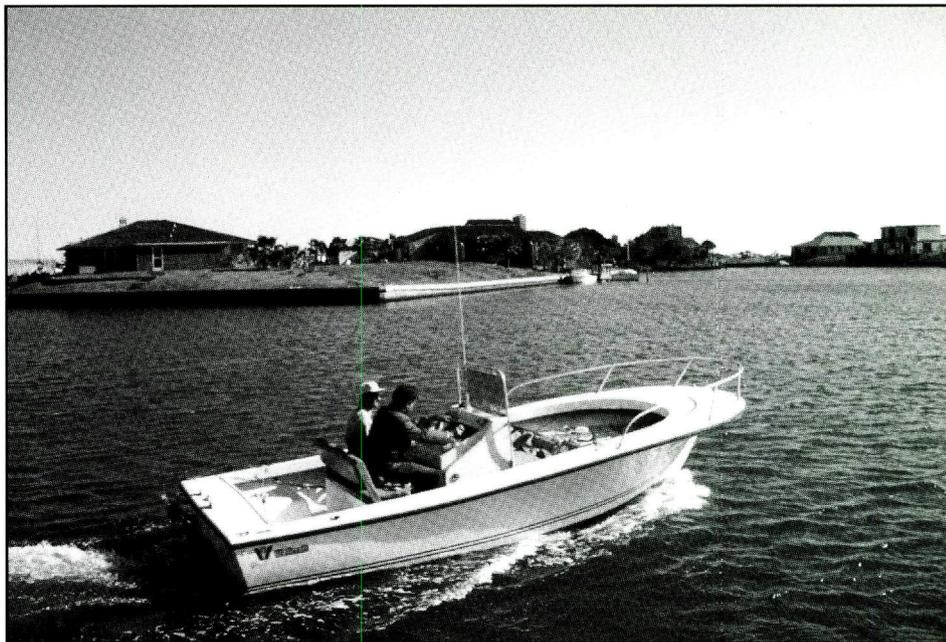
The current deficit in sports-arena funding is now moving towards the corporate sector. A bank paid \$55 million for the naming rights to a baseball facility. In this new era of taxpayer frugality, the future is apparent—funding will fall on sources other than taxpayers. The resulting end-product is for smaller

stadiums with mixed-use developments including such diverse attractions as museums. The primary variable is the fans' love for or disenchantment with professional sports.

*Susan Logan Nelson, University of North Dakota*

## Homeowner Associations: Impact of Professional Management

Homeowner associations dot the landscape, collecting millions of dollars annually. Some are managed by professionals and others by volunteers. Does the cost differ from one



*Resorts have a big impact on professionally managed homeowner associations.*

group to another? Do owners of real estate near resorts (those having greater rent potential) prefer professional management? Are homeowners willing to pay higher management fees to escape some of the liabilities now being borne by the professional management association?

In accepting the income of the association, the property management firm is exposed to the liabilities associated with the property. This study, including almost one-half (49 percent) of all homeowner associations in an Atlantic seaboard market, found that more than four in five associations were professionally managed. The resort impact is obvious in that 44 percent of respondents owned waterfront properties, and almost 60 percent had either a pool, a tennis court or both. More than one in six had a marina, fishing pier or golf course. Nearly two-thirds of the sample were condominium associations (61 percent) with 36 percent representing single-family housing.

**T**he research found, as had prior investigations, that professionally-managed associations have higher membership costs. Likewise, the superior locations have a greater residence turnover rate. Resort area associations are relatively similar in cost, with the owner-managed association costing \$155, almost identical to the \$153.19 monthly cost of professionally managed units. Residential (nonresort) associations report the owner-managed fees at an average \$38 per month versus \$87.89 for professionally-managed groups.

Does the higher cost of professionally-managed associations result from the effective transfer of legal liability from homeowners to the associations, and, hence, greater insurance costs for the professionally-managed properties? *No*, according to this study's results. No statistically-significant difference was found in expenditures between owner and professionally managed associations for insurance, operating expenses or reserves.

A much greater level of spending for repairs was shown in professionally-managed areas. Homeowners are much more likely to delegate owner-association management to professionals if the property requires greater levels of repair. Alternatively, it may be that professional association managers simply perform a higher-level of maintenance than do resident-managed properties.

*Bennie Waller and George Izzo, Ph.D. candidates, University of Mississippi*

## Age Restriction and Mobile Home Values

What is the impact of tenant age restriction on subdivisions of mobile homes? Does it influence the resale value of the property? A study of more than 2,000 mobile home and lot sales generates interesting conclusions.

Just seven years ago, six of every 100 elderly persons in the United States lived in mobile homes. Slightly less than 92 percent were owners rather than renters. The economics of this housing alternative is magnified by the finding that people with annual incomes from \$10,000 to less than \$24,999 were three times more prevalent in mobile homes than those with higher income.

Home equity represents 70 percent of the net worth of all the U.S. elderly (65 and older). More than 40 percent of the elderly who were in mobile homes, with incomes of less than \$25,001, had no other savings. This contrasts to 31 percent of those with incomes greater than \$25,000. This fact alone should be a major selling point for homeownership.

A statistical review of Mesa, Arizona, mobile home sales in subdivisions (which include land; mobile home parks include just the housing unit) indicates that "seniors only" mobile home subdivisions bring a 30 percent premium price compared to similar properties unrestricted by age. This is true even after adjusting for other variables such as age of property, size, single-versus double-wide, roof pitch, garage covers and deed restrictions.

The graying of Texas citizens and the high incidence of mobile home ownership, particularly among the elderly, directs attention to the preservation of wealth. Given that one in 12 Texas residences counted in the last national census was a mobile home or trailer, the conclusions of this study deserve attention.

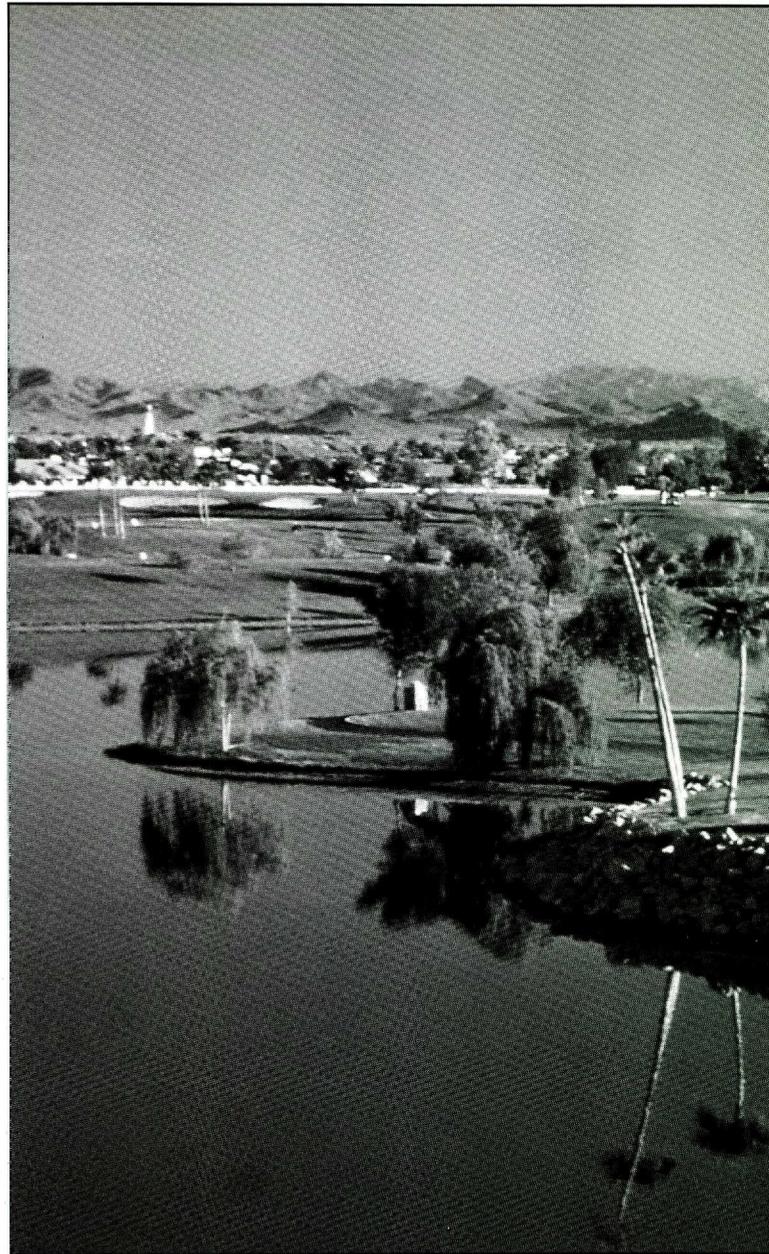
*Karl Guntermann, Arizona State University*

