Tierra Grande

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

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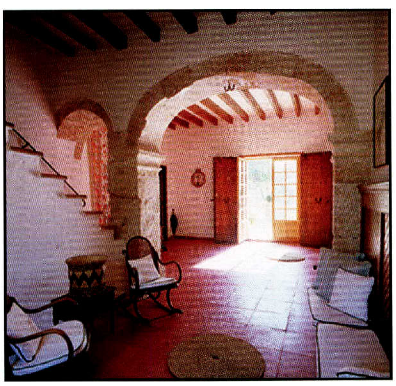
During the past 20 years, the Deceptive Trade Practices Act generated more litigation involving real estate transactions than any other law. The initial statute became effective in 1975. Major revisions implemented in 1979 and in 1995 are the focus of the article by Judon Fambrough on page 4.

Basically, the 1995 changes are aimed at an even-handed approach to protecting consumers while guarding defendants against groundless or false claims.

Consumers are protected against: false, misleading practices; unconscionable actions; and breaches of warranty.

Some transactions were exempted by the 1995 amendment. Of particular interest to real estate is the exemption of professional services providing advice, judgment, opinion or similar professional skills. However, the exemption does not apply in certain cases.



Probing the Residential Market

How many single-family homes sell in Texas each year? What is the typical sales-to-list price ratio? Is it a buyer's or seller's market? Where will prices go in 1996? How long does it take to sell a house today? Do franchise agents sell more? What is the market outlook?

For answers to these and other questions about single-family residential sales, see "Who Sells and How Much?" on page 7. The Center analyzed more than 50 percent of the single-family properties sold through Texas MLSs in 1995. The results reveal how the residential market is performing.

Search for Utopia

Environmental interrelationships become increasingly evident as a powerful force in the struggle to allocate land and resources suitably. The market dynamic has decreased genetic diversity, causing concern about future environmental vitality.

Regulation by laws designed to protect and promote a healthy biosphere has created controversy over public and private land use. Species and habitat preservation given priority over private property rights has generated even more problems.

In response to criticism of failed regulatory attempts, administrative agencies and allied groups are now proposing yet another solution. An ecosystem management approach would replace heretofore piecemeal environmental management.

Ecosystem management appears to be a comprehensive, complex plan. The objective is to sustain ecological interactions and deliver that ecosystem intact to future generations. How and where this system would be implemented are discussed in "The Search for Down-to-Earth Answers" by Charles E. Gilliland on page 11.

COLUMNS

CENTER PRODUCTS

Taxing Matters: The Business Trip Plus

Uncle Sam allows business travelers to combine a work trip with vacation days and still claim tax deductions. The traveler, as always, must abide by Uncle Sam's rules.

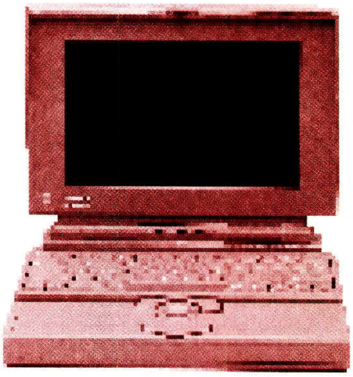
The trip must keep the taxpayer away from home overnight. Three types of travel expenses yield deductions: transportation, lodging and meals.

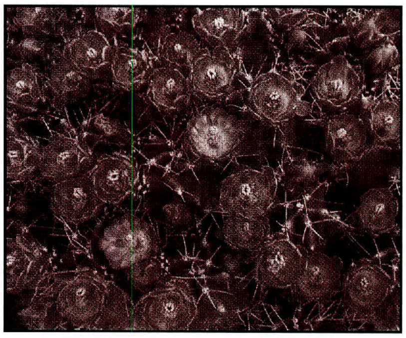
How to determine deductibility and calculate amounts are the subjects of Jerrold J. Stern's tax column on page 19.

On the Net—Places to Go, Sites to See

Perhaps nothing illustrates the information explosion as dramatically as the Internet. Each visit takes the user into an ever-expanding universe. Deciding where to go and what to select can overwhelm even the most enthusiastic user.

This issue's technology column identifies some starting points for real estate professionals. Mark W. Baumann describes and gives addresses for sites of interest in the industry. Check "Internet Site Seeing" for a time-saving guide to real estate information on the web; see page 22.





¿Qué pasa?

Claret-cup cactus blooms grace Val Verde County with beauty and color. Travelers to Langtry, Texas, enjoy gardens of spectacular cacti at the Judge Roy Bean Visitor Center. The famous judge claimed to have named the town after Lillie Langtry, a stunning British actress whom he admired. Perhaps Lillie, too, wore a claret-colored gown. Cover photograph by Laurence Parent.

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Benchmarks

Friends old and new gathered on February 22 to celebrate the Real Estate Center's twenty-fifth anniversary. Industry leaders and educators joined current staff at Texas A&M University to mark the historic occasion and recall how real estate has changed.

Before 1971, Texas—the second largest land area in the nation—had no system for monitoring real estate trends. Neither consumers nor researchers could find information about the quantity or quality of Texas housing. Dramatic population shifts were creating housing problems statewide. It was impossible to anticipate supply and demand. The farm-to-city migration generated a demand for other forms of real estate, such as recreational properties. College catalogs listed new subjects of study, such as recreation and parks, land economics and appraisal.

