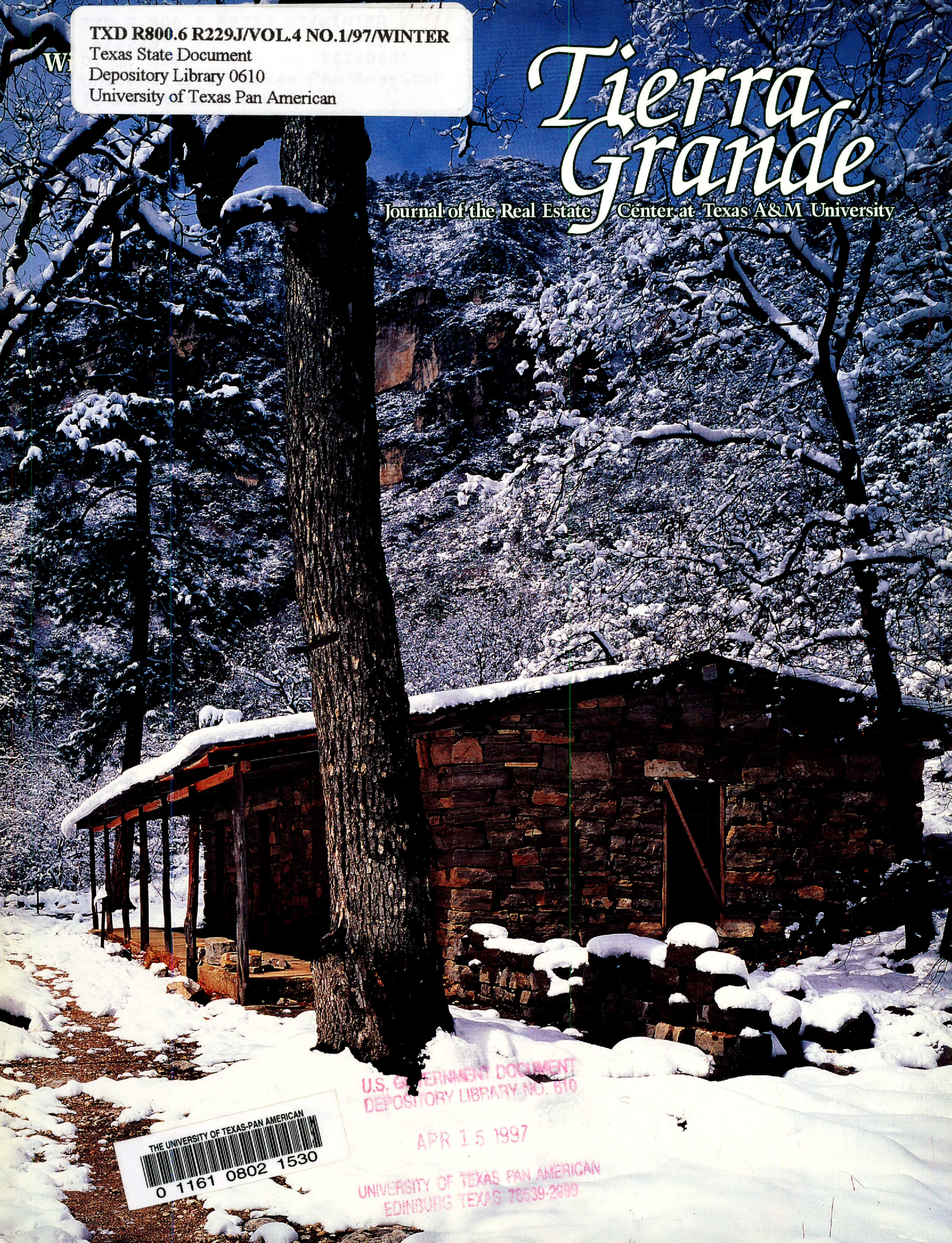
TXD R800.6 R229J/VOL.4 NO.1/97/WINTER
Texas State Document
Depository Library 0610
University of Texas Pan American

Wi

Tierra Grande

Journal of the Real Estate Center at Texas A&M University



U.S. GOVERNMENT DOCUMENT
DEPOSITORY LIBRARY NO. 610
APR 15 1997
UNIVERSITY OF TEXAS PAN AMERICAN
EDINBURG TEXAS 78539-2999

THE UNIVERSITY OF TEXAS-PAN AMERICAN
0 1161 0802 1530

Tierra Grande Vol. 4, No. 1 Journal of the Real Estate Center at Texas A&M University

2 Jobs Fuel Big City Economies

Employment, Not Construction, Drives Dallas, Houston, San Antonio Growth

Good news—healthy growth without the drama of boomtimes

By Ted C. Jones and Misti Hill

8 Texas Economy Mimics Nation

Economists anticipate the same moderate but steady pace of the previous six years for 1997

By Jared E. Hazleton

10 Advertising Where It Counts

NAR and Center studies reveal no fail-safe rule for allocating advertising dollars

By Ted C. Jones and Larry Hart

12 Statutory Limitations for Equine Activities

Law shields owners and animals with stringently limited liability

By Judon Fambrough

14 The New Range War

Public Access to Private Land

The owner's burden of protection for land users rests, in part, on the user's legal classification when entering

By Judon Fambrough

17 Tech-YES/NO-logy

Downsizing Debate Heats Up

Tierra Grande readers quickly responded to the world of work envisioned by last issue's technology watchers

By Ted C. Jones and Bethany Burnam

21 S Corporations

New Rules, Potential Benefits

Tax breaks close at hand under the Small Business Job Protection Act of 1996

By Jerrold J. Stern

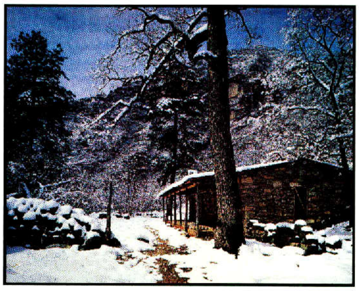
22 Analyzing New Property Development

The 1980s taught some tough lessons about overbuilding; the 1990s seem to be testing developers' learning curve

By Wayne E. Etter

On the Cover

Photographer Laurence Parent slogged through four miles of snow in the Guadalupe Mountains National Park to capture April in Texas at this historic hunters' cabin.



©1997, Real Estate Center. All rights reserved.

DIRECTOR, Dr. R. Malcolm Richards; **ASSOCIATE DIRECTOR,** Gary Maler; **CHIEF ECONOMIST**, Dr. Ted C. Jones; **SENIOR EDITOR**, David S. Jones; **ASSOCIATE EDITOR**, Dr. Shirley E. Bovey; **ASSISTANT EDITOR**, Kammy Senter; **ART DIRECTOR**, Robert P. Beals II; **CIRCULATION MANAGER**, Gary Earle. **TYPOGRAPHY**, Real Estate Center; **LITHOGRAPHY**, Wetmore & Company, Houston. **ADVISORY COMMITTEE:** John P. Schneider, Jr., Austin, chairman; Gloria Van Zandt, Arlington, vice chairman; Michael M. Beal, College Station; Conrad Bering, Jr., Houston; Melissa C. Cigarroa, Laredo; Dr. Donald S. Longworth, Lubbock; Carlos Madrid, Jr., San Antonio; Andrea Lopes Moore, Houston; Kay Moore, Big Spring; and Pete Cantu, Sr., San Antonio, ex-officio representing the Texas Real Estate Commission. **TIERRA GRANDE** (ISSN 1070-0234), formerly *Real Estate Center Journal,* is published quarterly by the Real Estate Center at Texas A&M University, College Station, Texas 77843-2115. Telephone: 409-845-2031 or E-mail: info@recenter.tamu.edu. **SUBSCRIPTIONS** are free to all Texas real estate licensees who provide their name, address, telephone and license numbers to Department TG at the address given. Other subscribers, $20 per year in Texas and $25 per year for nonresidents. **VIEWS EXPRESSED** are those of the authors and do not imply endorsement by the Real Estate Center, the Lowry Mays College & Graduate School of Business or Texas A&M University. **PHOTOGRAPHY/ILLUSTRATIONS:** Robert Beals, pp. 1, 14, 15, 16, 21, 22, 23; Laurence Parent, pp. 2, 4, 6, 12, 13; Real Estate Center photo library, pp. 3, 5, 7, 8, 16, 18, 19, 21; Publishers Depot, pp. 14, 15, 20.

BENCHMARKS

Typical Texas Realtor® a Man, But Women Top Producers Nationally

Although the typical Texas Realtor® is male, nationally the typical top producing sales associate is a female.

The Real Estate Center surveyed 7,000 members of the Texas Association of Realtors® (TAR). Of the 25 percent who responded, 56.3 were male, lived in the suburbs (50.5) and worked in an independently-owned single office (52.5 percent).

More than 60 percent of the Texas Realtors® said they had at least an associate degree. Three out of four said they worked at least part of the time with sales of existing single-family homes.

On average, the typical respondent was 50.4 years old, had been a Texas real estate licensee 13.6 years, worked 46.4 hours per week in real estate and had been a TAR member 12 years. They earned an average $47,377 ($35,000 median) in 1995 from activities as a Realtor®.

The National Association of Realtors® (NAR) also conducted a survey, this one aimed at the highly successful sales associate. According to NAR, the typical top producer is a 49-year-old woman with a broker's license who has been active in real estate 13 years. She has been affiliated with two firms during that time and has been with her current firm six years.

The top producer has at least a two-year degree and at least one designation from an NAR affiliate organization. In 1995, top sales associates earned a median of $130,600.

All Texas Licensees Receive *Tierra Grande, Law Letter*

Beginning with this issue, all 120,00 active and inactive Texas real estate licensees receive *Tierra Grande* magazine at no cost. This increases the magazine's circulation by 35,000.

Another major change involves the Center's popular quarterly periodical *Law Letter*. The newsletter is being expanded from four to six pages. All Texas licensees will receive it as well—some 113,000 more readers.

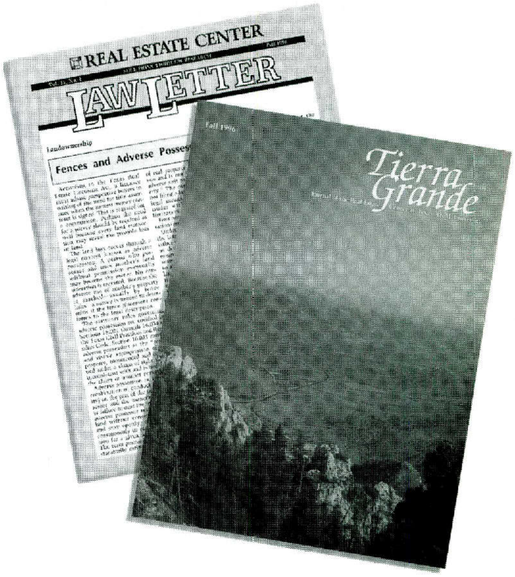
"The Real Estate Center receives the same amount of money from an inactive license as it does from an active one," says Center Director R. Malcolm Richards. "If they pay the same, they should receive the same benefits."

Although all Texas licensees will automatically receive both periodicals, individuals may have their name removed from either or both lists. Send requests for changes of address or deletion to: Circulation Manager, Real Estate Center, Texas A&M University, College Station, Texas 77843-2115.

Ted C. Jones Leaving Center

Chief Economist Ted C. Jones leaves the Real Estate Center March 17 after 14 years at Texas A&M University. Jones is the new chief economist for Stewart Title in Houston.

"Ted has been one of the most important people ever to work at the Center," says Malcolm Richards, director. "His leadership, insight and counsel will be missed. Ted epitomized the researcher who could explain real estate in everyday terms."



Before coming to Texas A&M, Jones taught appraisal and property management at the University of Canterbury in New Zealand. He holds a Ph.D. in finance with a specialization in statistics from Texas A&M. His master's degree, also from Texas A&M, is in land economics and real estate.

Take the Homestead Test

By Judon Fambrough and Ted C. Jones

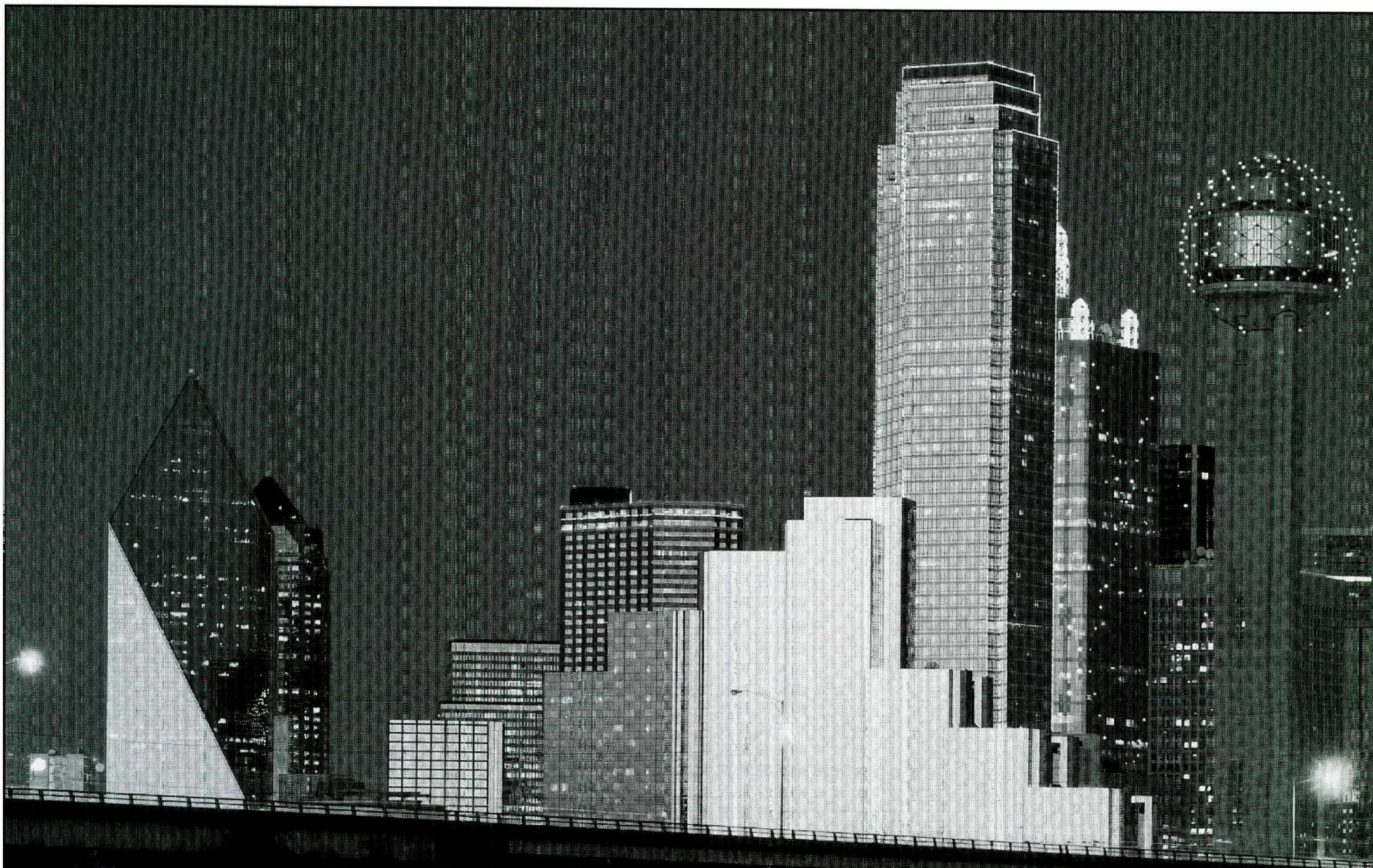
Texas is the only state that has the protective benefits and corresponding financial limitations imposed by homestead laws. A survey mailed this past year to 7,000 Texas real estate licensees tested their knowledge about this law. More than 25 percent responded. The results revealed a wide array of knowledge and opinions about the subject.