## Targeting Retirement Community Occupants

The aging of America (and Texas—although it has a median age two years younger than the country as a whole) provides a target-rich environment for housing developers. The current success of Del Webb's property in Georgetown illustrates Texas' potential as a retirement location. More than one in 20 Americans older than age 64 move each year. Of those relocating, more than one-half stay within the same county. Everyone does not, however, need the same level of housing; the market varies from amenity driven to assisted housing for the disabled. Moving is generated by health issues, loss or disappearance of support groups and the inability to care for an existing dwelling.

**M**ost retirement community occupants are women living without a spouse. A survey of 10,000 retirees resulted in a more than 14 percent response rate. Two of three respondents were women. One in four respondents lives in a retirement community. The response was similar regardless of employment status, age or income. Key factors for relocation included medical treatment access, proximity to hospitals, shopping and the availability of both home and personal care services. Public transportation and planned social activities with group recreation were important considerations.

As Texas becomes both an aged population and a base for other retirees, the economic potential of this group continues to cascade.



*Karen Martin Gibler, George P. Moschis and Euehun Lee, Mercer University, Georgia State University, and Sojong University (Korea)*

## Buyer-Broker's Impact on Selling Price

Is there a demographic profile of potential clients of a buyer-broker—one legally working for the buyer but still typically paid by the seller? Does selection of a buyer-broker vary as the result of buyers? Do homebuyers being relocated (employer-financed moves) vary when opting for a buyer-broker? Do buyer-brokers influence price? An analysis of 1996 homebuyers by the National Association of Realtors® addresses these issues.

Prospective out-of-town purchasers and those relocating from their respective firms are more attuned to using a real estate licensee. Repeat homebuyers also were more likely to use the services of professionals in the home search. The choice to use a broker or salesperson was not found to be dependent on the demographic characteristics of the client. Higher income buyers were more likely to use a professional in finding a home. Of particular significance is the interplay of disclosure to potential homebuyers. The researchers found that "buyers



*In a survey of 10,000 retirees, two of three respondents were women. One in four lived in a retirement community such as Del Webb's Sun City in Phoenix (shown here) or the new Sun City in Georgetown, Texas.*

who received agency disclosure as part of a broker-assisted transaction are more likely to seek out a buyer-broker."

The key question is whether buyer-broker real estate professionals influence the actual selling price of a property. Evidence from this study shows that using a buyer-broker does not reduce sales price to alternative strategies. Likewise, researchers found that the use of a real estate licensee for prospective purchasers did not result in a premium price as contrasted to properties acquired directly from owners. Prior research findings concluded that, when a buyer used a real estate licensee, search time was reduced across all classes of buyers.

Given that in more than 99 percent of instances the seller pays for the real estate professional, and the finding of reduced search time with a real estate professional across all classes of homebuyers, it becomes apparent to most homebuyers to use the services of real estate professionals—whether or not the agent is acting as a buyer-broker or an intermediary.

*Harold W. Elder and Leonard Zumpano, The University of Alabama, and Edward A. Baryla, East Tennessee State University*

### **Hunting (Recreational) Leases: How Important?**

Considering that private ownership of U.S. farm and ranch land represents more than two-thirds of all privately owned property, the potential revenue from recreational and hunting leases is apparent. The potential is further magnified by the more than 270 million visits in 1996 to federal recreational areas and parks and one estimate of a 100 to 166 percent rise in access fees in 1997. This level of pressure on public lands will shift even more demand for recreational use of private lands. So how valuable are hunting leases in Texas?

The Texas Comptroller's Property Tax Division sent a survey of farm and ranch hunting to ten landowners in each of the state's 254 counties. Responses from 414 found the following results.

Almost 34 percent of the respondents indicated that more than one-half of their county's range and pasture land was leased for hunting. One in eight respondents thought that more than one-half of the respective county's cropland was leased for hunting. One in every three leases allowed year-around access to the property. The average lease rate was \$4.24 per acre, with a typical day lease per gun costing \$95.45.



*A survey of Texas landowners reveals eight of ten hunting leases are for deer.*

Six out of every ten leases were for a specific hunting season. The average lease rate per gun per season was \$633.75 with a corresponding 234 acres per gun. Eight out of ten leases were for deer, exotics (3.1 percent), predators (29 percent), quail (35 percent), turkeys (43 percent) and wild hogs (33 percent).

Hunting blinds or feeders were provided on 16 percent of properties. One in every five owners planted grain for the benefit of game, typically covering almost 15 percent of the tract.

Rural landowners have the potential to economically benefit from the cash revenues of hunting and related recreational usage. This study indicates a need for information relating to market rental rates, amenities and respective risks to allow Texas property owners to maximize their potential incomes  
*John S. Baen, University of North Texas*

### **Divergence in Commercial Appraisal Estimates**

How is it possible to find such a wide range of opinions in the value estimates of the same property? Is appraisal an art that is going to result in divergent values regardless of the science applied? Do these estimates result from using different comparables or appraisal techniques? Or do some appraisers, regardless of techniques and comparable sales, go with their initial opinion reached early in the appraisal process?

A United Kingdom study selected a major English city commercial structure on the fringe of the office core to address the issues. The structure was built around 1900. It was refurbished nine years ago. The space had a vacant floor, and the primary tenant, while not of triple-A quality, was of good

standing with 11 years remaining on the lease term. Thirty individual valuation (appraisal) firms were contacted to complete a free appraisal for the study, of which 18 delivered usable products. The findings were varied. Approximately 80 percent of the firms fell within plus or minus 20 percent of the mean estimated value of £455,000. Only 39 percent were within plus or minus 10 percent of the mean. The minimum value estimate was £305,000 and the maximum £700,000. Differences in value estimates by study participants were found to be based on differing opinions of quality, income streams and a strong tendency to stick with conclusions reached early on in the appraisal process.

**F**ive separate series of data were provided over time to the participants. Yet 13 of the 18 had decided on rental and yield values after reviewing only the second series of information. While some of the variability in the resulting estimates could be traced to comparable sales selections, the tendency of appraisers to reach an initial conclusion without all information seemed to contribute to the wide range of value estimates.

*Tim Havard, Centre for Property Development and Management, Manchester, United Kingdom*

### **Property Design, Crime and Value**

Once considered essential in the design of neighborhoods to allow rear access to garages, utilities and garbage, alleys also provide a potential avenue for criminal access to residences and occupants. Given the concern for crime, does the presence of a rear alley negatively impact the value of properties?

Yes according to an analysis of 1,672 single-family sales in Denton County from July 1989 through December 1995. Homes studied had an average value of \$86,500. Almost 8 percent had alley access. The study found that those with alleys sold for 5.5 percent less than other properties, after adjusting for other factors. If these findings hold, then crime likely will be a major factor in the buyers' selection motives—a point significant to real estate designers, builders, marketers, buyers and sellers.