Industry leaders, such as Julio Laguarta of Houston and the late Lawrence (Bud) Miller of Dallas, imagined a state agency—funded entirely by real estate licensees—and dedicated to scientific inquiry for the benefit of all Texans. Backed by the influential Texas Association of Realtors (TAR), the leaders drafted legislation to realize their dream. On May 18, 1971, Gov. Preston Smith signed an emergency bill establishing the Texas Real Estate Research Center at Texas A&M University. The nation's largest publicly funded real estate research organization was created in response to a clear need.

Although the Center's name was subsequently shortened, the purpose has never changed.

The mission of the Real Estate Center is to conduct real estate related research based on needs of the Texas citizenry and disseminate results and findings.

Reluctant to constrain the kinds of research conducted, the founders fashioned a deliberately broad law. It mandates that the Center study all subjects that relate directly or indirectly to Texas real estate.

A.B. Wooten, now director emeritus, became its first director. In comments to honored guests at the anniversary luncheon, Wooten expressed his belief in the Center—both then and now. "You continue to serve the state well," he said.

The Center's second director, Richard L. Floyd, also delivered remarks. Floyd assumed leadership upon Wooten's retirement in 1981; he served as director for ten years, until accepting an administrative position with The Texas A&M University System (TAMUS).

Robert L. Pardue, Houston broker-owner, spoke briefly about the Center's early history. He served on the Advisory Committee for 12 years, including three years as chairman from 1974 through 1977.

Conrad Bering, Jr., chairman of the Center's Advisory Committee, and Benny McMahan, TAR executive vice president, also commended the Real Estate Center's contributions to the industry and the citizens of Texas.

A.B. Wooten

Both Bering and McMahan, however, noted that the Center is the "best kept secret in the country."

"Just look at how real estate has changed in the last 25 years," commented R. Malcolm Richards, the Center's current director and head of the Department of Finance at Texas A&M. "Radon gas, asbestos, wetlands, endangered species, hazardous waste, ozone depletion, the Resolution Trust Corporation, the S&L crisis, computers, faxes, pagers and cellular telephones weren't even in our vocabulary in 1971."

The Real Estate Center is unique because it emphasizes applied research. Unbiased findings are the bedrock underlying the Center's reputation. Richards said the need for real estate research into current, bottom-line issues and their implications for the future of Texas has never been greater.

Many industry leaders and outstanding citizens have been instrumental in the Center's work. Richard Perry, now Commissioner of Agriculture, and Frederick McClure, now on the Board of Regents of the TAMUS, served on the Advisory Committee and as chairman.

Bering congratulated the Center on its accomplishments. "Out of the last 25 years have come some things that are priceless. You established a standard of quality and productivity that becomes a challenge for the next 25 years," he said.

"The Center of the future will continue its support of real estate related professional associations," promised Bering. "It's not just TAR, but the mortgage bankers and the vast array of ancillary disciplines that provide support to the industry. The next 25 years must be for us a pledge to continue the quality of product, staff and dedication to ensure that licensees—the first line of support—get the benefits and realize the Center is here for them."

Rural Land Outlook Conference Set for May

The Sixth Annual Outlook for Texas Rural Land Markets is scheduled for May 13, 1996, at Texas A&M University. R. Malcolm Richards, Center director, will welcome participants and deliver the luncheon address, "Perspectives on Real Estate Research."

Other speakers will discuss the economy, agriculture and agricultural policy, endangered species policy and Texas land market developments.

Continuing education units will be offered from some organizations. Advance registration is required. The fee is $60 per person.

For more information or to register, contact Margaret Benedict at the Center by telephone (409-845-9691).

Two Named to Professorships

R. Malcolm Richards, director for the Real Estate Center and head of the Department of Finance at Texas A&M University, has been selected to hold the Patricia and Bookman Peters Professorship in Banking in the College of Business Administration (CBA) at Texas A&M.

Wayne E. Etter, professor of finance and with the Real Estate Center, was named the Julio S. Laguarta Professor in Real Estate, also in the CBA.

Both appointments were effective March 1, 1996.

Advisory Committee Selects Chairman

Conrad Bering, Jr., a Houston broker-owner, was elected chairman of the Center's Advisory Committee at a meeting on February 22. Bering served a previous term from October 1992 to January 1994, when he became vice chairman.

John P. Schneider, Jr., owner of an Austin brokerage firm, was elected vice chairman.

Research, Education, Service

Significant contributions during the first quarter century include research, education and service evolving from commitment to the Center's mission.

- Assisted countless Texans in obtaining a Texas real estate license.
- Became the authority on rural land values. No other agency, organization or individual has this data.
- Produced "The Realty Report," a series of daily 30-second radio spots designed to educate consumers and broadcast by 80 stations statewide.
- Long-term publications: *Tierra Grande,* the Center's flagship magazine mailed quarterly to the 86,000 active real estate licensees statewide. *Trends,* a monthly statistical report. *Digest,* a quarterly newsletter created in 1984 for the then-active 80,000 real estate salespersons. Terminated in 1995 when salespersons began receiving the magazine. *Law Letter,* also a quarterly newsletter, for those interested in Texas real estate law.
- Developed and distributed 100,000 brochures on "Building a Future in Real Estate" for Texas high school students.
- Published a Spanish-language homebuyers' guide and the *English-Spanish Real Estate Glossary.* More than 14,000 copies of the glossary have been distributed nationwide.
- Established the Studies of Advanced Real Estate Subjects (SOARS), a three-year professional educational program. Funded annual scholarships for Texas licensees.
- Played a key role in establishing the Land Economics and Real Estate master's degree program at Texas A&M University. More than 400 students have graduated from the program. Funded an endowed scholarship at Texas A&M.
- Helped establish the Texas Real Estate Teachers Association (TRETA). Provided financial support to enable teachers to attend professional programs.
- Helped form the Society of Texas A&M Real Estate Professionals.