The questions are reproduced below. Take the quiz and see how you compare with the respondents. Answers can be found on page 24.

True False

1. □ □ A Texas homestead may include a business.
2. □ □ The maximum rural Texas homestead for a single person is 200 acres.
3. □ □ A residence may be claimed as a Texas homestead prior to actually living on the property.
4. □ □ Texas allows a life-time homestead.
5. □ □ Proceeds from the sale of a Texas homestead are protected for nine months from seizure by creditors.
6. □ □ A bank can have a valid lien against the homestead if the purpose of the loan was to pay federal income taxes.
7. □ □ A change in the Texas homestead laws requires amending the Texas Constitution.
8. □ □ Texas law prevents a homestead from being taken in condemnation.
9. □ □ Failure to request a property tax homestead exemption voids the rights of protection afforded by the Texas homestead law.
10. □ □ A Texas homestead can be claimed in a federal bankruptcy filing.
11. □ □ Failure to pay an assessment for street improvements can result in loss of a Texas homestead.

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



Jobs Fuel Big City Economies

Employment, Not Construction, Drives Dallas, Houston and San Antonio Growth

By Ted C. Jones and Misti Hill

Dallas

Big D continues to thrive economically, as evidenced by a strong 3.6 percent job growth rate in the past 12 months. Real estate markets continue growing, but a changing economic base and technology distribute the positive and negative impact unequally. Sales of existing housing continue to rise, as do prices, but construction is off from a year ago. Retail, while adding more than 1.5 million feet, absorbed more than two million—with more under construction. Office demand, although up overall, recorded net losses in the central business district. The Dallas economy grows at a healthy pace but so far has avoided the boom characteristics of the 1980s.

Job growth drives the fundamental direction and speed of change in an economy. The current Dallas growth rate exceeds its average 2.3 percent per year for the previous ten years. This decade-long growth takes on greater significance given the city's recession from late 1986 to 1988 followed by flat job growth from 1991 to 1993.

While job growth is healthy overall, it is not the same in all industries. The type of job growth reveals the new economic base forming in Dallas.

The good news for Dallas is the 2.1 percent increase in manufacturing jobs during the past year. Even better news is that manufacturing jobs have increased in the past decade by 4.7 percent, growing from 226,000 (17.1 percent of the work force in 1986) to 236,600 today (14 percent of the work force). While this gain pales in comparison to Austin and Houston, with decade-long increases in manufacturing jobs of 76.5 and 25.3 percent respectively, at least it reverses the losses incurred in the second half of the 1980s and early 1990s.

Mining employment, which includes oil and gas exploration and production, remains in a free-fall, plunging from 25,000 jobs in 1982 to just 11,300 today—a minuscule 0.7 percent of Dallas' work force. Total Dallas mining jobs dipped 5.8 percent during the last 12 months.

Growth perseveres in construction jobs, which increased 8.8 percent last year and an additional 7.9 percent in the past 12 months. At 75,400 workers, construction employment represents only one in 22 jobs in Dallas, down from one in 16 ten years ago.

Denton
Texarkana
Industrial Blvd

Service sector jobs have been the foundation of Dallas' job growth—adding a phenomenal 202,300 jobs in ten years.

Continued development in Dallas' transportation and utility industries, along with expansion at Dallas-Fort Worth International Airport (DFW), helped raise jobs in this sector by 6.1 percent in the past 12 months, with a hefty 51.3 percent jump in the past decade. Ten years ago, transportation and utility jobs represented 5.5 percent of Dallas' work force but now account for 6.6 percent.

Arrivals and departures at DFW were up 2.22 percent for the first eight months of 1996. American Airlines, which currently has 61.4 percent of the total passenger traffic load through DFW, gained 5.36 percent. Simmons (American Eagle) is up 49.4 percent. When combined, American and American Eagle (Simmons) carry seven of every ten passengers arriving and departing at DFW. Delta, the second largest carrier at DFW, recorded a year-to-date decline of 18.7 percent, dropping to slightly less than an 18 percent market share.

After declining by one million passengers from 1985 through 1987, Love Field continues posting annual increases. Through August 1996, Love Field increased passenger traffic by 2.66 percent. Southwest, Love's primary user, saw year-to-date traffic rise by 2.79 percent.

Trade employment, increasing by an annual average 1.9 percent in the past ten years, swelled to 3.9 percent growth in the past 12 months. One out of every four Dallas jobs is now in the wholesale and retail segments, down from one in every 3.7 in 1986. This decline mirrors the nation-wide structural change in retailing from high-service operations to power-center and discount units.

Dallas continues to have an international retail and wholesale presence. The 1995 decline in the rate of retail sales growth reflected the peso devaluation. Given, however, a stabilized peso and continued Dallas employment growth, the last four quarters summon good news for retailers. Net absorption of two million square feet of space kept ahead of more than 1.5 million square feet of new construction in the first eight months of 1996. The Galleria alone added more than 300,000 square feet.

Employment by governmental agencies grew 1.8 percent last year, while the financial sector (finance, insurance and real estate) rose only 0.2 percent. Government employment represents 11.7 percent of the total work force and the financial sector 7.8 percent.

The foundation of employment growth in Dallas has been in the service sector, which has added a phenomenal 202,300 jobs in the past ten years. This represents a growth rate of 69.7 percent or nearly 58 percent of new jobs created since 1986. In the past 12 months alone, the number of service sector jobs has grown by 4.7 percent.

Perhaps the best news for the United States' hotel and motel industry is the continued improvement in operating profit margins. Although Dallas occupancies rose slightly in the first ten months of 1996 (up 0.6 percent versus a 1.6 percent decline statewide), the average daily rate was up 8.4 percent, according to PKF Consulting of Houston.

The real economic gain to Dallas was in revenues, with average room costs rising from $82.17 to $89.08. The combination of higher nightly rates and an increasing total number of rooms rented equates to a 9.4 percent gain in the total dollar revenues of hotels and motels. The most expensive room costs were found in the central business district (averaging $106.73), followed closely by the Market Center area ($104.36). No area reported declining average daily room rates or lower total revenues.

Population growth continues at a healthly more than 2 percent per year. This fuels housing demand, while jobs supply the oxygen to keep the fire burning. Housing demand reflects the large number of new dwellers moving into the Dallas area and finding employment. Sales of residential dwellings were up 14 percent in the past 12 months, with a corresponding minimal 6.8 months of inventory.

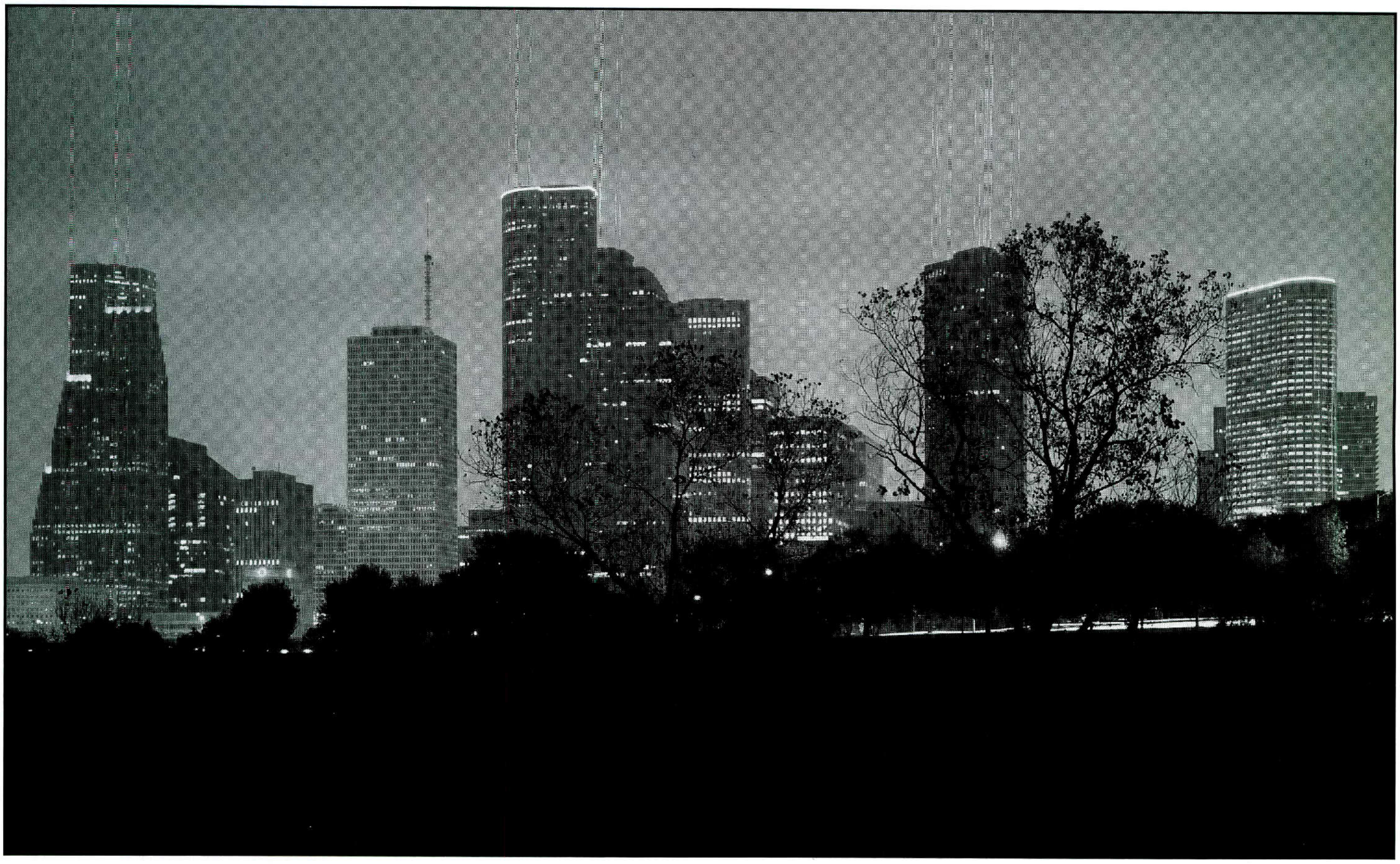
Job growth continues to create substantial added housing demand. Average prices soared in recent months. This statistic rose primarily as a result of sales of larger, high-amenity properties and does not necessarily imply a value increase for all properties. The average price of houses marketed through the Multiple Listing Service (MLS) in the past 12 months was $129,600, up 6 percent from last year. The median price—at which one-half of all homes sold for more and one-half sold for less—was $99,300, up 7 percent from 1995. Interest rates will play a major role in future house sales and price movements.

Sales have recovered from the higher interest rates during early 1995 but, just as the rest of Texas, slumped significantly in the past month.

As with last year, perhaps the best kept secret in real estate today is that, for many renters, the combined principal and interest payment for a similar residence is the same as or less than the monthly cost of renting. Occupancies, though anticipated to drop in 1996, have actually risen, driven by higher-than-anticipated job growth, a slowed construction pace and accelerated demolition of existing units.

The number of residential dwelling permits issued is 26,400 today (on an annualized basis), a decrease of 4.2 percent from last year. The question is whether too many homes are being built today. The answer is ***no***, given that the growth rate in the number of jobs exceeds the nearly 2 percent annual rate of increase in houses by 90 percent. This does not mean, however, that one price range or location is not being overbuilt. Inventories of higher-priced homes are creeping up, indicating potential problems in some segments of the new and existing housing market.

Housing, while growing in overall stock, has fared well this past year, although weakening this past month in sales volume. Given limited inventories, prices should continue to rise. The structural change in retailing will perpetuate the seemingly endless cycle of build, bulldoze and remodel. Office absorption is a function of technological impact on office demand and location. The service sector, the prime growth industry of Dallas, also is likely the most influenced by technology in its needs for real estate.



Houston

The Bayou City's economic health continues to be excellent for a second straight year, based on a 2.5 percent job growth rate in the past 12 months. Houston's residential market has set records this past year, with limited inventories available for prospective buyers. This, in turn, has driven construction of the most dwelling units since 1984. Houston continues to expand its role as a major international wholesale and retail center and is aided by a stabilized Mexican peso. Net office absorption is approaching one million square feet, with rents rising slowly. Retail space expanded by nearly four million square feet, although this rate of growth is not anticipated for the coming year. The good news once again is that Houston's economy is expanding. The best news is that it has diversified without using the four-letter word *boom*.

Houston's growth rate is good news for an economy tied to the minimal growth of the national economy. The total number of civilian jobs has grown 28.3 percent in the past ten years, rising to 1.8 million employed workers. In contrast, total U.S. employment increased 19.9 percent in the past decade. Houston endured two major recessions in the early and mid-1980s but barely experienced job losses during the early 1990s when both Texas and the United States rode out a recession.

The great news for Houston is the 25.3 percent increase in manufacturing jobs in the past ten years, with a 2.7 percent rise measured in just the past 12 months. This important sector represents 10.6 percent of the total work force, significantly less than the nation's rate of 15.4 percent.

Mining employment (including oil and gas) has plunged from 109,600 jobs in 1982 to just 66,000 today—representing just 3.6 percent of Houston's work force.

The number of construction jobs has grown only 1.8 percent in the past 12 months or 30.9 percent for the decade. Construction workers represent 6.9 percent of the work force, compared to 4.5 percent in the United States. Transportation and utility-based employment currently represents 6.9 percent of Houston's work force (5.3 percent in the United States.)

Airline arrivals and departures at Houston International (IAH) are up 7.7 percent. The growth in traffic is skewed towards international travel, up 16.4 percent versus 6.6 percent in domestic passengers. Freight operations are up 6.2 percent. Hobby Airport continues to sustain a pace of 8 million passengers annually.

Houston's manufacturing jobs increased by 25.3 percent during the past ten years.

Trade employment, increasing by 18.4 percent in the past ten years, represents 23.5 percent of all jobs, down from 25.7 percent in 1985. This reflects the structural change in shopping habits. Houston has long been an international retail and wholesale center. Reflected in the stabilized peso are climbing retail sales. While a stabilizing peso is positive for future retail growth, the four million square feet added in the past 12 months points to reduced future retail construction activity.