*Randall S. Guttery, University of North Texas*

### **Single-Tenant Properties: Does Price Reflect Risk?**

Single-tenant properties are similar to an investor holding just one stock—the owner lives and dies with the performance of that one asset and loses the opportunity to reduce risk through the portfolio effect. Having 100,000 square feet leased to ten occupants poses differing risks than leasing the same property to one user. Does a single tenant, having adjusted for the occupant's financial quality, influence the value of the property?

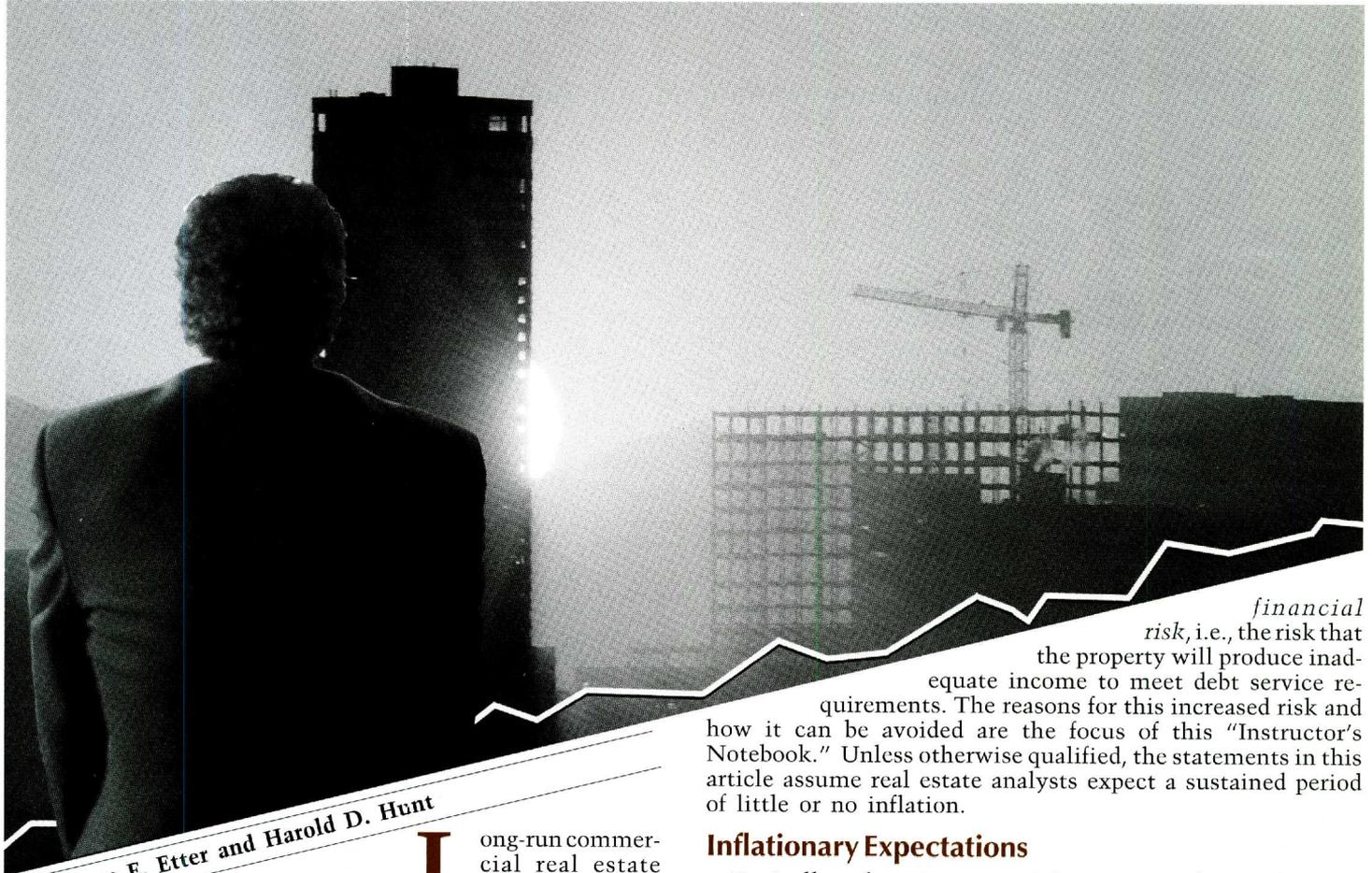
Analysis of 26 single-tenant buildings across four states found that this exerted an impact on the value of the property. The researchers used five independent variables in a regression to model each property's capitalization rates. The variables included the tenant firm's beta (which measures how risky the firm is with respect to changes in the overall stock market), lease term, number of renewal options, the lease term plus the number of options and the number of times the lease rate will be adjusted.

The capitalization rates were extracted by dividing the annual net operating income by the sale price or appraised value. Higher-risk tenants were found to have greater capitalization rates indicating that the real estate value includes the risk of the single tenant (and reduced the value of the property). Longer lease terms reduced the capitalization rate increasing property value. The bottom line to sellers and prospective buyers is to recognize the risk inherent in single-tenant buildings.

*Steven P. Mooney, St. Cloud State University; Tim Virgin and Stu Mortrude, Diversified Real Estate Services, Minneapolis* □

*Dr. Jones is chief economist for Stewart Title Guaranty Company.*

# Can Low Inflation Affect Commercial Real Estate's Risk?



By Wayne E. Etter and Harold D. Hunt

Long-run commercial real estate values are determined by supply-and-demand conditions within a particular market area. In markets where increased demand for space relative to supply exists (or is expected), rental rates increase. During inflationary periods, however, rental rates also may increase because of specific commercial lease clauses linking rental rates to the inflation rate or escalator clauses requiring the tenant to pay periodic rent increases.

Over time, increased rental rates from either source will be capitalized into higher real estate values. During recent years, therefore, commercial property values have gone up, both from the increased demand for space and from inflation.

The effect of a sustained period with little or no inflation on commercial real estate's net operating income (NOI) and value was considered in the last issue of *Tierra Grande*. The article shows that many leases provide commercial real estate owners with rising NOI during inflationary periods.

If the effect of supply and demand on rental rates is set aside, however, these same lease terms produce a much smaller increase in NOI during little or no inflation. With little or no inflation anticipated, real estate analysts are unlikely to forecast property value increases unless they expect an increased demand for space. Thus, if the Federal Reserve's Board of Governors' effort to control inflation is successful for a sustained period, commercial real estate value could be affected negatively.

Another possible effect of a smaller increase in NOI during a sustained period of little or no inflation is an increase in

*financial risk*, i.e., the risk that the property will produce inadequate income to meet debt service requirements. The reasons for this increased risk and how it can be avoided are the focus of this "Instructor's Notebook." Unless otherwise qualified, the statements in this article assume real estate analysts expect a sustained period of little or no inflation.

## Inflationary Expectations

Typically, when a commercial property is financed with a mortgage loan, the loan is repaid in equal payments over the life of the loan. To estimate the amount of the payment that can be repaid from the first year's NOI, the lender requires a minimum debt coverage ratio to add a **margin of safety**, i.e., the excess of NOI over the mortgage payment. For example, if the lender requires a debt coverage ratio of 1.25, the annual NOI must be 1.25 times the annual mortgage payment. The NOI can decline by 20 percent before the borrower's ability to make the payment is jeopardized.

During recent years, real estate analysts usually have projected increased NOI for the life of a loan, with a fixed mortgage payment as shown in the example.

Year	NOI if growth rate is 3%	Mortgage Payment	Debt Coverage Ratio
1	\$60,000	\$48,000	1.25 x
2	61,800	48,000	1.29
3	63,654	48,000	1.33
4	65,564	48,000	1.37
5	67,531	48,000	1.41

The expected NOI increase results from the expected control of operating expense increases with triple net leases or leases with expense stops and expectations of increasing rental rates. In turn, increasing rental rates reflect the expectation that demand for space will exceed the supply of space

and/or because of particular lease clauses link rental rate increases to expected inflation or escalator clauses. Over time, the margin of safety and the debt coverage ratio increase, and, thus, financial risk decreases.