For a more complete list of highlights, log on to the Center's Internet site at http://recenter.tamu.edu and click on the twenty-fifth anniversary logo.

DTPA Protects Consumers and Defendants

By Judon Fambrough

Perhaps no legislation has influenced the practice of real estate more than the Deceptive Trade Practices Act (DTPA). The initial 1973 statute, found in Chapter 17 of the Texas Business and Commerce Code, did not affect real estate transactions until 1975. Although minor revisions have been made to the act, extensive changes were implemented in 1979 and 1995.

Among other things, the 1979 changes shortened the statutes of limitation from four to two years, required a prior 30-day offer of settlement (later changed to 60 days) before asserting a claim, altered the defenses and allowed recovery for deception by omission, i.e., failing to disclose material facts.

The 1995 changes attempt a more even-handed approach. They protect the consumers in the marketplace while guarding the defendants against groundless and false claims. This article reviews the entire DTPA as revised effective September 1, 1995.

Basically, the act is designed to provide efficient, economical procedures to protect consumers against three offenses:

- False, misleading practices
- Unconscionable actions
- Breaches of warranty

The following sections define the terms and explain the offenses.

The DTPA defines a consumer as an individual, partnership, corporation, the state or a subdivision or agency of the state that seeks or acquires goods or services by purchase or lease (Section 17.50[4]). The definition excludes private entities having or being controlled by another entity with more than $25 million in assets.

False, misleading and deceptive business practices are not defined but described by a list of 25 practices (Section 17.46[b]). Consumers must prove that the defendant engaged in one of the practices, that it was the producing cause of their damages and that they relied on the practice to their detriment. The listed practices most relevant to real estate transactions are:

- Representing that goods (including real estate) or services have . . . characteristics . . . uses . . . benefits or qualities they do not have.
- Representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used or secondhand.
- Failing to disclose information concerning goods or services that was known at the time of the transaction if such failure to disclose . . . was intended to induce the customer into a transaction . . . the consumer would not have entered had the information been disclosed.
- Taking advantage of a disaster declared by the governor by demanding or collecting an exorbitant or excessive price for the sale or lease of fuel, food, medicine or ***another necessity*** (added in 1995).

The term *producing cause* is not defined by the statute. Case law defines it "as an efficient, exciting or contributing cause that, in a natural sequence, produces the complained of injuries or damages"

(*Knebel v. Port Enter, Inc.*, 760 S.W. 2d 829). The term does not encompass foreseeability as does proximate cause. Therefore, a consumer need only prove the amount of actual damages factually caused by the deceptive trade practice (*Hycel, Inc. v. Wittstruck, M.D.*, 690 S.W. 2d 914).

An *unconscionable action* is one that takes advantage of the consumer's lack of knowledge, ability, experience or capacity to a grossly unfair degree (Section 17.45[5]). After 1995, the definition no longer includes transactions in which the value received and the consideration paid result in gross disparity.

The act does not create nor detail the *warranties* encompassed by the DTPA. Case law indicates that the DTPA is breached by a violation of an implied or express warranty described in the Uniform Commercial Code or an implied warranty declared by the courts.

As noted, before filing a lawsuit, consumers must give the would-be defendant a 60-day written notice reasonably detailing their claim and including an offer of settlement. The offer of settlement must state by category the amount of the (1) economic damages, (2) damages for mental anguish, if any, and (3) expenses, including reasonable attorneys' fees, incurred to date. During this period, the defendant may inspect the consumers' goods, the subject of the lawsuit. If no preliminary settlement is reached, the plaintiff may pursue the claim in court.

The act omits a definition of *mental anguish*. *Economic damages*, however, are defined as the monetary compensation for the loss, including costs of repair and replacement (Section 17.45[11]). Excluded are exemplary (punitive) damages, damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment and loss of companionship and society.

If the defendant tenders a counteroffer of settlement for either damages, attorneys' fees or both that is rejected by the plaintiff, the counteroffer and an affidavit certifying its rejection should be filed with the court. If the court later finds that the damages sustained by the plaintiff or that the attorneys' fees incurred at the time of the counteroffer are substantially the same as the defendant's offer of settlement, only the lesser of the two amounts in each category is recoverable. The plaintiff forfeits any rights to enhanced damages.

An offer of settlement tendered by the defendant is not an admission of engaging in an unfair act or practice. Unless specifically granted, an offer of settlement made by either party may not be used as evidence.

Waivers to the DTPA have undergone extensive changes. Initially, the legislation declared all waivers null, void and against public policy. Now, under certain conditions, they are valid.

As amended in 1995, a written waiver is valid and enforceable if signed by the consumer. The consumer must not be in a significantly disparate bargaining position and must be represented by legal counsel not directly or indirectly identified, suggested or selected by the defendant or an agent (Section 17.42).