Employment by governmental agencies grew a miserly 0.6 percent in 1995, representing 13.7 percent of all local jobs and significantly less than the 16.3 percent nationwide. The financial sector (finance, insurance and real estate) was down 1.1 percent compared to a year ago, adding to the decade-long 9.7 percent decline. During the same period, financial jobs nationwide rose 10.8 percent.

The foundation of employment growth in Houston has been in the service sector, which added more than 200,000 jobs in the past ten years. This represents a phenomenal growth rate of 59.1 percent since 1986. The service sector posted the largest gain of all job categories in the past 12 months, rising 3 percent.

A 2.5 percent job growth rate indicates a healthy Houston economy.

Although Houston's hotel-motel occupancies declined in the first ten months of 1996 (down 0.7 percent versus a 1.6 percent decline statewide), the average daily rate was up 6 percent, according to PKF Consulting of Houston. The real gain was in Houston's revenues, with average room costs rising from $68.58 to $72.67. The combination of increased nightly rates and more rooms rented equates to a 4.8 percent gain in the total dollar revenues of hotels and motels. The most expensive room costs were in the central business district (averaging $102.83), followed closely by the Post Oak-Galleria area ($97.43). Only the Hobby Airport area reported declining average daily room rates, slipping slightly from $59.95 last year to $57.88 in October.

Housing demand in Houston reflects the large number of people moving into the area and successfully finding employment. Sales of single-family dwellings were up 13.2 percent for the 12 months ending in November, leaving a corresponding small 7.2 months of inventory.

Job growth has created substantial housing demand. Preliminary 1996 residential sales through the Houston Association of Realtor's MLS indicate record numbers. Since reversing the declining sales trend recorded in the latter half of 1994 through the summer of 1995, all months except one show increased sales compared to one year earlier.

Houston's average home price in the last 12 months was $111,500, an increase of 6 percent. The median price, at which one-half of all homes sold for more and one-half sold for less, was $82,200, also up 6 percent. Through November, the 8.6 months of supply was 16 percent less than last year. Given the increased supply, house prices should continue a gradual rise.

Sales may be showing effects of varying interest rates experienced in recent months. The MLS submarkets of Aldine-Westfield, Alief and Bellaire West each had 18 or more percent of property sales close in November. Rental rates are rising approximately 3 percent annually.

The number of residential dwelling permits issued rose to 20,500 (on an annualized basis), the most issued since 1984. This rate equates to an annual expansion in the total number of dwellings in Houston to approximately 15 percent.

The question is whether too many homes are being built today. The answer is ***no***, given that the growth rate in the number of jobs exceeds the 1.3 percent annual rate of increase in houses by more than double. That is not to say, however, that one price range or location is not being over-built. Inventories of higher-priced homes ($400,000 and more) are creeping up, indicating potential problems in some new housing market segments.

A 2.5 percent job growth rate indicates a healthy Houston economy. Houston is not, however, without concerns. Job growth makes addressing these issues much easier, however. Houston is continuing economic momentum that will assist in overcoming many roadblocks placed in its path. In this age of a global economy, the international connections of Houston bode well for success. The city, however, carries scars from the 1980's real estate over-building roller coaster. Houston's current job growth finally has gained enough momentum to move ahead—and that's great news.

San Antonio

The Alamo City continues to grow in the face of economic uncertainty. The good news in the past 12 months has been continued economic recovery in Mexico, as noted by the year-to-date 21.5 percent increase in exports from Texas to Mexico. Progress towards privatization at Kelly continues, although significant uncertainty hovers over the ultimate long-run success. Job growth maintained a respectable pace of 2.6 percent in the past 12 months, but this is down from nearly 4 percent last year and a 2.8 percent annual average during the past decade.

While San Antonio's 2.6 percent job growth exceeds that of the United States, it is measurably less than the nearly 4 percent level posted just a year ago. The total number of civilian jobs has grown more than 28 percent in the past decade, rising to 645,000 jobs today. Since the early 1980s, San Antonio has had only one short period of declining employment compared to the same period one year earlier. The declining job growth rate trend generated by the December 1994 peso crash causes concern.

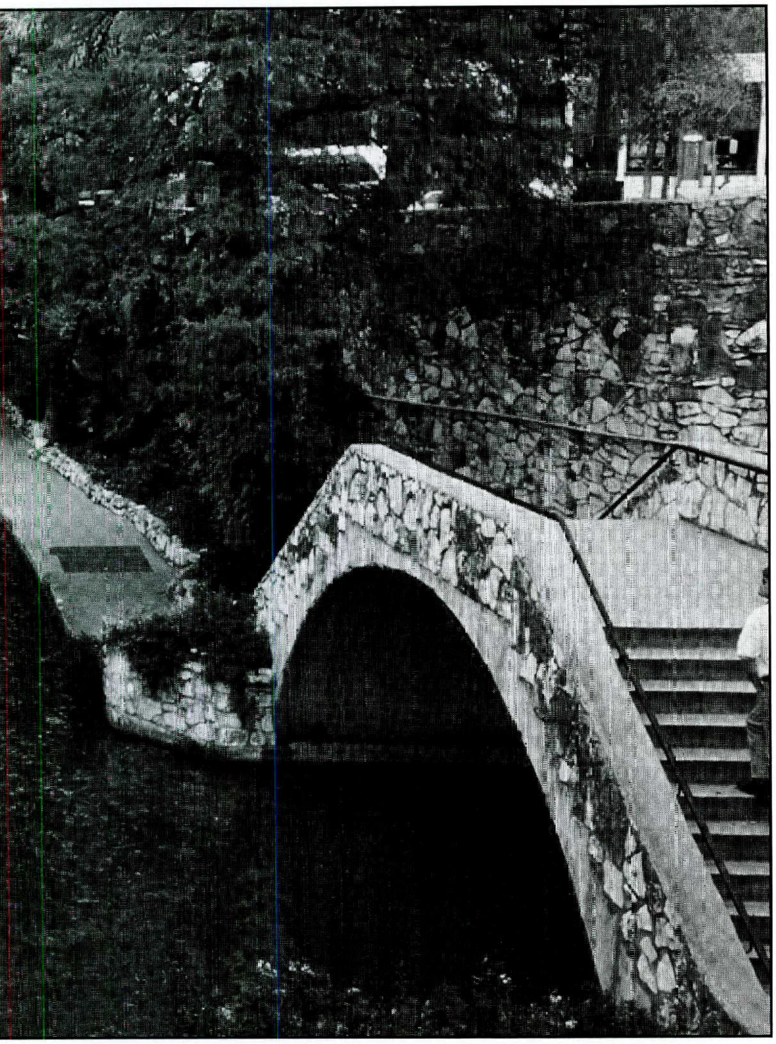
Manufacturing jobs historically have been the most important sector to the local economy and among the highest multipliers of dollars spent. Promising news for San Antonio is the 1 percent increase in manufacturing jobs last year. Even better news is that San Antonio has increased manufacturing jobs in the past decade by 2.5 percent, growing from 48,600 in 1986 (9.8 percent of the total work force) to 49,600 today (7.7 percent of the work force). Unfortunately, manufacturing has declined from 12.7 percent of the work force since 1981.

Mining employment, which includes oil and gas exploration and production, plus the limestone quarry business (for Portland cement production), has plunged from 3,400 jobs 11 years ago to just 1,900 today—representing a scant 0.3 percent of San Antonio's work force.

The number of construction jobs jumped an additional 7.1 percent in the past 12 months, after rising 10.4 percent a year ago. This sector had the largest 12-month growth rate. Construction jobs represent 5.4 percent of the local work force in contrast to 4.5 percent in the United States.

Activity along the I-35 corridor, combined with continued growth in passengers and freight flying into and out of the airport in the past decade, resulted in the 2.8 percent increase in the past year of transportation and utility jobs. Transportation-based employment currently represents 4.6 percent of San Antonio's work force, slightly less than the 5.3 percent national rate. Arrivals and departures were up by 13.8 percent in the first seven months of 1996. Domestic traffic rose 13.2 percent while international travel jumped an impressive 38.6 percent. Domestic passengers outnumber international travelers by a factor of 34 to one.

If the latest month is a trend, then even better news lies ahead in this sector, with a recorded 21.4 percent overall increase in passenger traffic (domestic up 19.9 percent and



international up 64.9 percent). Mail and freight posted a 5.9 percent year-to-date gain

Trade employment increased by 30,800 jobs in the past decade and represents 24.4 percent of the work force, slightly greater than the national average of 23.5 percent. The more than 26 percent-per-year gains in retail sales became negative or slightly positive after the December 1994 peso devaluation. Sales have picked up, and when combined with a more stable peso and continued San Antonio employment growth, hope emerges for retailers. During this period of frustrating sales activity, retail construction has increased substantially, setting the stage for older, trade-related properties to come on the market for sale and lease.

The keys to the health of San Antonio probably are outside local control.

Employment by governmental agencies grew 2.4 percent last year, while the financial sector (finance, insurance and real estate) rose by a paltry 0.9 percent. One out of every five employed San Antonians works for the government, contrasted to 11.7 percent of Dallas' jobs and 13.7 percent of Houston.

The solid foundation of employment growth in San Antonio has been in the service sector, which has seen the phenomenal addition of 77,200 jobs in the past ten years, representing a growth rate of 67.5 percent, or 55 of every 100 new jobs. In the past 12 months alone, service sector jobs rose by 4.1 percent—indicating the increasing importance of medical facilities and tourism trade for San Antonio.

The bad news for San Antonio's hotel-motel industry was a 2.3 percent decline in market-wide occupancy, measured in the first ten months of 1996, according to PKF Consulting of Houston. The airport area reported the only gain (0.7 percent) while the northwest recorded the highest decline (-5.7 percent).

In contrast, the average daily room rates rose city-wide by 3.1 percent to $71.79. Highest average tariff was in the central business district, and the lowest cost rooms were in the northeast. Total dollar volume is off 0.3 percent year-to-date, different from the state-wide increase of 3.9 percent. Mexico's economic perils continue to permeate San Antonio's hospitality industry.

Housing demand in San Antonio reflects the large number of people moving into the area and finding employment.

Sales of residential dwellings were finally back to the level reached in 1979. Percentage increases, however, follow a pattern typical across South Texas.

The average price of houses marketed through the San Antonio Board of Realtor's MLS in the last 12 months was $101,300, an increase of 3 percent from last year. The median price at which one-half of all homes sold for more and one-half sold for less, was $82,700, up 5 percent from the prior year. This reflects growing entry-level market activity.

The number of months of inventory has crept back into the realm that historically has stabilized prices. Prices rise most when the number of months inventory is lower than 11 months. This current level of supply may moderate price increases in the coming year, although nothing indicates falling prices.

The number of residential dwelling permits issued has climbed back to 9,100 (on an annualized basis). Preliminary annualized numbers indicate that single-family permit activity is up 14 percent while the number of multifamily permits are up 28 percent.

The question is whether too many homes are being built today. The answer is still ***no***, given that the growth rate in the number of jobs exceeds the 2.2 percent annual rate of increase in houses. That is not to say, however, that one price range or location is not being overbuilt. Inventories of higher-priced homes (more than $135,000) are creeping up, indicating potential problems in some segments of the new housing market. While the current pace of new dwellings is less than the overbuilding level of 1982 through 1984, it is treble the 1987 and 1991 rates.

The keys to the health of San Antonio are probably out of local control. Mexico's ills continue to haunt the San Antonio economy, although the more than 21 percent increase of Texas exports to Mexico is good news. While a 2.6 percent job growth rate would be welcomed across most of the country, it is significantly below recent San Antonio performance. On one hand, residential housing finally has returned to the late 1970's level; on the other hand, declining sales, rising inventories and substantial housing starts dim the outlook. The unresolved long-term water issue, a 1997 election in Mexico, uncertainty created by the federal Endangered Species Act and successful privatization of Kelly AFB challenge San Antonio. ⊞

Dr. Jones is chief economist and Hill is a student research assistant with the Real Estate Center at Texas A&M University

Texas Economy Mimics Nation

By Jared E. Hazleton

The nation's economy just completed its sixth consecutive year of growth. The 1997 outlook appears to be a rerun of the 1996 forecast: on average the U.S. economy will record moderate growth, low unemployment, low inflation and low interest rates. Is it any wonder that economists are beginning to feel like the Maytag repairman? With nothing needing fixing, no one ever calls.

Some variation, however, prevented an economic flatline in 1996. Robust growth in the first six months gave way to some summer doldrums. Economic growth slowed in the third quarter to less than half the 4.7 percent pace of the second quarter. Consumers apparently wanted a breather after taking on mountains of credit card debt earlier in the year.

Third-quarter growth also was slowed by an increasing trade deficit. Exports declined as a result of the sluggish growth of some of the nation's leading trading partners, particularly Mexico and Japan. Imports surged as a strengthening dollar gave foreign producers an opportunity to gain market share here by cutting prices.

Mortgage rates jumped in the first six months of 1996 and began to dampen housing markets in late summer, as starts and sales of existing homes both fell. Contrary to the conventional wisdom that it is impossible to bring unemployment down without causing prices to rise, the nation's unemployment rate fell to near 5 percent by late summer, its lowest level in 20 years, but prices remained stable with the Consumer Price Index holding at less than 3 percent. The economy improved slightly in the final months of 1996 as consumers returned to the nation's auto showrooms and shopping malls, bringing Christmas cheer to retailers.

Growth is expected to continue into 1997, spurred by strong consumer confidence and rising real incomes, lower long-term interest rates and increased exports resulting from economic improvements among major trading partners, especially Mexico, Japan and Europe. Business fixed investment and residential investment should continue to slow.

With inflation remaining at about 3 percent, look for the Fed to hold short-term interest rates at or near current levels in the first half of 1997. Should signs of impending acceleration of inflation arise, however, the Fed would not hesitate to nudge the federal funds rate a couple of times by a quarter of a point. Long-term interest rates, which fell after the election, should stabilize in the first few months of 1997. However, long-term rates could move upward some later in the year in response to the Fed's tightening.

The Texas economy, once so unique, now looks much more like that of the nation, and the Lone Star State's economic prospects are tied more closely to the U.S. outlook. In the 1990s, however, Texas consistently has outpaced the nation in economic growth, partly because of a younger and more dynamic population.

The slowdown south of the border from the peso devaluation and the ensuing austerity program of the Zedillo administration dampened Texas growth in 1996. In addition, some areas of the state were hard hit by the drought. For the year, nonfarm employment was up an estimated 3.2 percent but still lower than the 3.6 percent rise in 1995.

Most job gains occurred in services, although construction recorded a larger percentage gain. The remaining sectors recorded below-average job growth. Manufacturing employment, for example, posted a modest 1 percent or so increase, as job gains in durable goods industries (particularly those related to construction, such as lumber and wood products; furniture and fixtures; and stone, clay and glass products) offset a slight decline in nondurable goods manufacturing employment.