**W**hen the property is sold or refinanced, the safety margin will likely be reduced temporarily as the new mortgage payment is increased to the maximum amount the NOI will support. If NOI continues to increase, however, in time the margin of safety and the debt coverage ratio will improve, and financial risk again will decrease.

This expectation of an increased margin of safety over time is analogous to the expectations of many single-family homebuyers in the past. Many homebuyers arranged the largest loan the family's income could support. Sometimes, the large payment was a burden. The family's income was expected to increase, however, while the mortgage payment remained fixed (although property taxes and homeowner's insurance would increase).

As the family's income increased, the mortgage payment was more easily managed; in effect, the family's margin of safety increased along with their income. In other words, a much larger decrease in family income could be sustained before defaulting on the mortgage. The family's increased income could result from increased wages and salary, cost-of-living increases or both.

Thus, increased income improves the margin of safety and reduces the risk of default for owners and lenders of both commercial property and single-family homes. How does sustained little or no expected inflation change these previously expected outcomes?

### Limited Inflationary Expectations

If a family's principal expectation of increased income is from cost-of-living increases rather than from higher wages and salary, the family's safety margin on their mortgage loan increases slowly during a noninflationary period. This lengthens the time that the mortgage payment is a burden. To reduce the burden, the family could choose a less expensive home and arrange a smaller loan so that the initial mortgage payment requires a smaller proportion of family income. Lower interest rates would likely be available; if so, the family's mortgage payments can be reduced. The commercial property owner's decision is more complex, however.

If a commercial property's income is expected to increase slowly during a period when little or no inflation is expected, the property's margin of safety increases slowly as well, all other things being equal. Unlike the single-family homebuyer, however, the commercial property owner neither constructs a smaller or less expensive building nor arranges a reduced loan to have an increased margin of safety.

Constructing a smaller or less expensive building than required for the market will likely result in unleased space. The probability of a property developer asking for a smaller loan is small, if not zero. In fact, the developer will likely take advantage of lower interest rates, if available. This increases the amount borrowed and keeps the mortgage payment at the maximum amount agreeable to the lender. As previously noted, any decrease in the margin of safety brought about by the property's future refinancing or sale should be temporary.

The following example shows that the impact of real estate analysts' expectation of little or no inflation is the projection

of smaller increases in the margin of safety during the holding period for newly financed properties.

Year	NOI if growth rate is 1%	Mortgage Payment	Debt coverage Ratio
1	\$60,000	\$48,000	1.25 x
2	60,600	48,000	1.26
3	61,206	48,000	1.28
4	61,818	48,000	1.29
5	62,436	48,000	1.30

There may be a much more important factor to consider, however. Once a commercial property is completed, it must compete for tenants from that location throughout its economic life. If, at the time the property is completed, there is sufficient demand by tenants for the property, the property should generate sufficient NOI to meet debt service and provide a margin of safety.

However, competition from newer, better located properties in the market may take tenants from older properties. To keep current tenants and attract new tenants, the owners of older properties may need to reduce rental rates. Competition from superior properties may take place regardless of inflation, but the consequences of that competition to the owner of the older center may be more severe during noninflationary periods.

During such a period, the aging center must compete to maintain net operating income; lease clauses that link rental rate increases to inflation or escalator clauses are little help. If the center cannot compete with the newer, more competitive properties, then the owner is forced to reduce rental rates. This action translates into a reduced NOI, margin of safety and debt coverage ratio. Such circumstances increase financial risk and risk of default.

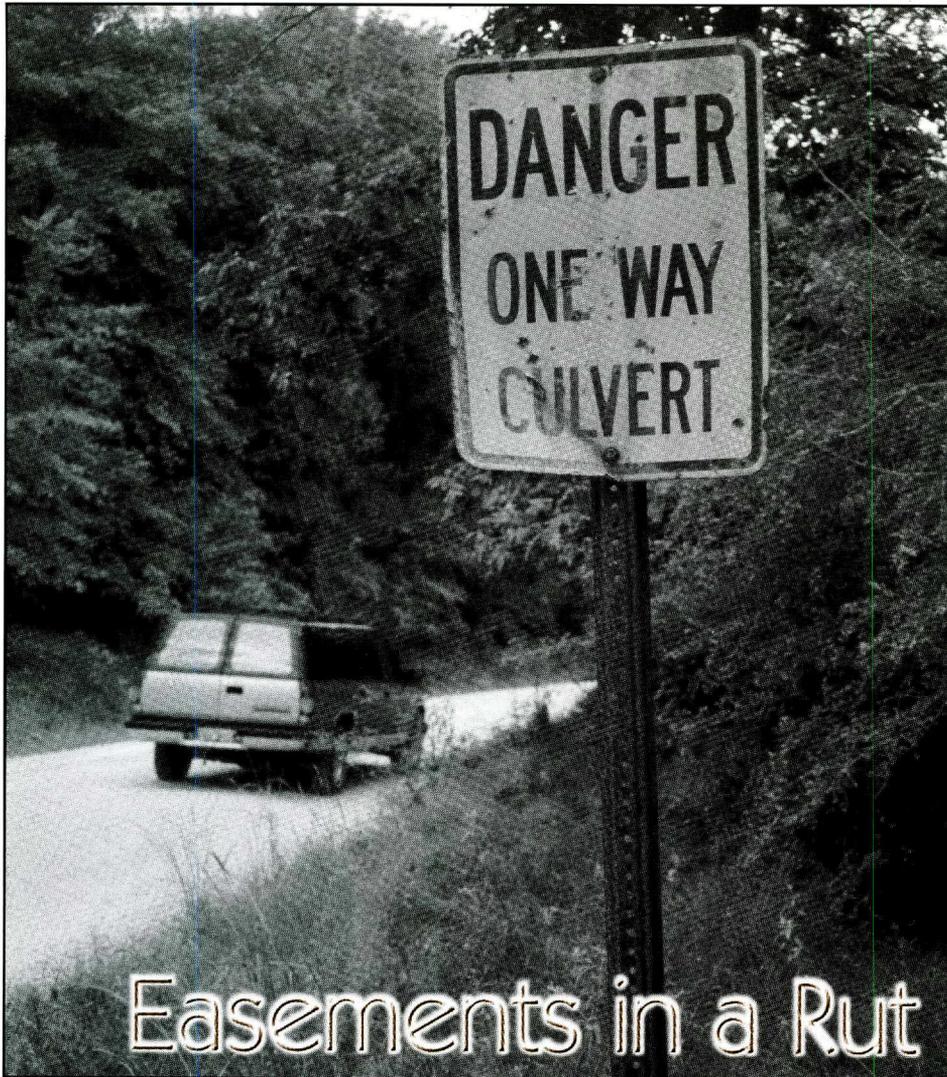
### Maintaining a Competitive Edge

To avoid this increased risk of default, both commercial property owners and lenders must be more concerned with the supply of and demand for commercial space within particular market areas. Specifically, much greater attention should be paid to competitive conditions within the market. Is additional space needed within the market? If so, what can be done to maintain a new property's competitive edge so that new competition will be dissuaded from entering the market in the future? Is the site under consideration a suitable site for the long-term? Such sites allow the owner to demand escalator clauses from tenants even in the absence of inflationary expectations.

Commercial property lenders should require and owners should accept more rigorous underwriting standards. Properties that can not command leases containing escalator clauses should provide a larger initial debt coverage ratio so that as the property ages it can withstand rental rate reductions that result from newer, better located properties. ☐

**“Both commercial property owners and lenders must be more concerned with the supply of and demand for commercial space . . .”**

*Dr. Etter is a professor with the Real Estate Center and of finance at Texas A&M University. Hunt is a graduate research assistant with the Center and a doctoral candidate in Urban and Regional Science.*



## Easements in a Rut

By Judon Fambrough

**M**isusing private easements is a problem associated with the population growth in rural areas. The owners of the tracts being crossed (servient tenants) may encounter increased traffic as large tracts served by the easements are subdivided. What recourse, if any, is available to the servient tenants?