The act requires the waiver to be conspicuous, placed in boldface print in a minimum of 10-point type and entitled "Waiver of Consumer Rights." It should read similar to the following:

> "I waive my rights under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Business & Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of my own selection, I voluntarily consent to this waiver."

In addition to the statutory waivers, the Texas Supreme Court recognized a limited "as is" waiver for commercial transactions (*Prudential Ins. Co. v. Jefferson*, 38 Tex. Sup. Ct. J. 366 [1995]). The court ruled, "A buyer who agrees, freely and without fraudulent inducement, to purchase commercial real estate 'as is' cannot recover damages from the seller when the property is later discovered not to be in as good a condition as the buyer believed it was when he inspected it before the sale."

An effective "as is" agreement (or waiver) must meet the following conditions.

- The seller must disclose all known defects. The agreement is unenforceable if the purchaser is induced by fraudulent misrepresentation or concealment of information.
- The seller can not obstruct the buyer's ability to inspect the property.
- The "as is" clause must be an important basis of the bargain. It can not be an incidental or boiler-plate provision.
- The buyer and seller must have relatively equal bargaining positions.

The high court does not label this form of an agreement as a waiver because the plaintiff can still sue. Instead, an effective "as is" agreement negates the producing cause element of the case, meaning the plaintiff can not win.

Few, if any, transactions were exempted initially. The 1995 amendment exempts professional services that entail providing advice, judgment, opinion or similar professional skills. However, the exemption does not apply if the professional services involve the omission or expression of a relevant, material fact, an unconscionable act or a breach of an express warranty, none of which could be characterized as advice, judgment or opinion.

The 1995 amendment added another exemption important to real estate. Basically, a claim arising from a written contract is exempt if three conditions are met:

- The project or set of transactions related to the same project exceeds $100,000.
- The consumer is represented by legal counsel, not directly or indirectly identified, suggested or selected by the defendant or an agent.
- The contract does not involve the consumer's residence as defined by Section 17.45(12).

The 1995 amendment exempted all transactions, whether or not based on a written contract, in which the project or set of transactions related to the same project exceeds $500,000. The project, however, can not involve the consumer's residence.

Finally, the 1995 amendment limited the recovery for mental anguish to instances when the trier of fact finds the conduct was committed either knowingly or intentionally. In short, *knowingly* means actual awareness of the falsity, deception or unfairness (Sections 17.45[9]). *Intentionally* means actual awareness coupled with intent for the consumer to rely on the falsity, deception or unfairness (Section 17.45[13]). Both can be inferred from the circumstances.

Only when the trier of fact (the jury or the judge setting without a jury) finds the act was committed knowingly is the recovery for mental anguish allowed (Section 17.50[b][1]). If the act was committed intentionally, the trier of fact may award up to three times the damages for mental anguish.

The two defenses added in 1979 remain virtually unchanged. The first defense relates to a third-party generating the false or misleading information. The defendant escapes liability by proving all of the following:

- The producing cause of the alleged offense stems from information written by a third party and given to the defendant.
- The party supplying the information reasonably anticipated the information would be given to a consumer.
- The information related to the transaction in question and was false or inaccurate.
- The defendant did not or could not have reasonably known of its falsity or inaccuracy.
- The defendant informed the consumer in writing prior to consummating the contract that he or she was merely the messenger, not the originator, of the information.

The seller's disclosure form is now a more effective defense for licensees.

While the defendant can escape liability, the third party supplying the information can be sued even though no contract existed with the plaintiff.

An amendment to the Texas Property Code, effective January 1, 1994, made this third-party defense more viable for real estate licensees (Section 5.008). The new law requires home sellers to provide a property disclosure form to prospective buyers. In rural settings, disclosures are required when the dwelling accounts for more than 5 percent of the sales price. The seller disclosure form enables licensees to rely on this defense more effectively.

The recent advent of property inspections also aids licensees. Texas case law, in some instances, holds that when a buyer engages the services of an inspector, the buyer's reliance on the inspection removes or lessens any reliance on the listing (selling) broker. (For more details about these instances, see "Disclosure Courts Define Broker's Duty," Real Estate Center publication 681.)

A second defense relates to a procedural matter and not to any factual issue of the case. Simply stated, the defendant may be absolved of liability by tendering the economic damages, damages for mental anguish and expenses, including attorneys' fees, claimed by the consumer within 30 days of receiving notice.

In the defendant's favor, if the court finds that the case is groundless in fact or law, brought in bad faith or for the purpose of harassment, the court shall award the defendant's reasonable and necessary attorneys' fees and court costs (Section 17.50[c]). Also, Rule 13 of the Texas Rules of Civil Procedure allows a similar recovery on the same grounds. Rule 13, however, allows the recovery from both the plaintiff and the plaintiff's attorney.

The recoveries under the DTPA were altered by the 1995 amendment. No longer is the amount of damages less than $1,000 automatically doubled. Instead, the prevailing plaintiff receives economic damages (defined earlier.) If the defendant's conduct was committed knowingly or intentionally, the trier of fact may award no more than three times the economic damages.

Mental anguish is recoverable only when the conduct was committed knowingly. Up to three times that amount may be awarded for intentional conduct. The 1995 changes eliminated any recovery for bodily injuries.