Just when it looked as if the oil industry was going to have to continue indefinitely with $18- to $20-a-barrel oil, the market suddenly tightened, driving prices to nearly $25 a barrel. Strengthening demand in both developed and developing nations is placing stronger pressure on the world's oil supply. At the same time, oil companies are managing inventories more closely. The result of these forces is higher and more volatile oil prices. Nonetheless, mining was the only sector in the state to record job reduction in 1996, down about 2 percent compared to 1995.

At year-end, the prospects for Iraq returning to world oil markets began to improve after having been earlier put on hold by the flare-up over Kurdish problems. Iraq's presence in the market in 1997, however, likely will not cause oil prices to weaken but simply help provide the increased supply needed to fulfill rising energy demands.

In 1996, 25 of the 27 metropolitan areas in Texas posted a rise in average nonfarm employment, compared to 1995. Regional patterns of growth mirrored those of recent years.

- With Austin leading the way, the major metropolitan areas along IH 35 from San Antonio to Dallas-Fort Worth continued to record above-average job growth. While these cities differ in economic structure, they obviously benefit from being located along the major growth corridor stretching to Monterrey, Mexico. On average, their economies are more diversified than other Texas cities, and they have a stronger presence in knowledge-based, information-intensive businesses, such as computers and telecommunications.
- Military redeployments helped Killeen-Temple and Wichita Falls achieve above-average employment growth in 1996.
- Employment growth along the Texas border slowed last year, as the lower-valued peso virtually halted Mexicans crossing the border to shop. Among the border cities, those with more diversified economies, such as Brownsville-Harlingen and McAllen-Edinburg-Mission, managed to achieve above-average job gains. El Paso and Laredo, however, which were much more dependent on Mexico, had a small decline in nonfarm employment.
- Regions of the state heavily dependent on the production of commodities, such as the Gulf Coast and East Texas, continued to grow but at a slower rate. For example, employment growth in Houston increased only about 2 percent in 1996, primarily because the Bayou City economy continues to be dominated by blue-collar, resource-based industries, such as oil and gas services, refining and petrochemicals manufacturing.
- Smaller metropolitan areas—such as Tyler, Bryan-College Station, Sherman-Denison, San Angelo, Texarkana, Odessa-Midland, Amarillo and Lubbock—dropped below the state average in employment growth as the recent trend toward regionalization of retail trade and services appeared to be nearing an end. After such cities have developed their regional hospital and attracted major discount stores and entertainment complexes to serve their multi-county trade areas, employment growth generally slows because a second round of such development is unlikely.

When the final numbers are in, they likely will show that output in the state rose about 5.8 percent in 1996. The Center for Business and Economic Analysis at Texas A&M projects that growth in the gross state product will slow to 5.4 percent in 1997. Gains in nonfarm employment are expected to decline to about 2.4 percent in this year, down from 3.2 percent in 1996. Projections for individual cities show a continuation of the pattern of growth experienced in recent years, although with diminished rates of increase in most cities. Bucking the downward trend will be the border cities, which should benefit from continuing improvement in the Mexican economy.

Nonfarm Employment in Texas Metropolitan Areas

Metropolitan Area	*Change 1995-96 (percent)	Projected Change 1996-97 (percent)	1997 Forecast (000 jobs)
Abilene	1.2	1.0	53.5
Amarillo	3.1	2.6	96.0
Austin-San Marcos	4.7	4.0	562.5
Beaumont	1.0	1.0	153.8
Brazoria County	1.0	0.1	72.2
Brownsville-Harlingen-San Benito	3.0	3.0	98.1
Bryan-College Station	0.8	1.2	65.1
Corpus Christi	1.9	1.5	150.5
Dallas	3.6	3.5	1,716.9
El Paso	-0.2	0.5	235.5
Fort Worth-Arlington	3.6	3.4	699.9
Galveston	0.8	0.8	88.1
Houston	2.5	2.2	1,845.2
Killeen-Temple	4.8	2.8	99.3
Laredo	-0.8	1.1	55.7
Longview-Marshall	1.1	1.0	85.2
Lubbock	2.7	2.0	112.5
McAllen-Edinburg-Mission	3.6	3.6	132.4
Odessa-Midland	2.3	2.0	100.0
San Angelo	1.0	0.7	41.7
San Antonio	2.6	3.0	658.8
Sherman-Denison	1.2	1.2	41.5
Texarkana	1.6	1.4	50.7
Tyler	0.4	0.4	72.3
Victoria	1.2	1.0	33.8
Waco	2.5	2.0	96.5
Wichita Falls	3.4	2.0	59.8
Texas	3.2	2.4	8,482.4

*Preliminary
Source: Center for Business and Economic Analysis at Texas A&M University

Dr. Hazleton is a research fellow with the Real Estate Center and director of the Center for Business and Economic Analysis at Texas A&M University.

Advertising Where It Counts

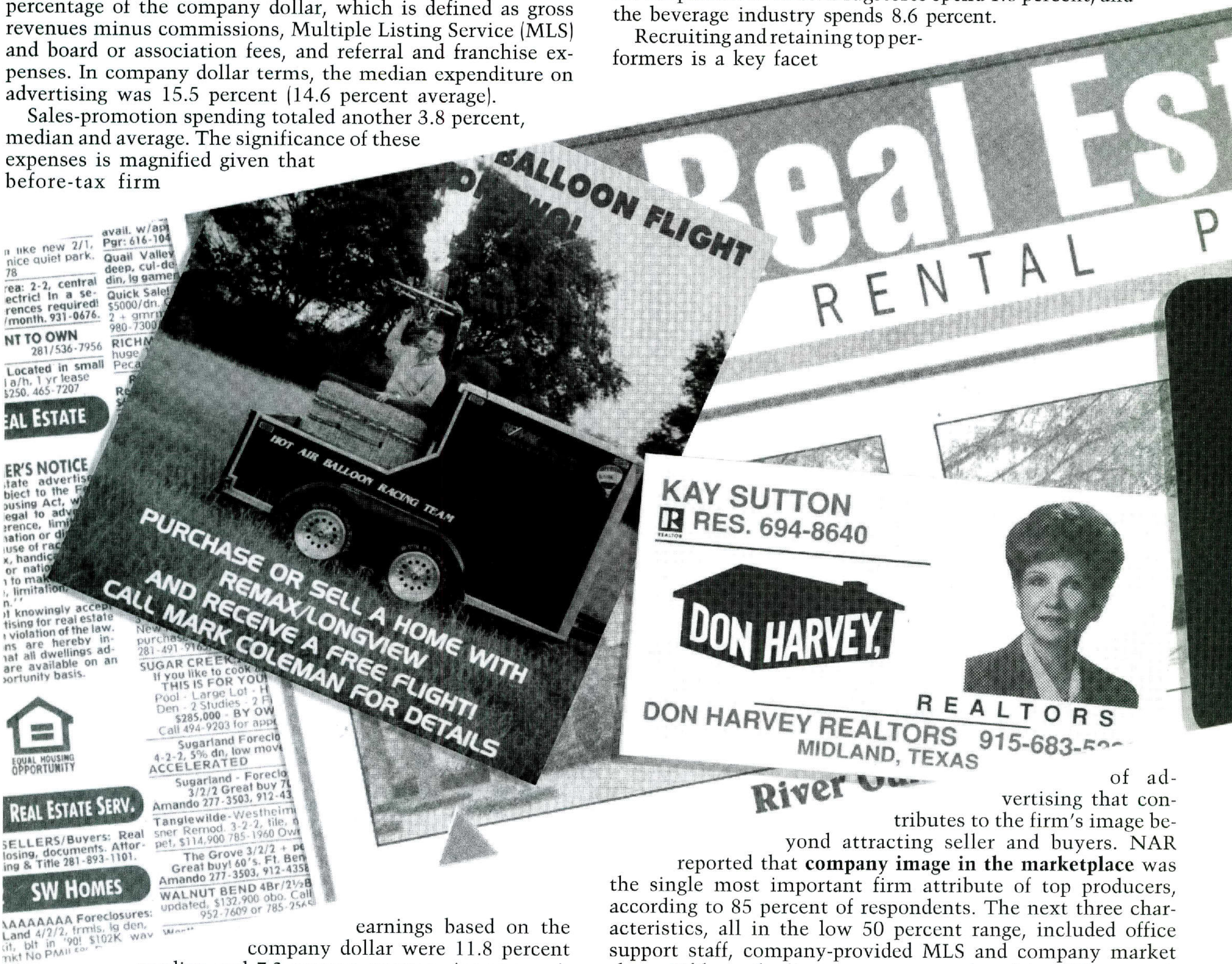
By Ted C. Jones and Larry Hart

With change surging through the brokerage industry, owners and agents must strive continually to control costs and reap the maximum benefits from expenditures. According to the National Association of Realtors (NAR), commissions alone have risen from 50 percent of the typical residential brokerage firm's gross income since 1990-91 to 58 percent last year. Advertising is integral to revenues and expenses.

Advertising not only communicates availability of properties to prospective buyers, but it entrenches the firm's image with consumers and agents. Given that advertising and marketing expenses are the second greatest expenditure for firms, they can be a key to profitability and success.

How much does the typical firm spend on advertising? NAR used two methods for quantifying costs. The first is known as the *company dollar approach.* It expresses expenditures as a percentage of the company dollar, which is defined as gross revenues minus commissions, Multiple Listing Service (MLS) and board or association fees, and referral and franchise expenses. In company dollar terms, the median expenditure on advertising was 15.5 percent (14.6 percent average).

Sales-promotion spending totaled another 3.8 percent, median and average. The significance of these expenses is magnified given that before-tax firm earnings based on the company dollar were 11.8 percent median and 7.2 percent average. Average residential brokerage firm advertising expense is more than double average earnings.


BALLOON FLIGHT
HOT AIR BALLOON RACING TEAM
PURCHASE OR SELL A HOME WITH REMAX/LONGVIEW AND RECEIVE A FREE FLIGHT! CALL MARK COLEMAN FOR DETAILS
Real Est
RENTAL P
KAY SUTTON
RES. 694-8640
DON HARVEY
REALTORS
DON HARVEY REALTORS 915-683-5
MIDLAND, TEXAS
River
EAL ESTATE
ER'S NOTICE
EQUAL HOUSING OPPORTUNITY
REAL ESTATE SERV.
SW HOMES
NT TO OWN
SUGAR CREEK
Sugarland Foreclo
ACCELERATED
Tanglewilde-Westheim
The Grove 3/2/2
WALNUT BEND 4Br/2½B

Newspapers accounted for 8.4 percent of the company dollar, institutional and direct mail brochures for 1.6 percent each, radio and television 1 percent total, signs and Yellow Pages for less than 1 percent each and other 1.5 percent. Responding firms had a median gross annual revenue of $260,000. The average gross annual revenue was nearly $1.5 million.

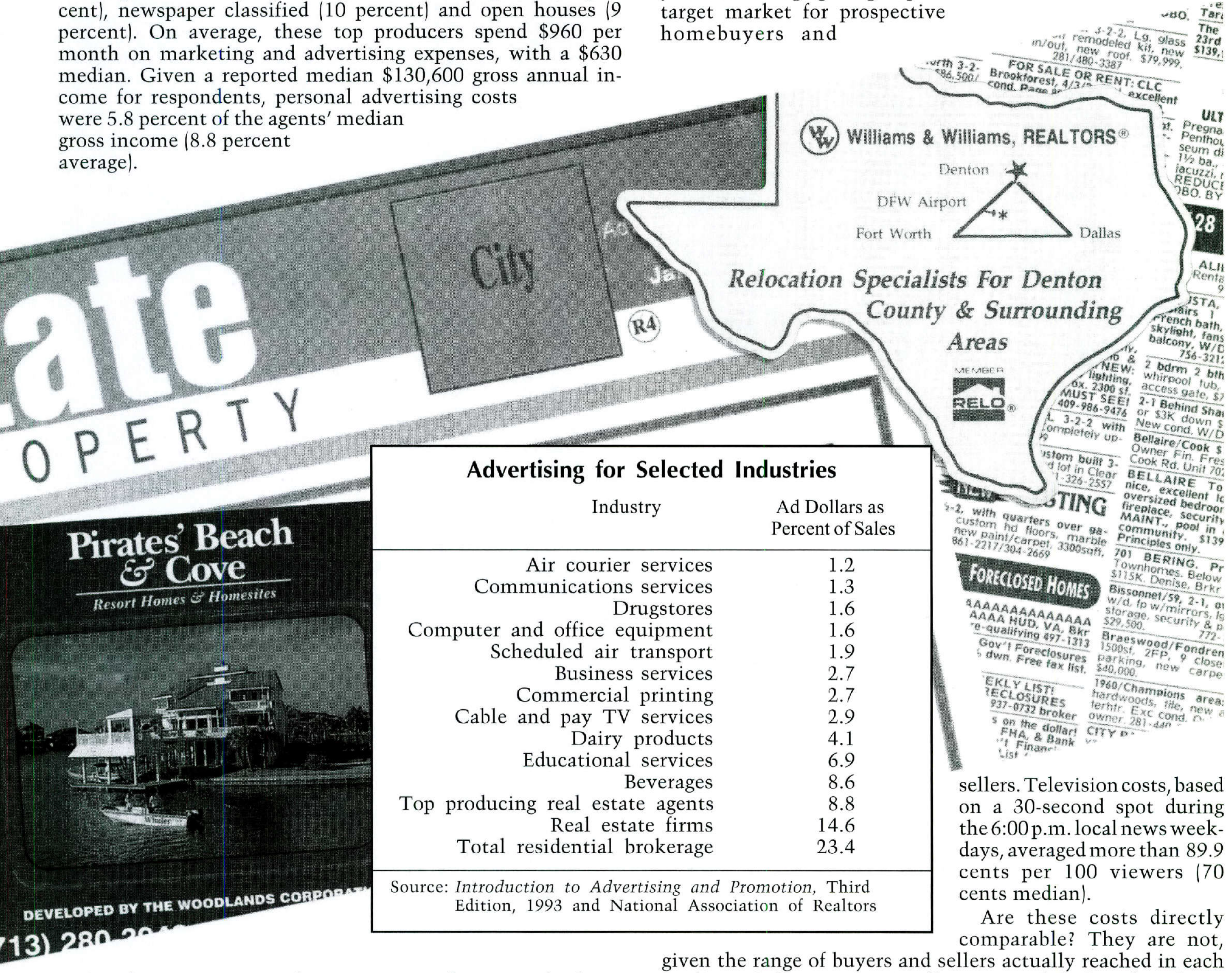
The second method in NAR's study for cost analysis is the *income statement approach.* Expenses are expressed as a percentage of gross revenues. Median advertising cost was 6.6 percent of gross income, with an added 1.6 percent spent on sales promotion. Average advertising cost was 5.4 percent with an associated promotion expenditure of 1.4 percent. Earnings before interest and taxes were a median 5.5 percent (2.9 percent average).

Thus, in the income statement approach, total advertising and marketing expenses were almost 1.5 times median firm earnings and 2.3 times average earnings. In comparison, total advertising expenditures in the air courier services industry are 1.2 percent of sales. Drugstores spend 1.6 percent, and the beverage industry spends 8.6 percent.