The following scenario illustrates some of the potential problems. Art purchases a moderate-sized tract in a rural area served by a newly opened county road. The owner of a neighboring ranch, presently served by a private easement across another landowner, asks for an easement. The new county road provides a more convenient access. Art, being a good neighbor, grants the easement.

Because the easement is prone to flooding, the rancher installs several culverts in the worst depressions. Over time, the stones and gravel covering the culverts wash away. Travel diverts around the culverts and outside the boundaries of the easement.

The rancher dies, leaving heirs who do not want to continue ranching but see a profit in subdividing. Now the easement serves not one but more than 50 families. No one maintains it. Trash and litter are constantly discarded on Art's property.

What legal recourse, if any, does Art have to relieve the problems?

First, Art contacts the local county commissioners court. According to Texas Local Government Code, counties may regulate subdivisions situated outside the corporate city limits. Art hopes the commissioners court will regulate the access route.

However, as pointed out in the recent case of *Elgin Bank v. Travis County*, the ability of the county to regulate subdivisions is limited to:

- tracts divided into two or more parts for a subdivision and
- streets, alleys, squares and parks or all other parts of the subdivision dedicated to public use.

The commissioners court informs Art that it is powerless to regulate the access route because no public dedications occurred.

Next, Art explores terminating the easement because of the misuse (overburdening). Texas case law allows a remedy in this situation. However, the relief is limited to an injunction, not termination. As pointed out in a 1996 case, *Seastruck v. Walker*, "If the appellee does abuse the easement established by the court, appellant's remedy is not forfeiture (termination) of the easement but an injunction against the improper or unauthorized use thereof."

Further insight was added in *Hook v. Ferguson*, "... even though there was a **substantial change** in the use of the easement granted, such change would not entitle appellees to a cancellation of the grant. . . . only to have an improper or unauthorized use enjoined" [emphasis added]. The case was remanded, in part, to have the words *substantially changed* defined.

In Art's case, it is unclear how an injunction works. Most of the case law involves placing too many lines in a utility easement. Would the courts limit this easement to one family?

Art next enlists an attorney to research the *Dominant-Estate Doctrine* as pronounced by the Texas Supreme Court. Art wants to know what, if any, effect the doctrine has in this instance.

As explained in 1966 and reiterated by the high court in 1979, the doctrine limits the use of an easement to the dominant tract described in the grant. It can not be extended to the other land or be converted into a public way without the consent of the owner of the servient estate.

The application of the doctrine to Art's situation depends on the wording of the easement. If the grant benefited the entire ranch, not just the location of the homesite, then any subsequent owner of **any part** of the ranch would have the right to use the easement, assuming it is not overburdened. If part of the subdivision is on the ranch and part of it is on adjacent land, however, the owners of the tracts on the adjacent land can not use the easement according to the doctrine.

Art investigates the legality of the families detouring around the culverts. First, whose duty is it to maintain the culverts? Second, can Art stop the detouring by confining the traffic to the easement?

Generally, the owner of the easement (originally the rancher) has the duty to prepare and maintain the easement. Any work necessary for the proper use and enjoyment of the easement falls on that person.

The only duty imposed on the servient estate (Art) is a negative one. The servient tenant can not interfere with the dominant tenant's use and enjoyment of the easement.

In this instance, subdivision owners who use the easement must repair the culverts if the washouts were caused naturally. Art, by the same token, can not interfere with the use of the easement by purposely dismantling the culverts or undermining the roadway. The owner of the easement is entitled to necessary support to use the easement.

No case law discusses diverting around culverts. The case of *Americans Cement and Plaster Co. v. ACME Cement and Plaster Co.* held that, if the servient tenant obstructs the way, the dominant owner is justified in going over another part of the land. However, in *Parker v. Baine*, the court ruled that if the owner

diverting around the culverts until repairs can be made. After that, the users become trespassers.

Art must be careful to ensure that the trespassing does not continue too long. A prescriptive easement may arise if the travelers divert (trespass) around the culverts for ten continuous years.

Finally, as to the trash and debris littering Art's land, Art may be able to get a judgment for clean-up costs. The owners of the easement have a duty to use ordinary care to avoid injury to the servient estate. To recover damages, the servient tenant must show that the easement owners were guilty of willfulness or negligence in the use of the easement.

If all else fails, Art, with the consent of the owners in the subdivision, may be able to convince the commissioners court to improve and maintain the easement. According to the Texas Transportation Code, if the commissioners court determines that the improvement of an access road to a subdivision is necessary for the public health, safety or welfare of the residents of the county, the commissioners court may improve the road to comply with county standards and assess all or a part of the costs pro rata against the subdivision owners.

To implement the procedure, the commissioners

court must first publish notice of the proposal at least twice in a newspaper generally circulated in the county, then hold a public hearing. After the hearing, the majority of the owners in the subdivision must approve the proposal with a mail-in ballot.

To ensure payment, a special lien is placed on the owner of each tract, even though the owner is personally liable for his or her share. As with all legal issues, consult an attorney for specific advice. ☐

*Fambrough is an attorney, member of the State Bar of Texas and senior lecturer with the Real Estate Center at Texas A&M University.*



*Trash is just one problem in rural areas.*

of the easement moves from the established way without justification, he or she is a trespasser.

In *Parker*, the dominant owner veered outside the easement to avoid deep ruts where the soil washed. The court ruled, "It is impossible to say what temporary condition would justify plaintiff's moving around a temporary obstruction, or what change by the elements would justify a permanent variation in the course of the easement. If, for instance, a tree should fall across the roadways, plaintiffs could go around it until they had a reasonable time to remove it."

According to these cases, it appears that the travelers are justified in

## Home Equity Loans

By Judon Fambrough

**O**n November 4, 1997, Texas voters will decide whether to alter the course of Texas history. Since the inception of the Texas Constitution, homeowners have been protected from general creditors by the state's unique homestead law. This protection, however, restricted the use of home equity as security for a loan. Now, Texas voters have a chance to remove some of the restrictions on home equity lending.

To help voters make an informed decision, here is a synopsis of the proposed constitutional amendment. The actual amendment is lengthy and complex. For those on the Internet, the complete text of HJR 31 may be accessed at the state legislature website (<http://www.capitol.state.tx.us>).

The three-part proposal addresses: home improvement loans, home equity loans and reverse annuity mortgages.

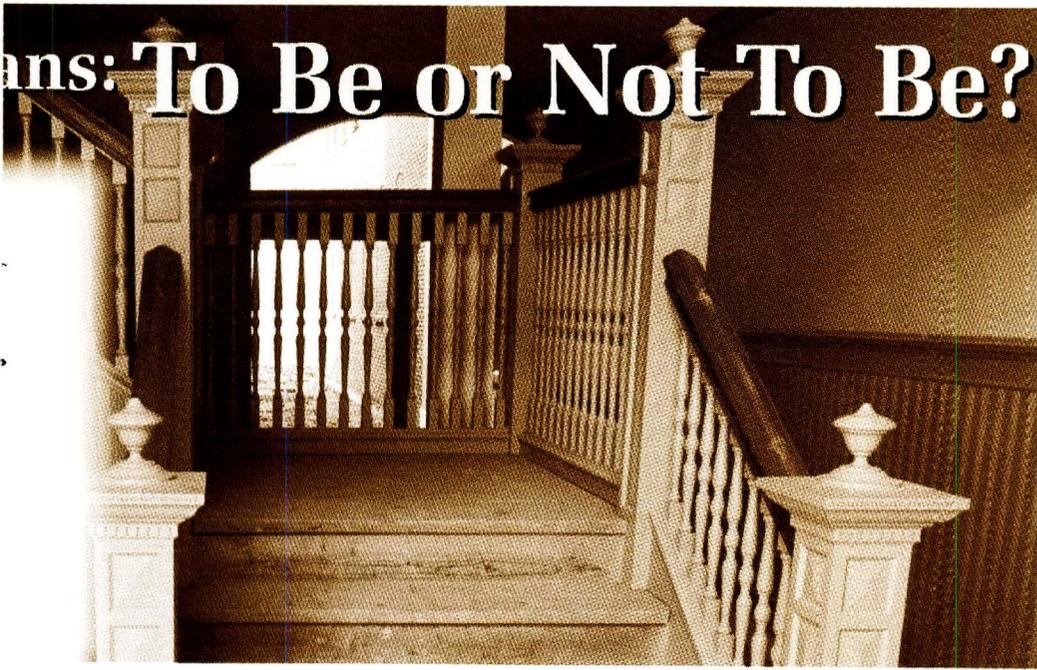
**Home improvement loans.** Although home improvement loans have been constitutionally authorized for years, the amendment introduces three procedural changes: a cooling-off period, limitations on where closings may occur and a right of rescission. At least 12 days must elapse between the owner's applying for the loan and signing the contract for the work and material. The contracts for the work and material must be signed in the lender's, attorney's or title company's office. Finally, after signing, homeowners have a three-day right to rescind the contract without penalty or charge.