In addition, the court may enjoin acts or failure to act, order the restoration of property acquired in violation of the act, appoint receivers, revoke licenses or initiate any other relief the court deems proper. Prevailing plaintiffs are awarded court costs as well as reasonable and necessary attorneys' fees. However, court costs, attorneys' fees and prejudgment interest may not be considered in computing additional damages when the defendant acted knowingly or intentionally.

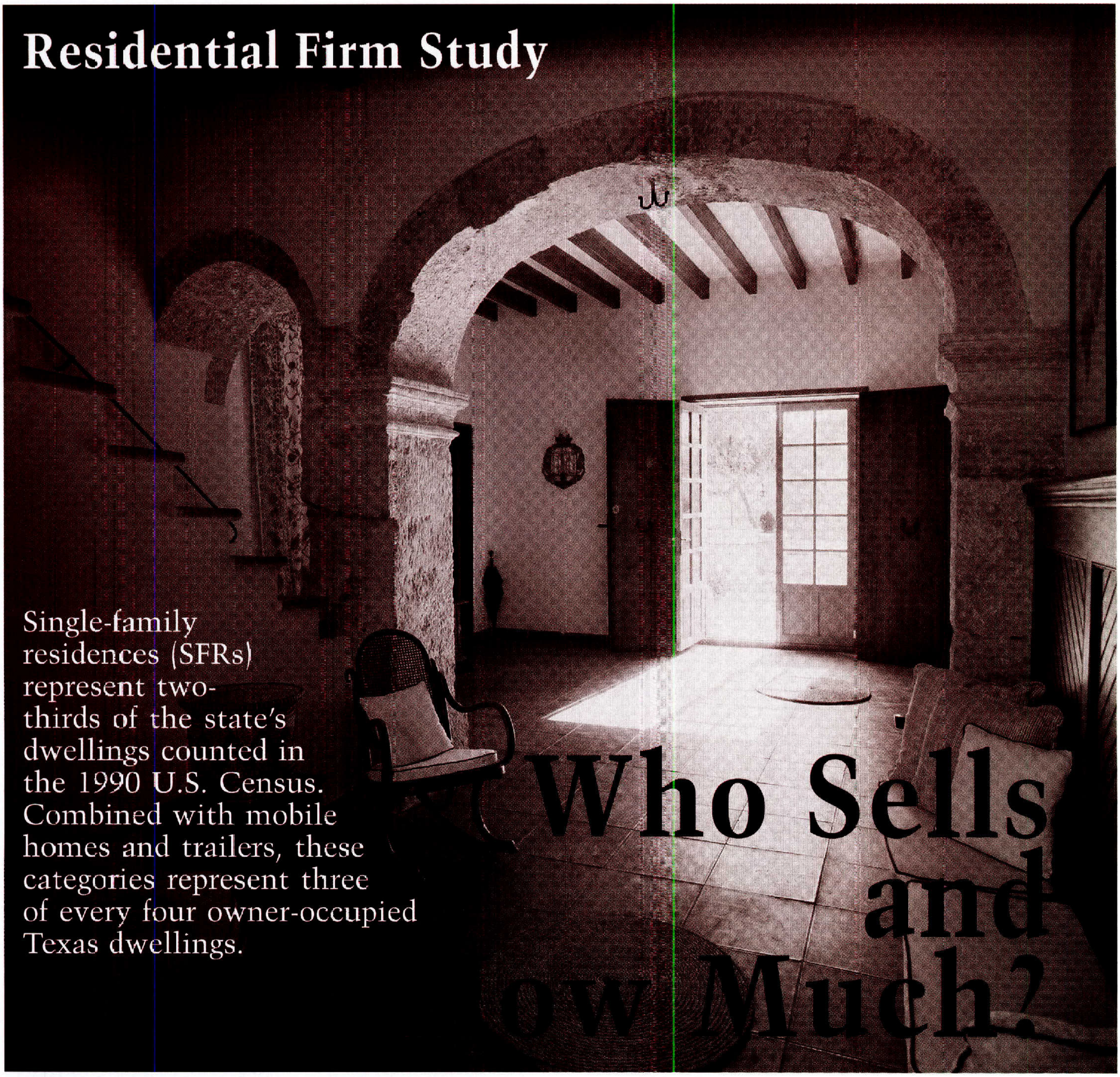
The 1995 amendments address the use of mediation. By filing a timely motion, either party may compel mediation when the claim for economic damages exceeds $15,000. The costs will be shared. Mediation for lesser amounts may be compelled if the moving party agrees to pay all costs. The court appoints the mediator when the parties can not agree. The mediation process outlined in the Texas Civil Practice and Remedies Code entitled "Alternative Dispute Resolution Procedures" is referenced for guidelines (Chapter 154).

For the past 20 years, the DTPA generated more litigation involving real estate transactions than any other statute. The 1995 changes represent equal protection for both the plaintiff and defendant.

This article is for information only. For specific legal advice, consult an attorney.

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

Residential Firm Study



Single-family residences (SFRs) represent two-thirds of the state's dwellings counted in the 1990 U.S. Census. Combined with mobile homes and trailers, these categories represent three of every four owner-occupied Texas dwellings.

Who Sells and How Much?

By Ted C. Jones, Charles E. Gilliland and Jenna Sundberg

Analysis of SFR sales shows the volume of residential activity, typical marketing times and relationships between asked and realized prices. It also reveals market share of residential brokerage firms and the impact firm size and franchise relationships have on the productivity of individual listing and selling professionals.