Recruiting and retaining top performers is a key facet of advertising that contributes to the firm's image beyond attracting seller and buyers. NAR reported that **company image in the marketplace** was the single most important firm attribute of top producers, according to 85 percent of respondents. The next three characteristics, all in the low 50 percent range, included office support staff, company-provided MLS and company market share. Fifth on the list was company advertising (37 percent), followed by firm referral network affiliation (36 percent), franchise affiliation (31 percent) and company education and training (30 percent). To be included in this survey, agents had to have either a minimum of 30 closed transactions or $3 million in commission income in 1994.

Top producers' best liked characteristic of their current firm was **the firm's image with consumers,** as noted by nearly one out of five respondents. The least liked characteristic of their current firm was the **firm's advertising support**, which at 18 percent was greater than **the firm's technology support** of 15 percent.

The most effective advertising media for these top producers was word of mouth (66 percent), for-sale signs (21 percent), farming newsletter (15 percent), home sales magazine (14 percent), newspaper classified (10 percent) and open houses (9 percent). On average, these top producers spend $960 per month on marketing and advertising expenses, with a $630 median. Given a reported median $130,600 gross annual income for respondents, personal advertising costs were 5.8 percent of the agents' median gross income (8.8 percent average).



Advertising for Selected Industries

Industry	Ad Dollars as Percent of Sales
Air courier services	1.2
Communications services	1.3
Drugstores	1.6
Computer and office equipment	1.6
Scheduled air transport	1.9
Business services	2.7
Commercial printing	2.7
Cable and pay TV services	2.9
Dairy products	4.1
Educational services	6.9
Beverages	8.6
Top producing real estate agents	8.8
Real estate firms	14.6
Total residential brokerage	23.4

Source: *Introduction to Advertising and Promotion*, Third Edition, 1993 and National Association of Realtors

Are the optimum spending amounts and patterns for firms and agents as noted in the top producer study? Probably not, given technological changes ranging from television slide and video shows to the Internet that are excluded from those categories. Prior research has shown that initial contact by an agent through television advertising is one of the most significant factors in attracting repeat buyers.

So what is the optimum allocation of advertising? No single rule works for all firms and agents, but a complete analysis of advertising avenues for cost and benefit analysis should include the Internet (a growing, target-rich environment in the higher price ranges), radio and television (in addition to the standard newsprint), signage and home sales magazines and supplements.

A recent Real Estate Center survey comparing advertising costs in Texas found a wide-ranging difference in the cost per contact. The typical cost per 100 readers of a three-line, single-column classified advertisement run for a period of two weeks was 4.58 cents per average week-day subscriber (2.35 cents median).

Radio advertising, a less-used medium for real estate advertising, averaged 14 cents per 100 listeners (12.6 cents median) for a 30-second spot. The radio ad is based on buying 30 spots per month on weekdays, with the ad aired from 6 a.m. to 7 p.m. and includes only those listeners in the 25- to 54-year-old demographic group—an attractive target market for prospective homebuyers and sellers. Television costs, based on a 30-second spot during the 6:00 p.m. local news weekdays, averaged more than 89.9 cents per 100 viewers (70 cents median).

Are these costs directly comparable? They are not, given the range of buyers and sellers actually reached in each medium. Only a systematic effort to record the benefits—long-term tracking of leads—will confirm the cost effectiveness for either the firm or agent.

Without question, the need to effectively target consumers in an advertising campaign is critical. Effective advertising builds the firm's and agents' images and, at the same time, optimally allocates limited promotional dollars. Advertising quality and costs warrant detailed scrutiny. Given that the firm and agent are spending a combined 14 percent of gross income on marketing and advertising, this one expenditure demands the highest priority. 🏢

Dr. Jones is chief economist and Hart a former research assistant with the Real Estate Center at Texas A&M University.

Statutory Limitations for Equine Activities

By Judon Fambrough

Effective September 1, 1995, the Texas Legislature enacted a new statute that encourages equine activities by limiting the liability of those who sponsor or permit such events as parades, trail drives or shows. More precisely, the statute provides that "any person, including an *equine sponsor* or an *equine professional*, is not liable for property damage or damages arising from the personal injury or death of a *participant* if the property damage, injury, or death result from the dangers or conditions that are an *inherent risk* of *equine activity*. . ." (Chapter 87 of the Texas Civil Practices and Remedies Code). The statute lists *inherent risks* as:

- the animal's tendency to behave in ways that cause personal injury or death;
- the animal's unpredictable reaction to sound, sudden movement or unfamiliar object, person or other animal;
- certain land conditions and hazards, including surface and subsurface conditions;
- collision with another animal or object; or
- a participant's negligent actions that cause injury to themselves or others when they fail to control the animal or to act within their ability.

Definitions—which comprise half of the statute—are critical for understanding the new law. For instance, the term *equine animal* includes a horse, pony, mule, donkey or hinny.

An *equine activity* includes:

- an equine animal show, fair, competition, performance or parade that involves any breed of equine animal and any equine discipline, including dressage, hunter and jumper horse shows, grande prix jumping, three-day events, combined training, driving, pulling, cutting, polo, steeplechasing, English and Western performance riding, endurance trail riding, Western games and hunting;
- equine training or teaching activities;
- boarding equine animals;
- riding, inspecting or evaluating an equine animal belonging to another, whether or not with compensation to the owner;
- informal equine activity, including a ride, trip or hunt that is sponsored by an equine activity sponsor;
- permitting a prospective purchaser of the equine animal to ride, inspect or evaluate the equine animal;
- sponsoring an informal equine activity, including a ride, trip or hunt;
- placing or replacing horseshoes on an equine animal; or
- rodeos and single-event competitions, including team roping, calf roping and single steer roping, whether or not the participants are compensated.

An *equine activity sponsor* means:

- a person or group who sponsors, organizes or provides the facilities for an equine activity, including equine facilities

- for a pony club, 4-H club, hunt club, riding club, therapeutic riding program, high school or college class, program or activity without regard to whether the person operates for profit or
- an operator of, instructor at, or promoter for equine facilities. including a stable, clubhouse, pony ride string, fair or arena where an equine activity is held.

An *equine professional* means a person who for compensation:

- instructs a participant or rents to a participant an equine animal for the purpose of riding, driving or being a passenger on the equine animal or
- rents equipment or tack to a participant.

A *participant* means a person who *engages in an equine activity* regardless of whether the person is an amateur or professional or whether the person pays for the activity or participates in the activity for free.

Engages in an equine activity means riding, handling, training, driving, assisting in the medical treatment of, being a passenger on or assisting a participant or sponsor with an equine animal. The term includes management of a show involving equine animals. The term does not include being a spectator at an equine activity unless the spectator is in an unauthorized area and in immediate proximity to the equine activity.

Certain exceptions and limitations apply. Liability for property damage continues when it arises from a participant's personal injury or death when the person, sponsor or professional:

- provided faulty equipment or tack to the participant, and they knew or should have known it was faulty;
- did not determine the participant's abilities to safely manage an equine animal before providing one;
- did not post warning signs or provide written notices or verbal warnings of dangerous latent conditions of the land if they knew of the conditions and they owned, leased or otherwise controlled the property;
- injured a participant by an act or omission with willful or wanton disregard for the participant's safety; or
- intentionally injured or killed someone.

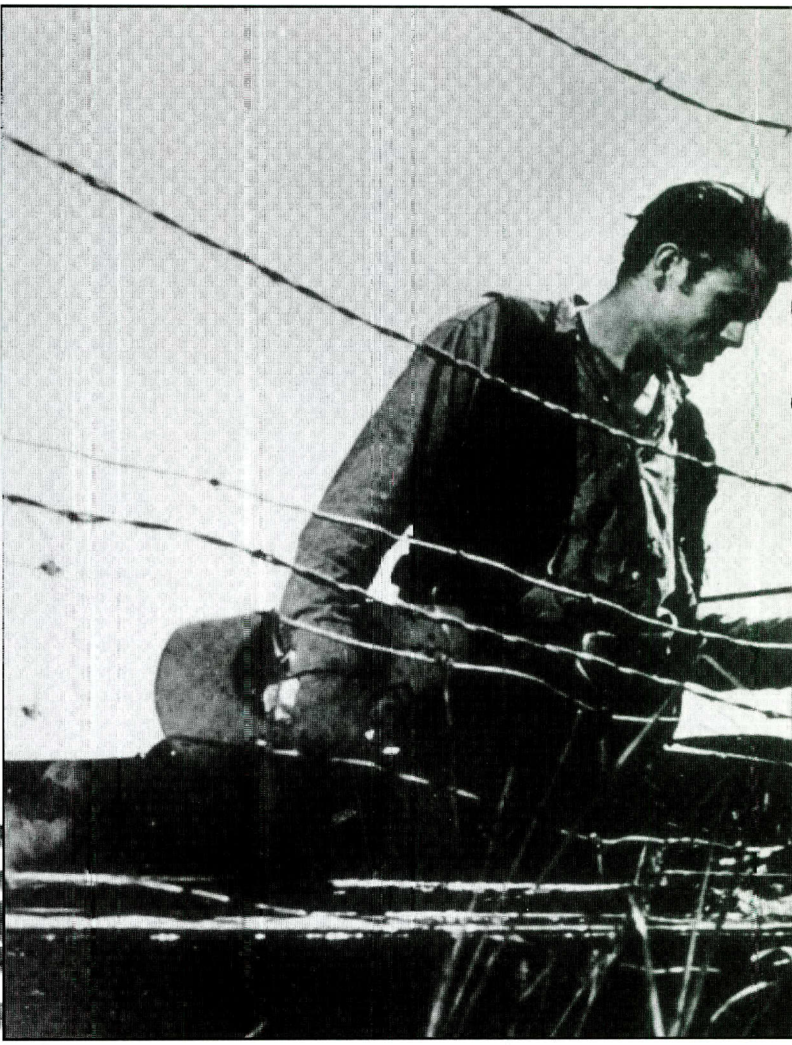
Finally, equine professionals who want to claim the statutory limitations must clearly and visibly post and maintain prescribed warning signs on or near stables, corrals or arenas that they manage or control. The same warning must be written clearly into every contract the professionals enter with participants for professional services, instructions or rental of equipment, tack or an equine animal regardless of where the equine activity occurs.

The warning must read as follows:

Warning

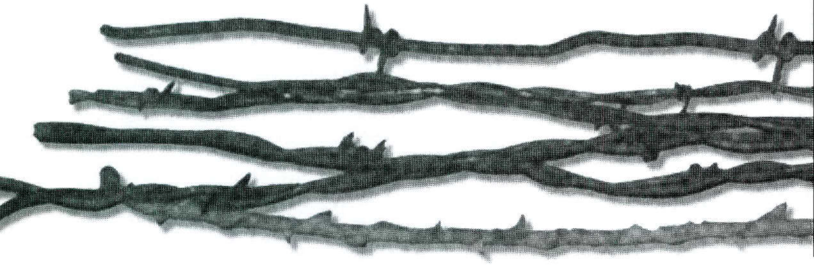
Under Texas law (Chapter 87, Civil Practice and Remedies Code), an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities. ⊞

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



Public Access to Private Land

The New Range War



By Judon Fambrough

Texas population is growing faster than the national average. With 97 percent of Texas land in private ownership, the demand for more public access will grow.

The problem has not gone unnoticed by the Texas Legislature nor by policymakers. The issue was one of five singled out by the recent Agricultural and Natural Resources Summit Initiative held in Kerrville.

While many landowners and policymakers are aware of the problem, they may be unaware of the current incentives encouraging landowners to allow public access. This article reviews the status of current laws.

Most initiatives generated by statutes reduce or eliminate landowner liability in lieu of allowing public access. The legislature has, in essence, created two new categories of persons entering property.

Common law (case law) recognizes four categories. These include invitees, licensees, trespassers and children under the attractive nuisance doctrine. The landowners' duties and liabilities vary with each group.

Invitees have an express or implied invitation to enter the premises. This group, composed primarily of business guests, enters for the economic gain of the landowner. Customers at a grocery store or restaurant are invitees. Fee-paying hunters are invitees.

Landowners owe the highest duty to invitees. Landowners must repair (make safe) or warn invitees of dangerous conditions known to the landowner or those that would be revealed by a reasonable inspection.

However, landowners do not guarantee the safety of invitees. Invitees have a duty to be on the lookout for open and obvious dangerous conditions. If injuries occur, judgments against landowners are reduced by the percentage that invitees contributed toward their own injuries. If invitees are more than 50 percent responsible, Texas Law of Comparative Negligence negates any recovery.

Licensees have express or implied permission (not an invitation) to enter. This group includes primarily social guests. They have the right to enter but are not on the property for the landowners' economic gain.

Landowners have a duty to warn or make safe all **known** dangerous conditions. An inspection is not required. Again, Texas rules of comparative negligence reduce or negate any recoveries by licensees for injuries caused by open and obvious conditions.

Trespassers have neither the express nor implied right (invitation or permission) to enter. Landowners owe no duty to trespassers. Landowners may not injure trespassers except for personal or property protection.

Trespassing children unaccompanied by adults receive special protection because of their inability to perceive a dangerous condition. Landowners have a duty to keep areas safe where children are apt to trespass according to the attractive nuisance doctrine. For more information on this topic, order reprint 475, "Liabilities for Injuries: Landowners, Children and Perilous Conditions," on page 24.

In 1989, the Texas Legislature added a fifth category known as *recreational guest* by amending Chapter 75 of the Texas Civil Practices and Remedies Code. Landowners who give permission to enter for recreational purposes owe the person

no greater duty of care than is owed a trespasser. The landowner is not liable for any injury to the individual nor for property damages caused by the individual. Some restrictions apply.

- Permission must be for recreational purposes—i.e., hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, cave exploration, water-skiing and other water sports.
- The landowner is liable when the entrant is injured by acts that are grossly negligent or inflicted in bad faith or with malicious intent.
- The landowner may not charge, in total, more than twice the amount of ad valorem taxes imposed on the property during the previous year.
- The attractive nuisance doctrine still applies until the entrant is older than 16 years.

Until recently, categorizing social guests who enter the property for recreational purposes was confusing. Are they classified as *licensees* under the common law or *recreational guests* under the statutes? Texas courts ruled that they are *licensees*. Recreational guests are those who would not otherwise have been on the property except for the limited-liability status

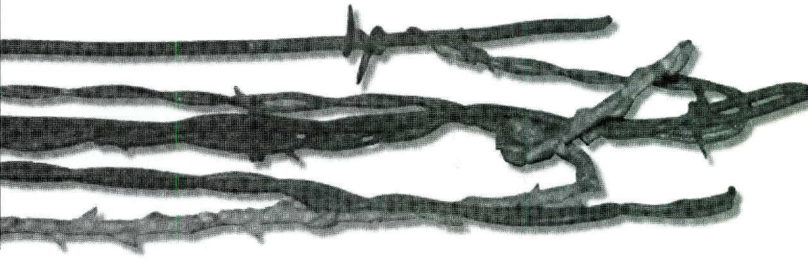
Effective September 1, 1995, the 74th Texas Legislature amended Chapter 87 of the Texas Civil Practices and Remedies Code, essentially creating a sixth category for persons involved in equine activities. Any person, including sponsors of equine activities and equine professionals, is exempt from liability for injuries, property damage or death caused by inherent risks associated with equine activities. A column in this issue of *Tierra Grande* discusses the exemption more fully.