The 12-day cooling-off period and the right to rescind do not apply when:

- the needed work (repairs) materially affect the health or safety of the owner or the persons residing in the homestead and
- the owners and spouses acknowledge this fact in writing.

**Home equity loans.** The authorization, limitations and requirements for home equity loans (better known as Section 50[a][6] loans) make up the bulk of the amendment. Several procedural rules parallel those proposed for home improvement loans.

For example, with one exception, a 12-day cooling-off period must occur between the loan application and the closing. The closing may occur only in the office of a lender, an attorney or a title company. A three-day right of rescission follows closing without penalty or charge.



The exception just noted relates to the beginning of the 12-day period. It begins with the loan application or on the date the lender provides a written list of the borrower's rights for home equity loans, whichever is later. If the discussion for the loan was conducted primarily in a language other than English, the lender must provide, before closing, an additional copy of the notice translated into the language used in the discussions.

Not all the equity in the home may be used. The proposal limits the loan amount to 80 percent of the fair market value (on the date of closing) less the recorded indebtedness against the dwelling. To avoid misunderstanding, the owner and lender must acknowledge the value of the house on the date the loan is extended.

Not all lenders may make home equity loans. The proposal limits the qualified lenders to:

- a bank, savings and loan association, savings bank or credit union doing business under Texas or U.S. laws;
- a federally chartered institute or a person approved by the U.S. government to make federally insured loans;
- a person licensed to make regulated loans provided by state statutes;
- a person who sold and financed all or part of the homestead purchase to the current owner; or
- a person related to the owner within the second degree of affinity or consanguinity.

**Note:** A qualified lender who engaged in redlining is ineligible.

The proposal specifies the type and condition of the loans. For example, the loan can not be open ended (revolving account). It must be nonrecourse (without personal liability) unless the borrower obtained the loan by fraud. It must be entered voluntarily. The lender can not require that the proceeds be used to repay another debt on the homestead, except one held by the lender.

The proposed terms of the loan would permit the lender to contract and receive any fixed or variable rate of interest authorized by statutes. Loan repayment must be in substantially equal monthly payments, but the borrower must be allowed to prepay without penalty. The document must state that the extension of credit is a type allowed by this constitutional amendment (Section 50[a][6]).

The loan may not be accelerated because the market value of the property decreases or because the owner defaults on other indebtedness that is not a prior valid lien on the homestead. The owner can not assign wages as security.

If the borrower defaults, the lender may foreclose judicially, not nonjudicially. The Texas Supreme Court will promulgate rules to expedite this type of foreclosure. To keep the lender from circumventing the rules, the owner can not sign a confession of judgment or a power of attorney to be used by the lender or third party in the event of default.

Some limits apply to the land used. In rural areas, a homestead designated for agricultural use for ad valorem taxes is ineligible unless the owner uses the property primarily for milk production. The lender can not require additional

realty or personalty as security. Only one home equity loan can be held against the dwelling at a given time. Once a loan is retired, another home equity loan can not be extended until one year after the closing date of the prior one.

The lender can not leave blank spaces in the loan documents. To ensure compliance, the proposal requires copies of all documents signed by the owner relating to the loan to be provided to the debtor.

The proposal includes limitations on the amount of fees that can be charged. In addition to any interest, all charges necessary to originate, evaluate, maintain, record, insure or service the loan can not, in the aggregate, exceed 3 percent of the original principal.

Once the owner repays the loan, within a reasonable time, the lender must cancel and return the promissory note and give the owner a recordable release. Alternatively, if the loan is refinanced, the lender must provide the owner a copy of an endorsement and assignment of the loan to the new lender.

The penalties for breaching the rules are severe. A lender or holder of the note forfeits all principal and interest for failing to comply with the lender's or holder's obligations under the amendment within a reasonable time after being notified by the owner.

The amendment approves refinancing of the first lien in the homestead to include an additional lien (and loan amount) against the borrower's home equity. It is unclear, however, whether the transaction requires two security instruments: one to refinance the existing lien, the other for the home equity loan.

The amendment is clear on one point. The same formalities, limitations and restrictions apply to the position of the loan secured by the home equity 50[a][b] as to any other loan.

**Reverse mortgages.** Reverse mortgages (sometimes referred to as Reverse Annuity Mortgages or RAMs) allow a homeowner to create an income stream for a certain period by using the home equity without selling or moving from the dwelling. According to the amendment, a reverse mortgage is a lien, voluntarily placed on the homestead by an owner or spouse 55 years old or older. The lender extends a lump sum or periodic advances based on the borrower's home equity.

Repayment of the principal or interest may be accelerated before maturity when the:

- homestead is sold or otherwise transferred or
- borrowers cease occupying the home for more than 180 consecutive days and the lender is unaware of their whereabouts.

By Steve H. Murdock

**M**ore arrive each day. Some are born there. Others move there from around the globe. Whether the newcomers are from Paris, Texas or Paris, New Hampshire or Paris, France, they are fueling a population surge in the Dallas-Fort Worth Metroplex. In the process, these migrants are the foundation for a strengthening real estate market.

On July 1, 1996, the U.S. Census Bureau estimated the combined population of the Dallas and Fort Worth-Arlington metropolitan areas at more than 4.5 million and rising. This is a six-year gain of 13.3 percent. Surrounding suburban counties have grown especially fast since 1990—more than 25 percent.

The half million new residents for the region represents 25 percent of the 2.1 million new Texans added during those six years.

Each metropolitan area is a strong migrant magnet in its own right. The Dallas area's gain was ninth highest among Texas' 27 metropolitan areas. Fort Worth-Arlington ranked eleventh. In actual head count, only Houston added more people than Dallas, while Fort Worth-Arlington was fourth.

Last year the Census Bureau put the Dallas metropolitan area (see table) increase at nearly 372,000—a gain of 13.9 percent since 1990. The Dallas area grew more than the 12.6 percent growth rate reported for Texas overall. Fort Worth-Arlington posted a 12.2 percent gain.

Population growth results from natural increase (births minus deaths), domestic immigration (from within Texas and from other states) and international immigration. The source of population growth is important because of the different effects each has on real estate.

Real estate markets are more affected by growth from migration than from natural increase. That is because nearly all migration involves new demand for housing. New births may not result in housing changes.

Similarly, a family moving from within the United States is likely to have more effect on the market than one moving from another country. Domestic immigrants tend to have higher incomes and spend larger amounts for housing.

State-wide patterns in the 1990s show less natural increase and more domestic immigration when compared to the 1980s. In 1980-90, 65.8 percent of all Texas population growth resulted from natural increase. In the 1990s, that fell to 55.2 percent. During the same time, the number moving from across Texas and across the nation jumped 13.6 percent. International immigrants fell 3 percent.