What is the typical sales-to-list price ratio?

The average sales-to-list price ratio is 96 percent, while the median sales-to-list price is 97.3 percent. The ratio varies widely across sales price ranges, however. As shown in the table, the average sales-to-list price is 95 percent or more for homes ranging from $40,000 to $749,000. Limited sales both above and below this range no doubt explain the lower sales-to-list price ratios in the remaining price categories.

How many properties are for sale? Is it a buyer's or seller's market? Where are prices expected to go?

Sales of a large number of properties does not alone reveal the overall health of a market. The ratio of the number of properties for sale to the number sold indicates the number of months inventory. It also provides a significant statistic that relates relative supply to demand. This ratio has been a leading indicator of value trends in recent years.

If no offer has been made after 90 days, a price adjustment may be needed for the house.

The number of months inventory is calculated by dividing the number of properties currently listed by the number sold in the prior 12 months, then multiplying the result by 12. An inventory of less than nine months indicates a seller's market, while more than ten months favors buyers.

Prior Center research indicates that property values typically rise when the number of months inventory falls to less than nine or ten months and generally does not increase when inventories are more than ten months. Although the numbers vary across markets, the ratio remains a consistent indicator of value trends. The nine- to ten-month range generally is considered normal; in economic terms, the market is in equilibrium.

Given the 6.8-month inventory of SFRs for sale in this study, the general conclusion is that value trends will be up this year. This is not true of all price ranges, as illustrated in the table. (The greatest price appreciation is anticipated for residences valued at less than $20,000 and based on 3.3 months of inventory for sale.)

With less than seven months inventories for all price ranges less than $110,000, the lower-to-moderate priced homes have the greatest value rise potential. The opposite is true for higher-valued

Crunching the Numbers

The Real Estate Center analyzed 55,437 single-family residential sales closed in 1995 from several Texas Multiple Listing Services (MLSs). This sample represents more than 50 percent of all single-family properties marketed through Texas MLSs last year. The average sales price was $115,400, with a corresponding average list price of $121,500 at the time of sale. Median sales and list prices were $87,500 and $89,900, respectively.

The table shows the number and percentage of sales by price range in the sample. Less than 8 percent of the sales were for $200,000 or more. Less than 8 percent sold for $39,999 or less. This analysis focuses on the office rather than the firm level.

residences, given the 11-plus-months inventory for all price ranges from $225,000 and up. Residences priced at $1 million-plus indicate at least 30 months of inventory available. Location and property characteristics, not just availability of properties expressed as months inventory, can override these market generalizations, however.

How long does selling a house take today?

The average number of days between the date the listing agreement began and the day the sales contract was signed is 101 days. Days on the market rise steadily across price ranges, beginning at $250,000. This average statistic can be misleading if examined alone.

The asking price had changed in nearly 40 percent of the properties sold during the listing period. Those properties were on the market an average 159 days, compared to 62 days for properties with no change in the asking price during the listing period.

Reassessment of the asking price typically came after the property had been marketed for 94 days. This statistically significant delineation indicates that a price adjustment should be considered if little activity (offers) occurs in the first 90 days of the listing, assuming an effective marketing effort for the property. This also confirms earlier Center research showing that a house first listed at market value sells in a timely manner.

What is the market share of franchise firms?

Franchise firms were stronger on the listing side than the sales side of the transactions. Slightly more than 53 percent of the sales were completed through brokerage offices affiliated with a national or internationally-related franchise. Of the 2,135 individual offices included in the study, 295 offices are franchise affiliates. The franchise affiliates, although representing just 13.8 percent of the total number of offices counted in the study, are listing agents for 53.1 percent of the residences closed.

The average list price at franchise offices is $106,600, 23 percent less than the $138,400 average list price for nonfranchise offices. As shown in the table, franchise listing agents claimed at least one-half of the market share for prices from $30,000 to $159,999, excluding the $140,000 segment. This is the core of Texas SFR sales, representing 77.2 percent of the market and indicates that franchise firms excel in the high-volume market segments.

Franchise offices are the selling agent 46 percent of the time, having at least a 50 percent share, in the $60,000 to $109,999 price range. The average sales price for franchise-based agents is $104,900, almost $20,000 less than nonfranchise sales agents' average price of $124,400.

Research suggests major national firms concentrate on core markets, leaving specialty categories and niches to independents.

Independents are more active in the more specialized lower and higher ends of the market. This suggests but does not confirm the hypothesis that major national firms would concentrate on the core markets, leaving specialty categories and niches to independent firms.

Do franchise agents sell more?

This study does not indicate that the franchise agents are more productive. The average number of agents per franchise office is 17.32 compared to 3.7 for independent offices. Gross sales per nonfranchise agent are $5,531 greater than their franchise counterparts.