Another statutory change, effective September 1, 1995, did not create a new category of guests but capped recoveries when injuries are caused by acts or omissions related to the premises. The 74th Texas Legislature capped all recoveries regardless of the legal classification of the injured party (Texas Civil Practices and Remedies Code, Section 75.004). However, the landowners must have liability insurance coverage in place equal to or greater than the caps, which are:

- $500,000 for each person,
- $1 million for each single occurrence of death or injury and
- $100,000 for each single occurrence for injury or destruction of property.

Texas courts, through case decisions, have granted land owners some relief. The Texas Supreme Court and the Civil Courts of Appeal recognize limited use of waivers. Essentially, the landowners allow third parties to enter the premises only if the visitors sign a waiver form releasing the landowner from liability.

To be effective, the waivers must meet certain criteria. First, the agreement must be based on an offer and acceptance between parties who have equal bargaining power. For this reason, a recent Texas appellate court ruled that parents can not release, in advance, a minor's right to recover for personal injuries caused by the negligence of another (*Munoz v. II Jaz Inc.* d/b/a Physical Whimsical, 836 S.W. 2d 207 [1993]).



Second, the agreement for the release must be based on consideration, but it need not be monetary. The agreement not to sue in exchange for the right to enter may be sufficient.

Third, the provision must state that the entrant indemnifies (releases) the landowner from any acts arising "from the landowner's negligence." This is sometimes referred to as the Express Negligence Doctrine (*Ethyl Corp. v. Daniel Const. Co.*, 725 S.W. 2d 705 [Tx. S. Ct., 1987]).

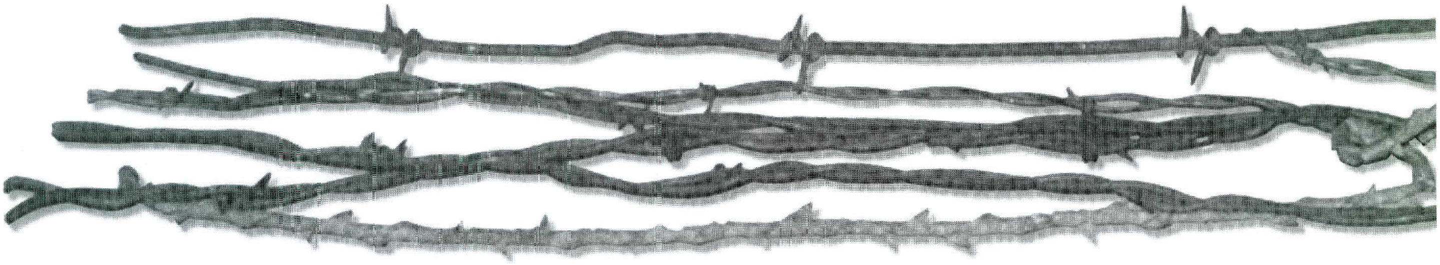
Fourth, the written contract must give the entrant fair notice of the release provision. The fair-notice principle focuses on the appearance and placement of the provision, not its content. However, the fair-notice requirement is not necessary if the landowner can prove the entrant possessed actual notice or knowledge of the provision (*Spense & Howe Constr. Co. v. Gulf Oil Corp.*, 365 S.W. 2d 631 [Tx. S. Ct., 1963]).

Fifth, the release provisions must be conspicuous. The element of "conspicuousness" is tied to the previous "fair-notice" requirement. Basically, the release provision must be sufficiently conspicuous to give the entrant fair notice of its existence (*Dresser Industries, Inc. v. Page Petroleum, Inc.*, 853 S.W. 2d 505 [Tx. S. Ct., 1993]).

How "conspicuous" is conspicuous? No absolute answer can be given. However, the following suggestions may be useful.

- Make the written provision noticeable.
- Emphasize the entire paragraph—not just a portion. Better still, place the waiver statement at the beginning or end of any agreement on a separate sheet of paper.
- Use headings but not misleading ones.
- Italicize the headings.

An obscure law in the Texas Parks and Wildlife Code prohibits the sale of freshwater lakes, rivers, creeks or bayous on private land. They must remain open to the public.



- Ask the entrant to initial the waiver paragraph if it is part of the contract or sign the page if written on a separate sheet.

Aside from limiting liability, another statutory approach lowers property taxes if public access is allowed. According to the Texas Tax Code, an owner of at least five acres may restrict the use of the property to recreational, park or scenic purposes. To do so, the owner must file with the county clerk a written instrument in the form and manner of a deed. The restriction must last at least ten years, and this must be stated in the document.

The phrase *recreational, park or scenic use* is defined in Section 23.81 of the Texas Tax Code as "uses for individual or group sporting activities; for park or camping activities; for development of historical, archaeological, or scientific sites; or for the conservation and preservation of scenic areas."

The owner is entitled to have the property valued subject to the restriction if four conditions are met.

1. The owner devoted the land exclusively to the restricted use during the preceding year.
2. The owner files a formal application for the special valuation with the chief appraiser before May 1.
3. The owner intends to use the land in compliance with the deed restriction for the duration of the current year.
4. The owner does not generate a financial gain in excess of the reasonable allowances for salaries or other compensable services.

Landowners at the conference in Kerrville criticized the statutory incentives. If landowners allow public access, problems other than liability arise. First, any property damaged or littered by the public goes uncompensated. Second, any information gained about the property by the public is not kept confidential.

One landowner who allowed the public to visit a spring on the property had to pay $10,000 for the removal of an abandoned dump site. A member of the public saw the site and reported it to the Texas Natural Resources Conservation Commission.

Landowners felt that the risks outweigh the gains under the present statutes.

A little known statute contained in the Texas Parks and Wildlife Code also deals with public access to private property. The statute, entitled "Private Fresh Water" and found in Section 1.012, has never been enforced even though it has been enacted for more than 20 years. If enforced, its impact on public access would be extensive.

The statute states that "[a]ny freshwater lake, river, creek, or bayou in this state contained in any survey of private land may not be sold but shall remain open to the public. If the Parks and Wildlife Department stocks the water with fish, it is authorized to protect the fish under rules as it may prescribe." A Real Estate Center publication entitled "Freshwater Lakes and Streams" (reprint 1009) discusses the statute in detail.

Any legislation such as Section 1.012 of the Texas Parks and Wildlife Code forcing landowners to allow the general public on their property faces problems if enacted after September 1, 1995. The 74th Texas Legislature added Chapter 2007 to the Texas Government Code (better known as the Private Real Property Rights Preservation). The amendment allows Texas landowners to recover from the state for any diminution of at least 25 percent in the market value of land caused by a rule or regulation. If the state does not pay the judgment, the rule or regulation becomes invalid.

"Private Property: How Private Is It?" a Real Estate Center publication (reprint 1034), discusses when a private individual has the right to enter the property of another without permission. However, the article does not discuss public access.

This paper summarizes the current status of the Texas statutes and case law that grant landowners an incentive to allow public access. So far, the major thrust focuses on reducing the landowners' liability in return for allowing specific types of entry. Only one statute deals with lowering property taxes.

This article is for information only and is not intended as a substitute for legal counsel. For specific advice, an attorney should be consulted. ▣

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

Downsizing Debate Heats Up

Tech-YES/NO-logy

By Ted C. Jones and Bethany Burnam

Never has a Real Estate Center article or publication generated such response. Readers disagreed or agreed with"Downsizing America's Real Estate Industry" by John Baen and Randall Guttery in the Fall 1996 *Tierra Grande* in record numbers. As promised, responses, concerns, questions and dittos sent by readers are reported here. Interestingly, most arrived as e-mail, indicating a relatively high use of technology by Texas real estate licensees.

At least one projection has proven accurate: "This article, although intended to raise provocative questions about the future of real estate services, also may raise the blood pressure or even anger of the reader." It did. One couple stated in their e-mail, "Boy, I sure felt good after reading your article. You know, that scenario ain't going to play so well around the coffee dispenser. . . . Seriously, it was an eye-opener and interesting. . . ." Most respondents signed their names, others included a complete address and a few merely resorted to profanity.

Chicken Little Hysteria

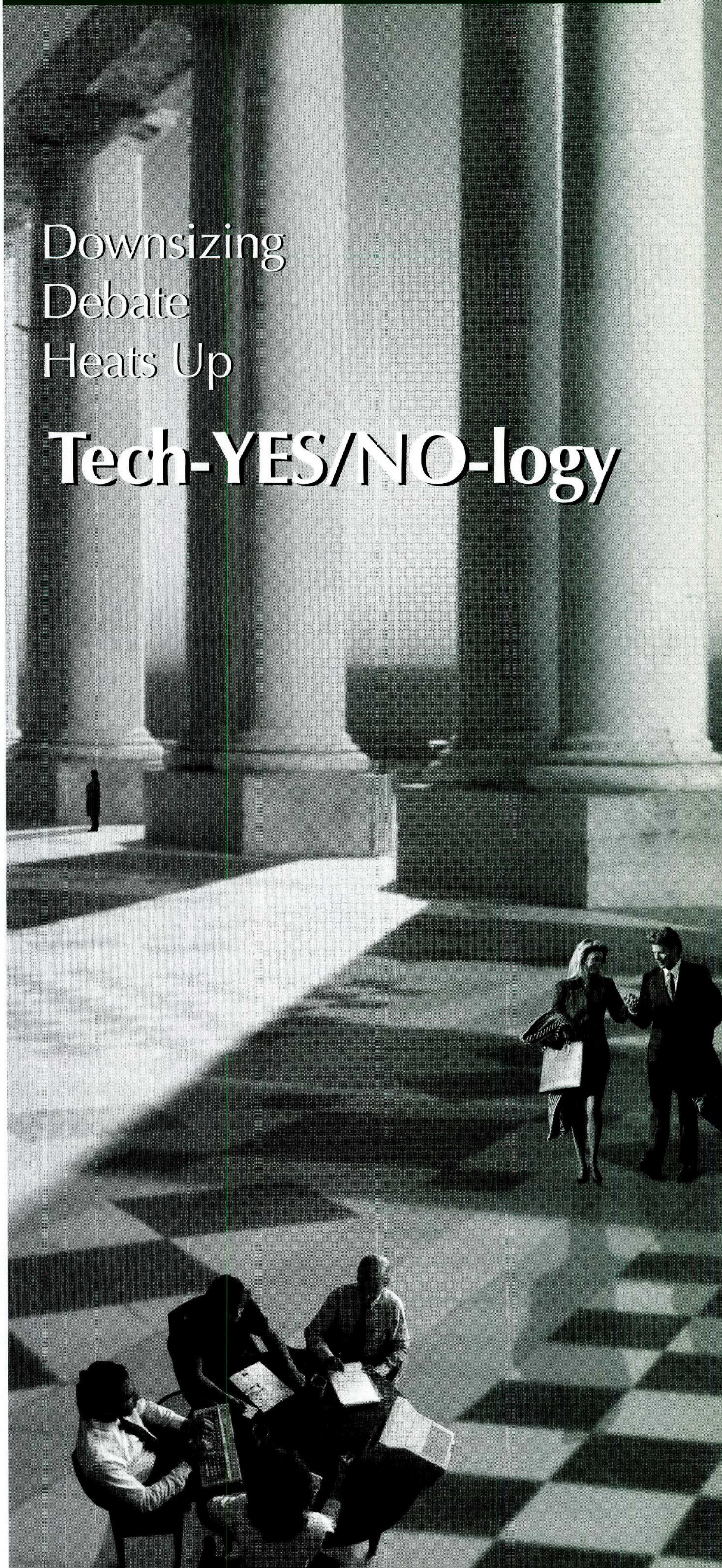
Another couple found the article equivalent to "the sky is falling Chicken Little story." In noting that 39 percent of residential Texas real estate closing documents did not include a real estate commission paid, while only 51 percent had an appraisal, they see the glass half full with opportunities rather than half empty. They responded, "We think the article's premise that is based on the elimination of the majority of these 'local' real estate professionals is the same 'Chicken Little' hysteria we have heard before, like when automatic tellers were going to eliminate the human bank teller. . . ."

Response. While human tellers have not been eliminated, their involvement in the traditional banking transaction is greatly diminished. The lending industry is a good example of the change taking place in banking. Regardless of any reluctance of the banking industry to participate in that change, consumers are switching to technology. *USA Today* reported on October 1, 1996, that home banking transactions now represent 40 percent of retail bank transactions, with a projected 60 percent to be completed electronically by 1998—less than two years distant. Not only would a bank not using electronic banking be excluded from the majority of the market transactions by then, they also would not be participating in the current record profits.

While technology is changing the banking industry by reducing significantly the number of tellers working face to face with customers, it simultaneously is facilitating record income levels. The cost to obtain those profits in the lending industry via down-sizing, mergers and out-right institutional purchases is identical to the phenomenon taking place in today's brokerage industry.

Experience, Judgment, Honesty

Just because the rules have changed on the appraisal requirement does not imply that electronically completed valuations are as or more accurate than human-prepared counterparts. A Gulf Coast appraiser pointed this out. He wrote, "Those

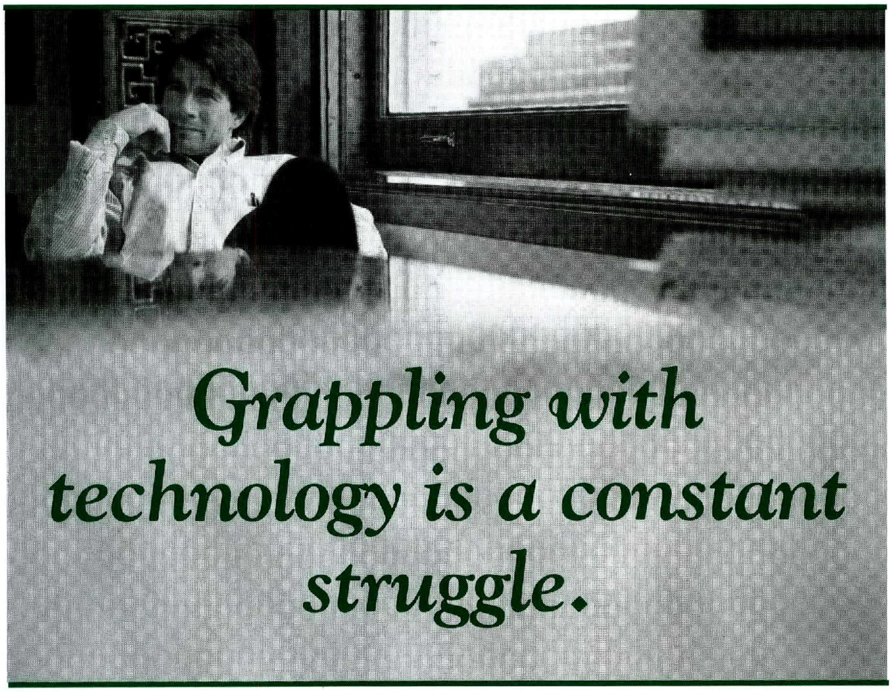


who have been trained in the appraisal process know that the accuracy of the value conclusion is more dependent on the analysis of the data than on its availability and is directly related to the appraiser's experience, judgment and honesty.