Overall population growth patterns differ for the Dallas and Fort Worth-

As with home equity loans, certain limitations apply but not nearly as many. As stated, the loan must be without recourse for personal liability. The loan may be based on a fixed or adjustable interest rate. However, interest may accrue and be compounded during the loan term.

The lender may not reduce the amount or number of advances because of a change in interest rates. If more than one advance is required, each must be at regular intervals established by the loan agreement.

The owner must attest in writing that counseling has been received regarding the advisability and availability of this type of loan. Perhaps the reason stems from broad powers given lenders. The proposal allows reverse mortgages to be made regardless of Texas laws that:

- limit the purpose and use of future advances or mortgage proceeds,
- limit future advances to a term of years,
- limit the terms of open-end account advances,
- prohibit future advances from taking priority over intervening advances,
- prohibit balloon payments,
- prohibit compound interest on interest on interest,
- require the maximum loan amount to be stated in the loan document or
- require a percentage of the proceeds to be advanced before the assignment of the reverse mortgage.

Advances made under a reverse mortgage and the interest on the advances take priority over subsequent liens filed in the deed markets against the homestead.

Because only older homeowners qualify for reverse mortgages, the proposal clarifies the effect of the advances on eligibility for state-assistance programs. The advances are considered proceeds from a loan, not income, and thus do not affect borrowers' eligibility for these programs. Undisbursed funds are considered equity in the home, not proceeds from a loan.

As with the other loans, the price for noncompliance is high. Lenders who fail to make required advances and fail to cure the default as described in the loan documents forfeit all principal and interest.

For specific questions regarding the legal effects of this amendment, consult an attorney. ☐

*Fambrough is an attorney, member of the State Bar of Texas and senior lecturer with the Real Estate Center at Texas A&M University.*

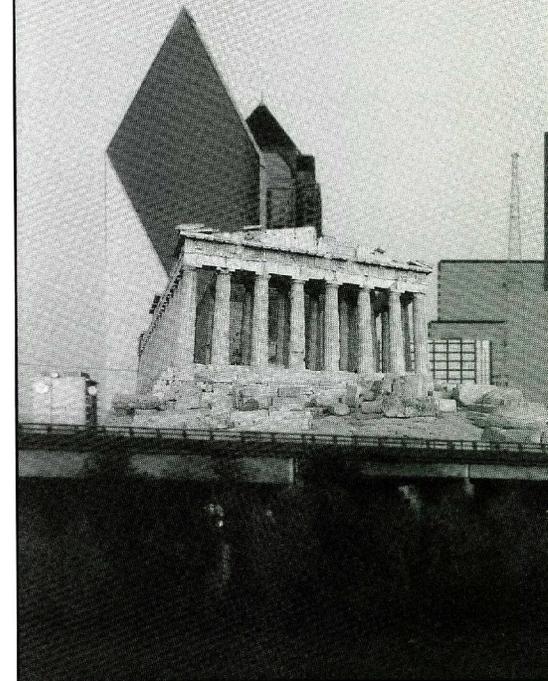
Arlington metropolitan areas. Natural increase accounted for 48.2 percent of Dallas' total growth in the 1980s. That jumped to 55.7 percent in the 1990s. At the same time, Fort Worth-Arlington's natural increase surged 18.2 percent to 55.8 percent of total population growth.

Population changes may be concentrated within specific parts of a metropolitan area. Like metropolitan areas elsewhere, Dallas and Fort Worth-Arlington growth has been greater and the effects of domestic immigration larger in the suburbs. International immigration has more effect on counties containing the central city.

Dallas County, the central-city county for the Dallas metropolitan area, actually posted a net loss of native-born Texans—about 75,000—while recording nearly an equal number of newcomers from other countries. Of the total international newcomers to the Dallas area, 86 percent moved to the central-city county.

Tarrant County, the central-city county for the Fort Worth-Arlington area, gained more international than domestic migrants. Tarrant County received 95 percent of the international immigration to its metropolitan area.

# Metroplex Magnet



The influx of immigrants to the central cities did not, however, change the fact that nearly all suburban counties in the metropolitan area grew more rapidly than the central-city counties. Hunt County in the Dallas area was the region's lone exception.

Migration to the suburbs was primarily of domestic origin. Among Dallas area suburban counties, domestic newcomers accounted for 68.5 percent of all growth and for 93 percent of all migration.

Similarly, among Fort Worth-Arlington suburban counties, domestic sources produced nearly 75 percent of the growth and more than 94 percent of all migration.

Nowhere is the rapid population growth more evident than in suburban Collin and Denton counties. Collin County's 1990-96 increase of 108,400 was a 41.4 percent overall population gain—the sixth largest increase of any Texas county. Of that total, 72 percent was the result of new arrivals from within the United States.

Denton County's increase of nearly 75,000 made it the tenth fastest growing of any Texas county. Nearly 63 percent of its growth was domestic.

Population patterns explain the rapid growth in real estate markets throughout the Dallas-Fort Worth Metroplex. Two relatively distinct markets can be identified. Central-city counties attract new residents from other nations and, therefore, suggest that moderately priced housing is more likely to be in demand. On the other hand, suburbs generally attract domestic immigrants more likely to have greater purchasing power.

Dallas-Fort Worth-Arlington real estate professionals face different challenges depending on where they work. But wherever they work, they are likely to be envied by those in other markets because of the area's rapid growth. In fact, if population trends set in 1990-96 continue, the Dallas-Fort Worth region will likely contain a

**Population Estimates  
Dallas and Fort Worth-Arlington Metropolitan Areas**

	Population on July 1, 1996	Percent Change Since 1990
Dallas Area		
Collin County	372,400	41.1
Dallas County	2,000,000	8
Denton County	348,500	27.4
Ellis County	97,100	14
Henderson County	65,700	12.2
Hunt County	67,900	5.5
Kaufman County	62,100	19
Rockwall County	34,200	33.4
Total Area	3,048,000	13.9
Fort Worth-Arlington Area		
Hood County	35,000	20.7
Johnson County	110,300	13.6
Parker County	76,000	17.4
Tarrant County	1,305,200	12.2
Total Area	1,526,600	12.2

Source: U.S. Bureau of the Census

population of nearly five million by the year 2000. □

*Dr. Murdock is a research fellow with the Real Estate Center and chief demographer of the Texas State Data Center, Department of Rural Sociology, Texas A&M University.*



# LLCs & S Corps

## NEW PERSPECTIVES

By Jerrold J. Stern

**M**aximizing after-tax profitability is typically the overall goal of business. Part of a business's after-tax profitability is determined when an entity form is chosen—corporation versus some type of flowthrough (which does not pay tax at the company level as a corporation does). Among the choices are the limited liability company (LLC), S corporation (S corp), sole proprietorship or partnership. This column contrasts key decision factors when choosing between LLCs (partnerships for tax purposes) and S corps.

Recent developments affect these forms of business structure.

- Tax law contains a new “check-the-box” procedure that makes selecting the LLC (partnership) form simple. Complex definitional rules of the past have been repealed.
- All 50 states recognize LLCs. This was not the case just two years ago.
- Texas now permits one-person LLCs.
- Attorneys across the country are becoming more comfortable with forming LLCs for their clients.

### S Corps Optimal Conditions

With these recent developments, new perspectives are emerging about the optimal conditions for choosing an S corp rather than an LLC. According to some tax advisors, here are the best conditions for selecting S corp status.

**Plans for merger and/or major ownership change in near future.** Merging one S corp with another or admitting new

shareholders can easily be nontaxable events for an S corp. In contrast, sizable tax consequences can result when LLCs merge or change ownership. The reason is that tax on appreciated assets (e.g., real estate) may become payable.