Texas Single-Family Residential Sales, 1995 Sample

Sales Price Range	Number Sold	Percent of Sales	Cumulative Percent	Average Days on Market	Sales Price as a Percent of List Price	Percent Franchise Listing Firm	Percent Franchise Selling Firm	Percent Changing List Price	Percent Listed and Sold by Same Office	Percent Listed and Sold by Same Agent	Active Listings			
											Number Active Listings	Percent of Listings	Cumulative Percent	Estimated Number Months Inventory
Less than $20,000	825	1.5	1.5	105	79	44	41	27	67	51	225	0.7	0.7	3.3
$20,000 to $29,000	1,060	1.9	3.4	96	87	47	40	24	66	50	423	1.3	2.1	4.8
$30,000 to $39,999	2,104	3.8	7.2	105	94	50	39	28	56	38	929	3.0	5.0	5.3
$40,000 to $49,999	4,114	7.4	14.6	100	96	54	42	30	47	32	1,447	4.6	9.6	4.2
$50,000 to $59,999	5,654	10.2	24.8	99	97	59	48	33	40	27	1,984	6.3	16.0	4.2
$60,000 to $69,999	5,622	10.1	35.0	91	97	60	51	33	36	24	2,244	7.2	23.1	4.8
$70,000 to $79,999	5,144	9.3	44.2	96	97	58	50	36	36	23	2,209	7.0	30.2	5.2
$80,000 to $89,999	4,647	8.4	52.6	91	97	56	50	38	33	19	2,217	7.1	37.2	5.7
$90,000 to $99,999	3,537	6.4	59.0	93	96	58	51	40	32	19	1,944	6.2	43.4	6.6
$100,000 to $109,999	2,992	5.4	64.4	93	96	58	52	41	30	17	1,377	4.4	47.8	5.5
$110,000 to $119,999	2,959	5.3	69.7	90	97	54	49	41	31	17	1,731	5.5	53.3	7.0
$120,000 to $129,999	2,500	4.5	74.2	98	96	53	47	45	30	18	1,584	5.0	58.4	7.6
$130,000 to $139,999	2,075	3.7	78.0	101	97	52	46	45	30	18	1,395	4.4	62.8	8.1
$140,000 to $149,999	1,549	2.8	80.8	103	96	48	44	47	29	17	1,265	4.0	66.9	9.8
$150,000 to $159,999	1,451	2.6	83.4	110	96	51	46	49	29	17	964	3.1	69.9	8.0
$160,000 to $169,999	1,206	2.2	85.6	104	96	48	46	46	29	17	914	2.9	72.8	9.1
$170,000 to $179,999	950	1.7	87.3	110	96	49	44	48	26	15	800	2.6	75.4	10.1
$180,000 to $189,999	854	1.5	88.8	112	96	46	42	49	29	17	631	2.0	77.4	8.9
$190,000 to $199,999	615	1.1	89.9	114	95	47	41	48	24	15	574	1.8	79.2	11.2
$200,000 to $224,999	1,255	2.3	92.2	107	95	44	42	50	25	16	889	2.8	82.1	8.5
$225,000 to $249,999	958	1.7	93.9	115	96	43	37	48	27	16	1,041	3.3	85.4	13.0
$250,000 to $274,999	608	1.1	95.0	132	95	43	38	52	26	15	596	1.9	87.3	11.8
$275,000 to $299,999	499	0.9	95.9	142	96	37	36	54	25	16	664	2.1	89.4	16.0
$300,000 to $349,999	641	1.2	97.1	144	95	31	33	53	29	17	734	2.3	91.7	13.7
$350,000 to $399,999	443	0.8	97.9	137	95	26	27	51	27	17	579	1.8	93.6	15.7
$400,000 to $499,999	515	0.9	98.8	144	95	28	26	48	28	18	709	2.3	95.9	16.5
$500,000 to $749,999	444	0.8	99.6	167	96	19	19	56	26	14	720	2.3	98.2	19.5
$750,000 to $999,999	141	0.3	99.9	199	93	11	11	50	21	15	287	0.9	99.1	24.4
$1,000,000 to $1,499,999	52	0.1	100.00	202	89	0	4	50	31	13	144	0.5	99.5	33.2
$1,500,000 to $1,999,999	13	0.0		306	92	8	0	54	38	8	67	0.2	99.7	61.8
$2,000,000 and more	10	0.0		283	88	10	0	50	60	10	72	0.2	100.0	86.4
Totals	55,437	100.0		101	96	53	46	39	36	23	31,369	100.0		6.8

Assuming a 1.5 percent commission split, the estimated annual commission difference is a mere $82.96.

Is dual agency or acting as an intermediary a moot issue from the brokerage office perspective?

The answer is a resounding no, at least in the marketing of Texas SFRs. The same office had both the listing and selling agent 36 percent of the time. The rate among franchise-affiliated agents was 41 percent versus a 31 percent occurrence in independent agents. In the lower volume ranges, lower priced (less than $40,000) and multi-million ($2 million plus), same-office listing and selling agents ranged from 56 to 67 percent.

Should the buyers and sellers of those properties be concerned about a potential conflict of interest?

Not necessarily, assuming that the sales-to-list price ratio and the average days on market are indicators of service performance by the brokerage office. The average sales-to-list price ratio was 96.5 percent when the listing and sales agent came from different offices and 95.4 percent when the two agents were from the same office. After adjusting for the price range, given the lower ratio in the high and low price ranges, these are statistically indistinguishable. The same is true when the number of days on the market are compared, with an average 101 days each.

How frequently does the same licensee simultaneously act as the listing and selling agent?