"Unless the property is in a very homogeneous neighborhood, 'cyber appraisals' will not improve on . . . distortions." He argues, "Under the guise of saving the customer $200 in appraisal fees, that same customer will be forced to pay an increased interest rate on the total loan for the full term of the loan" as a result of the conversion of formerly asset-backed mortgage securities to mere securities.

Another respondent took the Real Estate Center to the woodshed for "savaging an industry and marketplace that has: (1) provided more single-family homeownership than any other country in the history of humanity; and (2) provided worthwhile employment to some of the most able independent contractors in the free world."

Response. To the contrary, the article was intended to provide an arena for conversation and discussion about the impact of these changes on survivors in this industry. An equal question arising from this thought process is that, given the relatively high affordability of housing in Texas, why does Texas rank 43 out of 50 states in homeownership rates?



Grappling with technology is a constant struggle.

Stockbrokers Analogy

A Richardson Realtor vehemently disagreed with the conclusions of the authors. He wrote, "If what you say were true, wouldn't stockbrokers be out of business?"

Response. While stockbrokers are not out of business, their business is structurally changed from just a decade ago. The advent of some users of brokerage services pointed towards discount brokers, globalization of securities markets, packaging of individual stocks into mutual funds (mini-portfolios with now-altered transactions costs) all combined to see the merger mania and literal disappearance of numerous age-old firms. Sound familiar?

Even within the real estate industry, technology introduces complexities. The views of broker-manager-owners, individual agents and related real estate services represent a particular perspective with its own problems and benefits.

A San Antonio respondent posed several thought-provoking questions, echoed by several others, for the broker-owner-manager of residential business.

> Although technology and the information highway are changing the business, are the technological advances really going to downsize the Realtor's role into that of merely a facilitator? Will rapid expansion of the internet fundamentally change the control over the information in our MLS? Or, will we find that the current MLS structure is the only reasonable means of developing and sharing a substantial, accurate and well-developed database of real estate marketing information? Is it appropriate to completely open the MLS database to the public for data entry and retrieval? Are the technological advances reducing real estate employment, driving down the transaction cost and moving us into a lesser role and lower compensation rates?

This broker shared the frustrations of the added costs imposed by technology without a corresponding increase in overall market transaction volume and the further impact of any decline in fees per transaction. When viewed in today's market of shrinking profitability for broker-owners, even though agents are having some of the best years of their careers, grappling with technology is a constant struggle.

Amarillo's Tele-mortgage Applications

Several writers discussed the agent's impact from technology, again basing their responses on users' needs and demand. From Amarillo came this message, "You better wake up . . . running." The writer affirms the authors' opinion that change will take place regardless of the real estate professional's desires. "The one-size-fits-all commission structure is undeniably in question," he believes. He says:

> The public is entitled to receive the top-drawer service they are paying for. Even in Amarillo, a mortgage company originator offers tele-mortgage-apps. A live video conference is set up between the loan applicant and loan underwriter. The underwriter videoactively interviews the prospects and has the authorization to make loan approval on the spot.
>
> It's expensive, and probably a pilot program, but it's another example of what thinking out of the box can do to increase the efficiency of our business.

While not agreeing totally with the authors' conclusions, this respondent states, "These are not fighting words . . . [rather they] ask how are we going to reconcile our current business practice with the destiny awaiting us?" Finally, he calls a *service realignment* what the authors call *a transfer of wealth* from agents, lenders, appraisers and attorneys to the buyers and sellers. For comparison, he used the example of the same home-buying consumer having the option of an electronically deposited check or driving in traffic on pay day. The consumer's selection speaks loudly.

Response. The only thing certain is that technology will continue to evolve regardless of personal likes or dislikes. Demand for these highly competitive services will be market driven. Regardless of the beliefs of any real estate professional, researcher or academic, the ultimate users (read that also as *payers*) of real estate services will dictate to the real estate industry the level of technology they are willing to use in their infrequent transaction processes.

Technology Adds Costs

A chairman of the board of a title company noted his industry's place in the real estate transaction process. "Title companies are the workhorses on checking titles, paying off mortgages, distributing funds to Realtors and other parties and closing the deal. Hopefully, we will not be eliminated and are certainly pushing hard to be fully automated and speed up real estate transactions."

Response. The title industry illustrates increasing burdens on real estate professionals, having spiraled from just six documents in a closing process years ago to more than 40 today. Technology has added and continues to add costs to a highly competitive industry that competes today on service alone.

A recent major Texas newspaper quoted a highly successful residential top producer as stating that their current customers were not using the internet, and thus they felt no need to participate in that medium of advertising and marketing. Such a philosophy is a self-fulfilling prophecy. Would a similar statement that "we do not advertise in the newspaper. Because none of my buyers or sellers found me in the newspaper, I have no reason for advertising in that media" be equally embraced? Probably not.

One common theme and question was whether the real estate industry would be down-sized or would the technology industry grow without an impact, other than costs, on real estate. Many respondents shared the concern about the loss of their respective value by merely making the data available to nonlicensees in MLS systems. It they are correct in assuming that their value arises from the information rather than other services, then the users' ability to read data from on-line databases will dilute revenues. On the other had, if real estate negotiations truly benefit from the professionals' hands-on services, then technology will have a limited impact on the demands for Texas real estate professionals.

Explosion of New Jobs, Services

A Houston broker disagreed with the conclusion. "Instead of causing a major downsizing . . . rapid expansion of the Internet and user-friendly databases are going to cause an explosion of new services and jobs. Free accessibility to information is one thing, but the knowledge of what to do with it is another. True, a big change is coming; but I believe that it will be one full of great opportunities. We must realize that our service and value to the public lies not in some secret information but rather in how to use that information for our clients' benefit."

A similar response came from a Denton Realtor. She acknowledges that data dissemination is included in her job but represents only a small portion of total services. Other skills she defines include "the ability to listen, flexibility, dedication to satisfying a client's needs, patience, skilled negotiator, team player, superior knowledge of the market area, including any special factors influencing value, financing and/or marketability. How many of these skills does a computer have? I agree that the process of delivering and disseminating information will become more effective, efficient and obtainable; the notion that my service will be worth less in the future epitomized the phrase 'garbage in-garbage out'."

Another respondent concurs with the value beyond information, writing,

> Buyers and sellers don't pay us for some secret information that we have locked up on MLS computers. I have found that the more educated a client is, the smoother the transaction goes. In reality, technology is not a real estate professional's foe but a package of great tools that will increase our productivity . . . downsizing of the brokerage segment of the real estate industry has been driven by a number of changes: (1) higher license fees, (2) Mandatory Continuing Education and (3) top producers, with technology and personal assistants, who are taking a larger percentage of the business.

Top Producers and Technology

A San Antonio agent writes, "Buyers will always want to see homes. Buyers and sellers will want to negotiate the price. Who will take the time to prepare the market analysis, schedule the showings, pre-qualify the buyers, distribute the flyers, develop the advertising, negotiate the sale, assure the homeowner and share the experience of perhaps hundreds of prior transactions?"

Response. While this agent may be correct on the people skills side, technology has already made inroads into the creation of flyers, the need to distribute as many (electronic

"The ability to listen, flexibility, dedication, patience, skilled negotiation, superior knowledge of the market . . . How many of these skills does a computer have?" asks one Realtor.

on-line advertising for some purchasers), market analysis (computer-generated comparative market analysis) and even assistance from software-assisted scheduling.

Industry trends are obvious. Top producers continue to challenge the 80-20 rule that 20 percent of the agents sell 80 percent of the real estate. Is it now the 90-10 rule or even greater? A 1996 National Association of Realtors' (NAR) report, "Recruiting and Retaining the Best," found that "one area where [top producers] differ from the typical agent is in their use of technology. For these agents, the need to organize and systematize their business activity is so critical to their success that they are compelled to embrace technology as a means to an end." The respondents to this survey reported a median 1995 gross income of $130,600, sharply contrasted to a Texas-wide median of all income ranges of only $35,000. In the NAR study of recognized top producers, respondents were classified as low, average or high users of technology. Low users (three or fewer forms of office technology), average users (four to seven forms) and high users (eight or more) reported respective incomes of $104,400, $131,400 and $178,600.

People skills will continue to be high value-added components of the transaction.

Technology: Investment or Necessity?

Another trend is declining industry-wide profits for firms in the shadows of the greatest sales level ever in residential property. What is the solution to technology for profit-squeezed broker-owner-managers? Should technology be examined as an investment with an expected return, or has it become akin to oxygen and water for existence?

And yet more perplexing to the firm is the indication by respondents to the NAR study ranking the firm's technology support as more valuable than the firm's advertising or secretarial support or provision of a transaction coordinator. Technology support was equal as the firm's size, which ranked as the seventh most-liked characteristic. Respondents least-liked characteristic of their current firm found technology support only second to advertising support. Thus, technology becomes a significant factor in both recruiting and retaining top producers.

Frustrations were obvious in the brokerage business, ranging from rising technological costs, less-than-attractive lifestyle choices relating to hours worked, retirement and medical benefits and burgeoning regulatory changes continually sweeping the real estate landscape.

One person wrote, "I agree that the transaction process has changed since I started in business in 1978 and that that change will drastically accelerate—but not in the way [the authors] see it." He says even more human involvement may become part of the transaction process. Buyers' use of inspectors (offer more than one), two or more pre-listing appraisals in relocation sales, buyers and sellers each heavily relying on their respective agents for guidance and even insurance companies requirement to send their own agents to document and photograph properties prior to issuance of a binder.

"The recent failure of RIN [Realtor's Information Network]," says the same respondent, "shows not the failure of technology but that often real estate executives and others who are not in direct touch with buyers and sellers day to day simply are unable to see the direction or type of change that is happening. . . . Real estate professionals who provide a useful, valuable service will prosper. People who have made a living by driving people around will be driving taxis."

Without question, people skills are and will continue to be high value-added components of the transaction process. A Stephenville broker notes, "I closed a sale on a nice moderately [priced] older, larger home a few months ago, which was followed by a housewarming involving about 75 guests. I attended, got involved in conducting tours, and wound up with a prospective buyer wanting me to find them a similar home. . . . Technology can't completely replace the human element and human relationships involving the sale and purchase of real estate."

If consumers are willing to find real estate professionals via technology, then only those in the technological arena will participate in this growing, but not exclusive, segment. Change, after all, is the only constant in the real estate industry of Texas. 田

Dr. Jones is chief economist with the Real Estate Center at Texas A&M University. Burnam was a student research assistant.

S Corporations

New Rules, Potential Benefits

By Jerrold J. Stern

The chief benefits of S corporations are that owner shareholders enjoy limited liability and do not pay tax at corporate rates on net earnings. Owner-shareholders pay tax on their share of net earnings at individual tax rates when filing personal tax returns.

The Small Business Job Protection Act of 1996 makes S corporations easier to use for real estate and other businesses. Thus, real estate brokerage companies, property management companies and investment companies could potentially benefit. All changes from the new law discussed in this column are effective in 1997 unless stated otherwise.

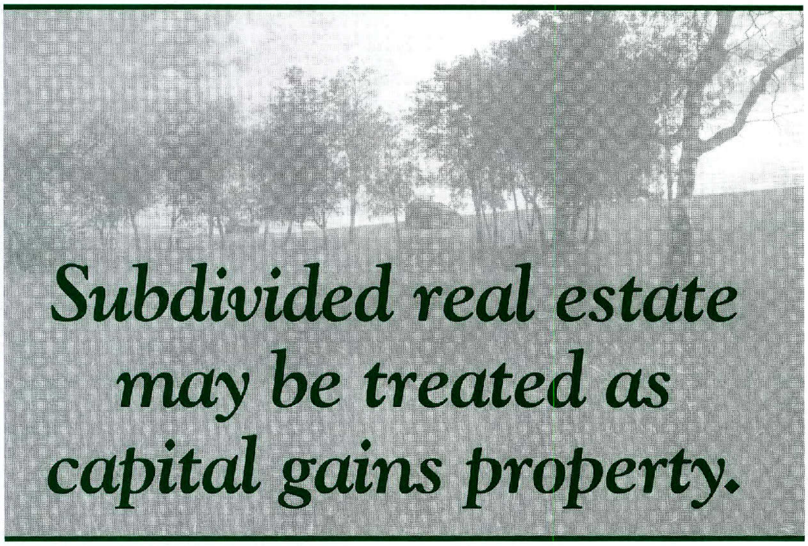
Number of shareholders increased to 75. The eligible number of shareholders is increased to 75 from 35, enabling larger entities to elect S corporation status. Married couples still are treated as one shareholder. As many as 75 couples now can own stock in a single S corporation. Two or more S corporations still are allowed to form partnerships when there are more than 75 owners.

Active subsidiaries are allowed. S corporations can have active corporate subsidiaries—100 percent-owned S corporation subsidiaries or regular corporation subsidiaries that are partially or 100 percent owned. For income tax purposes, S corporation subsidiaries are ignored, and net income is treated as earned directly by the S corporation parent.

If the subsidiaries are regular corporations, the subsidiaries must file their own tax returns and pay tax at regular corporate rates. Thus, the S corporation subsidiary option appears to dominate the regular corporation subsidiary option. The ability to use active subsidiaries enables entrepreneurs to fully insulate separate activities from liability.

For example, assume Terry owns all of the stock in an S corporation that owns and operates four apartment buildings. The new law enables Terry to establish a separate regular or S corporation for each building (corporations two, three, four and five). S corporation one owns all stock of each corporation. If the subsidiaries are S corporations, Terry pays tax on the combined net income, yet each building is a self-contained legal entity. No corporation taxes are paid.

Deductible leasehold improvements. The new law clarifies that, when a lease expires, lessors can deduct the adjusted basis (original cost less any depreciation deductions claimed) of leasehold improvements they made to rental property if the leasehold is irrevocably disposed of or abandoned. If the entire structure containing the leasehold is demolished, however, the cost of demolition and the adjusted basis of the entire structure is added to the adjusted basis of the land (deductible only when the land is sold). This new rule applies to all leasehold improvements, regardless of whether an S corporation is involved. Leasehold improvements disposed of or abandoned after June 12, 1996, are covered by the new rules.



Subdivided real estate may be treated as capital gains property.

Capital gains treatment for certain subdivided real estate. Typically, taxpayers who subdivide and then sell parcels of real estate pay tax on their profits at ordinary tax rates (up to 39.6 percent) rather than at the 28 percent maximum capital gains tax rate. An exception that has existed for individual taxpayers now applies to S corporations as well. Land that is subdivided and then sold will be treated as capital gains property if (1) the land was not previously part of the taxpayer's inventory, (2) the taxpayer did not hold other real property in the year of sale, (3) no substantial improvements have been made to the land by the taxpayer, related parties, lessees or the government and (4) the land was held by the taxpayer for five years or was inherited by the taxpayer.