**Self-employment tax on extremely profitable businesses.** Self-employment tax rates are 15.3 percent on the first \$65,400 of self-employment net income and 2.9 percent on the balance (without limit). As partners, active LLC members pay self-employment tax on their **entire** share of LLC net income.

In contrast, S corp shareholders are subject to these tax rates only on amounts designated as their “salary,” **not** on the rest of their share of S corp income. Of course, regular income taxes are payable on all income regardless of whether it is taxable as self-employment income.

For example, assume a real estate business has one owner and generates net profits of \$1 million. If this business is an LLC, the self-employment tax for the owner is approximately \$37,109, computed as follows:

$$\begin{aligned} & \$65,400 \times 15.4 \text{ percent} = \$10,006 \\ & \text{plus} \\ & (\$1 \text{ million less } \$65,400) \times \\ & 2.9 \text{ percent} = \$27,103 \end{aligned}$$

Yet, if the business files to be an S corp and pays a salary of \$65,400 to the owner, the combined payroll taxes of the S corp (analogous to the self-employment taxes paid in the LLC case) are only \$10,006 (\$65,400 x 15.3 percent), saving approximately \$27,103 annually by avoiding the 2.9 percent tax on income of more than \$65,400. (The savings are approximate

because two adjustment computations are not included in this example analysis to avoid complexity.)

### LLC Relative Advantages

When an entity is **unable** to realize sizable advantages under either of the two conditions previously discussed, the LLC form may be the better choice. LLCs have several relative benefits over S corps. First, no restrictions limit the number or type of owners (members). S corps are limited to 75 shareholders who must be individuals, estates or certain trusts.

Second, S corps generally must allocate profits, losses and cash distributions among shareholders in accordance with their percentage of stock ownership. In contrast, LLC agreements can vary allocations among members to take advantage of their differing tax or economic circumstances.

Finally, more tax losses may flow through to members of LLCs because their ability to absorb losses is increased when the LLC borrows to purchase assets. In contrast, S corp shareholders cannot increase their loss capacity in this way.

As discussed here, potential benefits of S corps and LLCs are numerous for real estate businesses. Because of the complexity of tax and legal rules, consultation with an accountant or attorney regarding specific issues is recommended. □

*Dr. Stern is a research fellow with the Real Estate Center at Texas A&M University and a professor of accounting in the Graduate School of Business at Indiana University.*

# BENCHMARKS (continued from p. 1)

"And, it may be deader than the dodo bird."

Bottfeld says the living room is diminishing as a percentage of home size. In smaller homes, it is often joined to the dining room. In larger homes, it is a small annex off the entry.

"One private study suggests that from 1980 to 1995, the size of living rooms as a percentage of new home size was halved," says Bottfeld.

**Technology prevails.** The personal computer and the Internet are about to place builders on a collision course with technology, says Bottfeld. He offers several reasons why technology will force changes in floorplans and architecture.

At the end of 1996, an estimated 22 percent of all American households were on the Internet, double the number of the previous year. A Las Vegas study

determined that 33.2 percent of those seeking a new home were on the Internet.

"Twenty years ago, there were 20,000 computers in the world," notes Bottfeld. "Today that many are installed every day. Just as television changed architecture and floorplan design in the 1950s, 1960s and 1970s, so will the computer in the twenty-first century."

The kinds of changes he sees include wall spaces to accommodate computers, wiring that allows networking more than one home computer, special plugs and outlets, increased den and home office space and built-ins to accommodate computers and related equipment.

**Babyboomer factor.** Bottfeld believes the extended family as a housing factor may have been overlooked.

"The babyboom generation may be the most divorced generation in history," he says. "More than 40 percent of all U.S. marriages include one spouse who has been married at least once previously. They have his children, her children and sometimes their children."

As baby-boomers turn age 50, they find their children and parents coming to live with them—or at least spend time with them. Therefore, babyboomers are looking for larger homes to accommodate the extended family.

"That also is why the casita—a room separated from the house featuring its own private entrance, usually in the home's courtyard—is gaining popularity. Babyboomer watchers need to evaluate the extended family more closely in terms of housing design."

**Ethnic sensitivity.** Some call

it "splinter segmentation." To others, it is "niche segmentation." The fact is that growing numbers of immigrants have builders paying closer attention to ethnic sensitivity.

Builders are learning, for example, that homes near cemeteries do not sell well to Asian buyers. Certain numbers and colors are considered unlucky. To some, the position of the staircase is important.

**Lighten up.** As the use of the home's interior changes, so does the role light plays.

"Focus groups conducted by Marketing Solutions suggest that—beyond view potential—larger windows have greater value to some consumers," says Bottfeld.

For those who disdain sunlight, a new window is available that can be "turned off." A flick of a switch clouds the window and blocks the sun.

Fluorescent lighting is a gaining popularity. Screw-in fluorescent bulbs are being marketed. Lighted skylights are being introduced.

**Streetscapes.** "The trend is away from uninteresting and it-all-looks-the-same streetscapes," says Bottfeld. "Consumers complain about a lack of distinctive exteriors."

One way of changing this perception has been the use of cluster housing rather than zipper lot or zero lot line homes. Cluster housing gathers four to ten units around a common courtyard. Garages face the courtyard, and the cluster provides slightly better land use for the buyer.

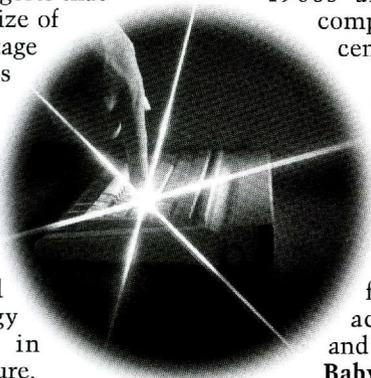
**Active Seniors.** Del Webb—the nation's largest builder of active, senior communities—also has a vision of their future homes.

For many couples, retirement marks the first time they have spent considerable time together. This generates the need for public and private spaces. As the mature market becomes more honest about how they live together in their homes, some couples are opting for dual master suites.

They see more home automation. Smart houses do the work. More home offices will accommodate the aging babyboomers who refuse to retire in the traditional way.

The backyard will continue to evolve into a secondary living environment. More sophisticated exercise rooms will be built for those babyboomers who fight growing old.

And look for integration of new building materials, such as high-tech carbon fiber and environmentally-friendly, "green" products. The trend toward low maintenance will continue. □



## How Long Will It Last?

A well-built home can last for centuries, but many of its parts must be replaced or refurbished on a regular basis. Knowing the life expectancy of different products and materials in the home can benefit agents, buyers and sellers. This list was compiled by the National Association of Home Builders.

Item	Life Expectancy in Years
Compactor and dishwasher	10
Clothes dryer	14
Clothes washer	13
Microwave oven	11
Free-standing, built-in electric range	17
Free-standing, built-in gas range	19
Standard refrigerator	17
Toilet and cast iron bathtub	50
Fiberglass bathtub and shower	10-15
Kitchen cabinets	15-20
Medicine cabinet	20
Laminate countertop	10-15
Ceramic tile with high-grade installation	Lifetime
Exterior screen door	25-50
Interior solid core door	30-life
Garage door	20-50
Garage door opener	10
Copper wiring	100+
Exterior paint	7-10
Interior wall paint	5-10
Oak, pine and slate flagstone floors	Lifetime
Carpet	11
Central air conditioning unit, compressor	15
Smoke detector	12
Asphalt driveway	10
Swimming pool	18
Sprinkler system	12
Wooden deck	15



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### Answers to Landlord-Tenant Quiz

1. False 2. False 3. False (after Sept. 1, 1997) 4. True 5. True (a three-day notice is required, however) 6. False 7. False 8. False 9. True (after Sept. 1, 1997) 10. False

For a detailed discussion of the answers, call the Center's Fax-on-Demand system at 409-862-7461 or 409-862-7460 and request number 1193. The information is free. Telephone charges, if any, apply.

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