Reelection allowed to previous S corporations. Prior to the new law, corporations terminating their S corporation status were required to wait five years before being eligible to reelect S corporation status. As a result of the new S corporation rules, the five-year waiting period is waived for terminations occurring prior to 1997.

Correctable inadvertent terminations. The Internal Revenue Service now has greater powers to validate S corporation status resulting from unintentional S corporation termination caused by events such as the failure to obtain the necessary shareholder consents for electing S corporation status. This change is retroactive to 1983.

The best way for taxpayers to address the opportunities under the new S corporation rules is to seek the advice of a tax accountant or attorney.

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.

INSTRUCTOR'S
NOTEBOOK

Analyzing New Property Development

By Wayne E. Etter

Many, but not all, local real estate markets have emerged from the effects of overbuilding during the 1980s. Properties purchased by investors during the latter 1980s and early 1990s at prices less than their original construction cost are now providing their owners with positive cash flows and satisfactory rates of return. In some markets, rising occupancy and rental rates promise even better financial performance.

Until recently, moreover, many investors believed they had little chance to be competing with newly constructed properties at any time soon. Their complacency was supported by both economic theory and financial feasibility analysis: market rental rates, while sufficient to provide the owners of older properties a satisfactory return, were considered inadequate to support new construction. A rational investor would not build a new property unless anticipating profit. Yet, construction is occurring in some markets. How can this be explained?

Relating Rental Rates to Costs

Using economic theory, market rental rates can be graphically related to costs as shown in the figure. The market rental rate (P) is established in the market by the forces of supply and demand. As long as the market rental rate received from supplying an additional unit, *i.e.*, the marginal revenue, is larger than the cost of supplying an additional unit, *i.e.*, the marginal cost, the unit will be supplied. The owner's cost includes all fixed and variable costs (including management compensation).

The figure reveals that the market rental rate is sufficient to provide the owner of an existing property (purchased, perhaps, at a price less than its cost of construction) with a net return. Total revenue (P x Q) is greater than total cost (C x Q). But usually a to-be-built property will have higher costs than an existing property; thus, total cost will be greater than total revenue. Under these circumstances, the owner of an existing property expects to be protected from the competition of new properties.

To Build or Not to Build

Economic theory is helpful in conceptualizing these circumstances and in monitoring market expectations. Financial feasibility analysis, as used by real estate professionals, helps to determine whether or not a proposed property should be built. Using current land and construction costs, current market rental rates and operating expense estimates and the cost of expected debt and equity financing, a to-be-built property is analyzed to determine if it will be financially feasible. To be financially feasible, it must produce sufficient income to pay its operating expenses, support sufficient debt to finance the property and provide a satisfactory cash return to the owner. Obviously, if market rental rates are too low, costs are too high or both, the property will not be financially feasible. Thus, a property's financial feasibility is determined by its expected income and costs, the same concepts considered in economic theory.

Understanding Market Rental Rates

But new construction, particularly of retail and multifamily properties, is taking place in many markets where new construction was considered infeasible a short time ago. Are eager, but naive, investors who are ignorant of the market responsible? To the extent that this is so, the outcome of their development activities may be unfortunate.

Before dismissing the current development activity as the result of ignorance, however, it may be wise to consider the assumptions of economic theory and financial feasibility analysis. Both are dependent on a precise understanding of what the market rental rate represents in each analysis. Consider, for example, a multifamily housing market where current market rental rates were assumed to be insufficient to support the construction of new units. The following questions might be asked about such a conclusion:

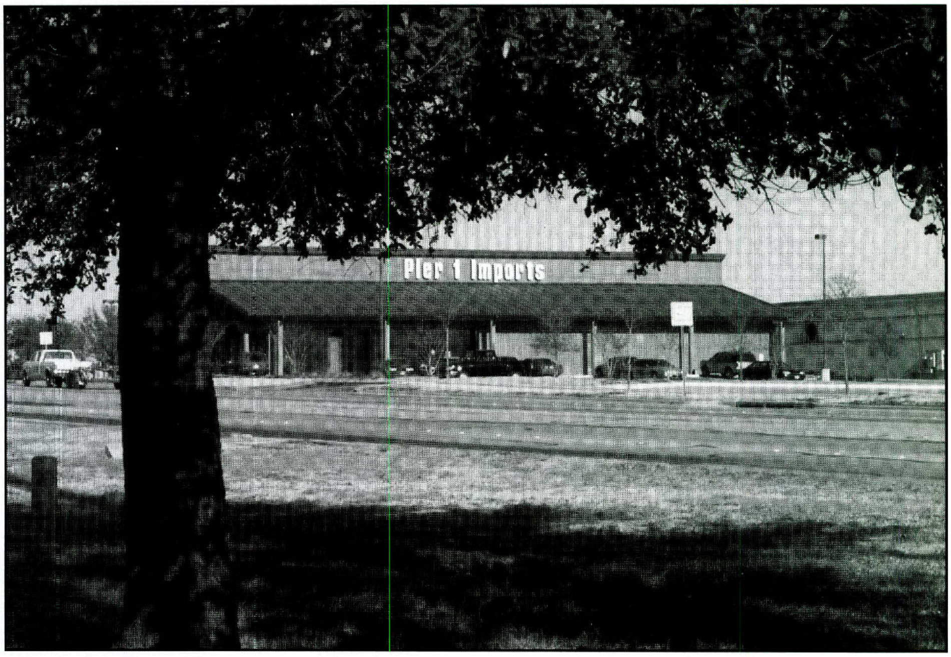
Were the existing multifamily housing properties reasonably homogenous? If not, the derived market rental rate will not be meaningful for analysis. For example, within a particular market area, different multifamily properties may serve distinctly different market segments. Rental rates for the existing high-end multifamily properties may be much closer to the necessary rate to support new construction than the average market rental rate. Market research can reveal the existence of different market segments; market rental rates can then be developed for each segment.

Were any market segments unserved? A market segment may be willing to pay a higher rental rate for a product that is currently not offered in the market area. A new multifamily property will be viewed as a different product if the existing multifamily properties are old, poorly maintained or lacking amenities. Market research can reveal the existence of unserved market segments.

Were the linkages between the existing multifamily housing and employment centers, educational centers and shopping centers satisfactory? Have these linkages improved since the existing multifamily housing was built? Poorly located multifamily properties may be occupied because no other choice is available. Market research can reveal whether new, well-located multifamily properties that take advantage of new roads and improved public transportation will find a ready market.

Were any of the new multifamily properties financed with tax credits? If so, the developer's use of tax credits reduced the project's cost sufficiently for it to achieve financial feasibility at lower market rents than would have been required without the tax credits.

In some retail markets, additional development is considered unnecessary because retail space is vacant. However, the location of some of this retail space is poor, and a low rental rate will not make it attractive to retail tenants. Unless a site is expected to be a profitable business location, the space will remain vacant while new retail space is developed. Moreover, a number of national and regional retailers have a distinctive building design as par: of their marketing strategy, and, therefore, they usually are uninterested in vacant retail space when they move into new market areas.



A number of national and regional retailers have a distinctive building design as part of their marketing strategy.

Evaluating Market Needs

Investors who purchased multifamily properties in the late 1980s and early 1990s at prices less than the original cost of construction did so with the expectation that rising rental rates would gradually increase their properties' profitability and value. Investors in retail properties believed that in time rising demand for retail space would gradually increase occupancy rates in partially vacant retail centers. At the same time, they did not expect competition from new properties because rental rates were too low to support new construction.

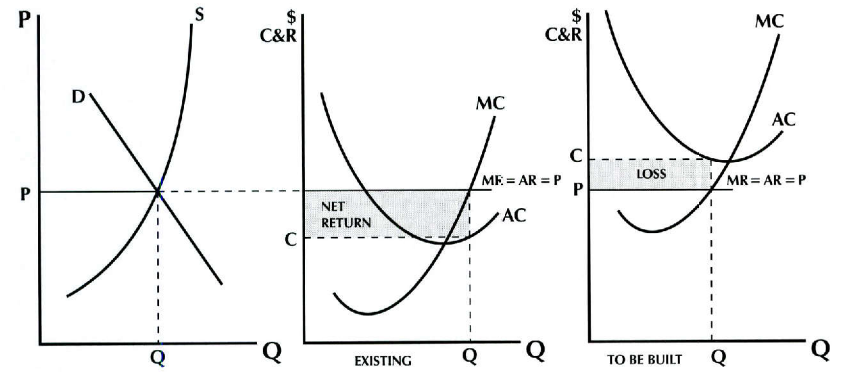
Despite this, new multifamily and retail space development is taking place in many markets. For both property types, the analysis concluding that new development would not occur failed to take into account the needs of various segments within each market and their willingness to pay an above-market rental rate for those other products when they were offered. In such markets, successful development can take place while currently available space remains vacant.

In the case of multifamily properties, current tenants who desire and can afford higher quality apartments will shift to the newly developed properties, leaving the older, less well-maintained properties with larger vacancy rates. In some cases, the owners of existing properties will rehabilitate them to compete or to attract a new market segment unable to afford the newly developed multifamily properties. In the case of retail properties, poorly located retail properties with high vacancy rates may continue with high vacancy rates because little can be done to increase their attractiveness as a retail location.

Those who are developing new multifamily and retail properties, however, should carefully evaluate the size of the market segments with unmet needs. If demand exists for 250 upscale apartment units within a market area, developing 1,000 units will lead to the familiar 1980s scenario once again. And even if a site appears to meet every criteria for being an outstanding retail location, a tenant that sees the same opportunity is mandatory. No profit comes from oversupplying the needs of a market segment or in supplying space for retail tenants who are not attracted to a particular market location. ◰

Dr. Etter is a professor with the Real Estate Center and of finance at Texas A&M University.

Market Rental Rates Related to Costs



Publications Order Form

CALL TOLL-FREE FOR FASTEST DELIVERY 1-800-244-2144

REAL ESTATE CENTER

Publications, Real Estate Center
Texas A&M University
College Station, Texas 77843-2115
Voice: 409-845-2031 • FAX 409-845-0460

Method of Payment

□ Check/Money Order

□ MasterCard □ Visa □ Discover □ American Express

Account no. ____________________

Expiration date __________ Signature ____________________

Telephone __________ Print name ____________________

Quantity		Title	No.	Price	Total
______	□	*Publications Catalog* **NEW**	J-306	**FREE**	______
______	□	"Liabilities for Injuries: Landowners, Children and Perilous Conditions"	J-475	$2/$2.50	______
______	□	"Landlocked Property"	J-947	$2/$2.50	______
______	□	"Freshwater Lakes and Streams"	J-1009	$2/$2.50	______
______	□	"What's the Cost? Private Property, Public Use"	J-1034	$2/$2.50	______
______	□	"Homestead Protection: For Whom and How Much?"	J-1136	$2/$2.50	______
______	□	*A Newcomer's Guide to Texas Real Estate*	J-1137	$2/$3	______
______	□	"Downsizing America's Real Estate Industry"	J-1144	$2/$2.50	______
______	□	Real Estate Software Directory on Disk	J-1154	$10	______
______	□	One-of-Everything*	J-533	$250/$500	______
		*(One copy of every active publication in Center inventory–technical reports, special publications, references, directories. Would cost more than $365 if purchased separately ($730 outside Texas). Not included are quarterlies and reprints.)		Texas Residents add 8.25% sales tax	______
				Total	______

When two prices are listed, Texas residents pay the lower price.

In a hurry? Use your credit card, and FAX your order to 409-845-0460.

Subscription Prices

Licensed Texas real estate brokers and salespersons may receive **free** subscriptions. Center periodicals are available to others at the following prices.

□ *Tierra Grande,* a 24-page quarterly magazine reporting recent research, $20/$25 per year.

□ *Real Estate Center Law Letter,* a six-page quarterly legal summary, $35/$50 per year.

□ *Real Estate Center Trends,* an 8-page monthly statistical report on 50 of the state's largest cities, $24/$36 per year.

Send name, address, telephone and license numbers on this form to the Real Estate Center.

Ship to: ____________________

____

____

____

□ Business or □ Home address? □ Broker or □ Salesperson License No. __________

ADDRESS CHANGE

Or, incorrect address? Please indicate the correct address on this form; include your broker or salesperson license number. Attach the mailing label from the back cover with the old or incorrect address.

Answers to Texas Homestead Test

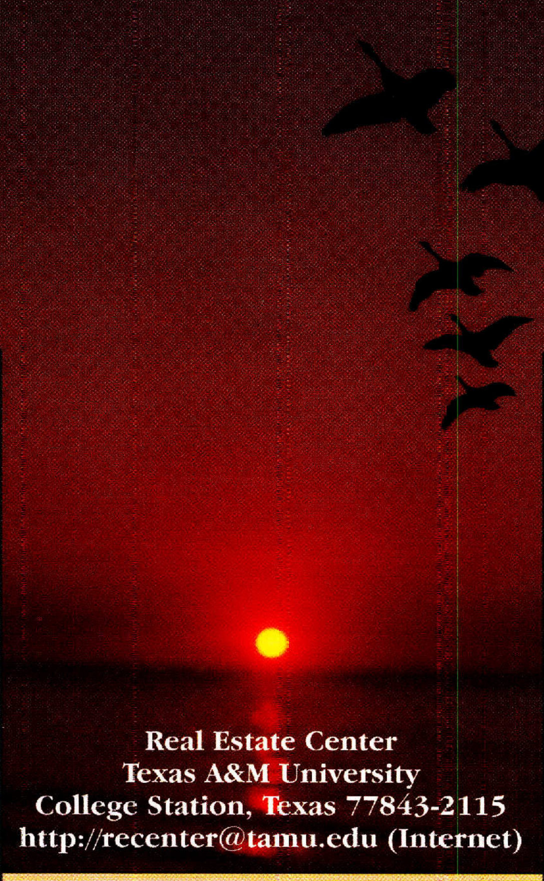
1. True 2. False 3. True 4. True 5. False 6. True 7. True 8. False 9. False 10. True 11. False

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 1153. The information is free. Telephone charges, if any, apply.

Wild goose chase?

If searching on the Internet takes you too far astray, follow this leader

Real Estate Center



Real Estate Center
Texas A&M University
College Station, Texas 77843-2115
http://recenter@tamu.edu (Internet)

Real Estate Software Directory
on disk for Windows 95™

REAL ESTATE CENTER
Real Estate Software Directory

528 software packages
270 categories

Publication 1154 $10

FAX ON DEMAND

409-862-7460
409-862-7461
References
Reports Reprints
No waiting Nominal cost

TEXAS A&M UNIVERSITY SYSTEM

REAL
ESTATE
CENTER

TEXAS A&M UNIVERSITY
COLLEGE STATION, TEXAS
77843-2115

NON-PROFIT ORG.
U.S. POSTAGE PAID
HOUSTON, TEXAS
PERMIT NO. 8833

In This Issue

Homestead Test

Allocating Advertising

Landowner Liability

Public Access

Downsizing Debate

S Corporations

Development Decisions

SOLUTIONS
THROUGH RESEARCH