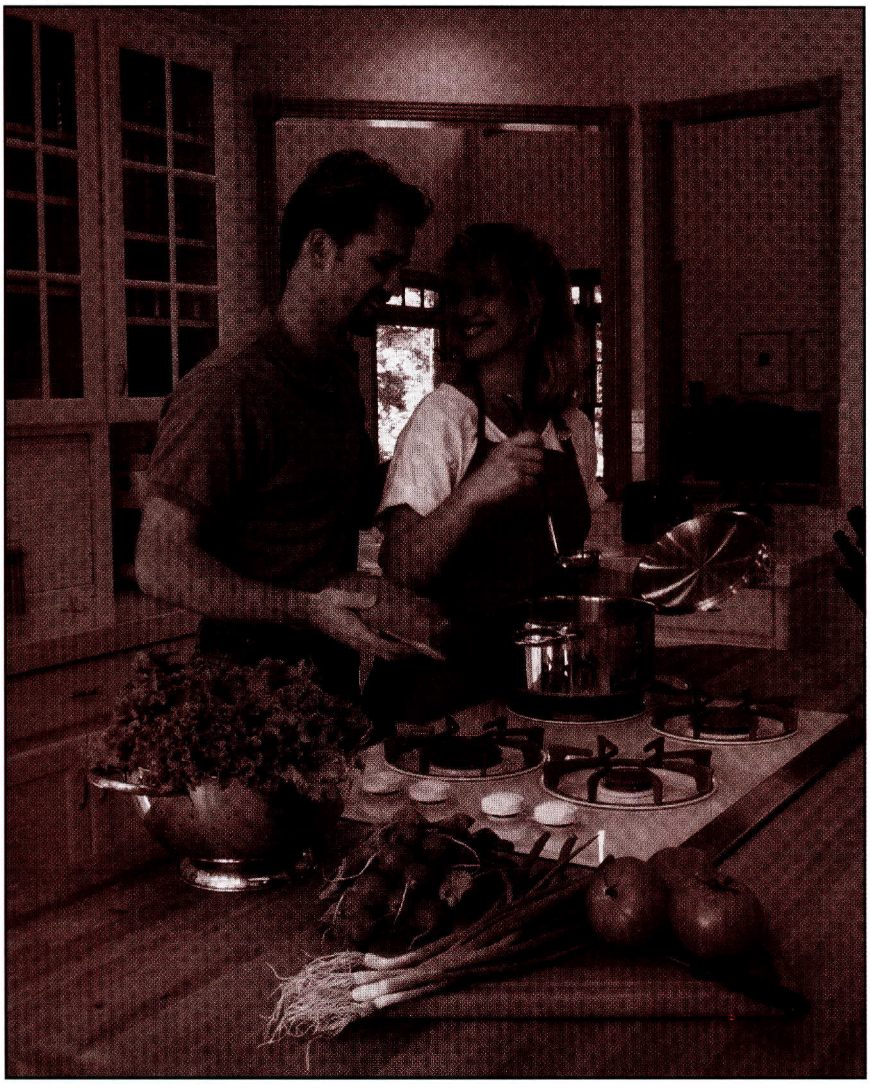
The same individual acted as both the buying and selling agent in 23 percent of the transactions. The table shows that the same agent transaction is more prevalent in the lower price ranges. This is not surprising, given the relative low volume of the market in those ranges and probable concentration of market expertise by relatively few licensees. Nonfranchise agents are both the buying and selling agent 20 percent of the time, with franchise agents filling the dual role in 25 percent of the transactions.

What is the market outlook?

Limited inventories in most price ranges—coupled with a growing Texas job market and favorable interest rates—bode well for homeowners and residential real estate professionals in 1996. Franchises, while dominating the listing side of the Texas' single-family market, have yet to equal that market share on the selling side. Attention to implications of market statistics should further assist Texas real estate professionals in successfully listing and closing single-family transactions.

While these highly-aggregated summary statistics should not be used to predict actual factors for a particular property, they do provide a series of benchmarks for comparisons. These statistics may help the Texas residential real estate professional negotiate listings and offers, estimate time on the market, decide when to counsel an owner to change a listing price and address potential concerns of agency-intermediary relationships.

Limited, inventories, a growing job market and favorable interest rates bode well for homeowners and licensees in 1996.



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Ecosystem Management In Search of Down-to Earth Answers

By Charles E. Gilliland

At its most elementary level, natural resource management concerns competition for space among the earth's teeming biological populations. The rivalry places demands on the land, air and water in the environment. Currently popular management regimens on both public and private lands have promoted the dominance of particular populations of consumable products. Guided by a market economy founded in private property rights, these activities have yielded pastures stocked with cattle as well as fields of blooming cotton and ripening grains at the expense of other populations. Spurred by profit, this approach to land use has supplied homes and sustenance to an ever-increasing human population.

This management approach to resource allocation has succeeded beyond the capacity of the human population to consume its produce. Its success in suppressing populations of noncommercial species has caused some scientists studying environmental interrelationships to question the long-run viability of such an approach. They contend this monoculture regimen results in a dwindling diversity of genetic material to meet future developments in the environment. By betting the future on a narrow resource base, this focused management approach may reduce the ability of future generations to cope with changing environmental conditions. Perhaps concentration on profitable products has undervalued some aspects of the environment that should be preserved and nourished, these ecologists argue. The markets may have failed to allocate land and other resources suitably because they can not price and capture the benefits of passing a genetically diverse environment to the next generation.

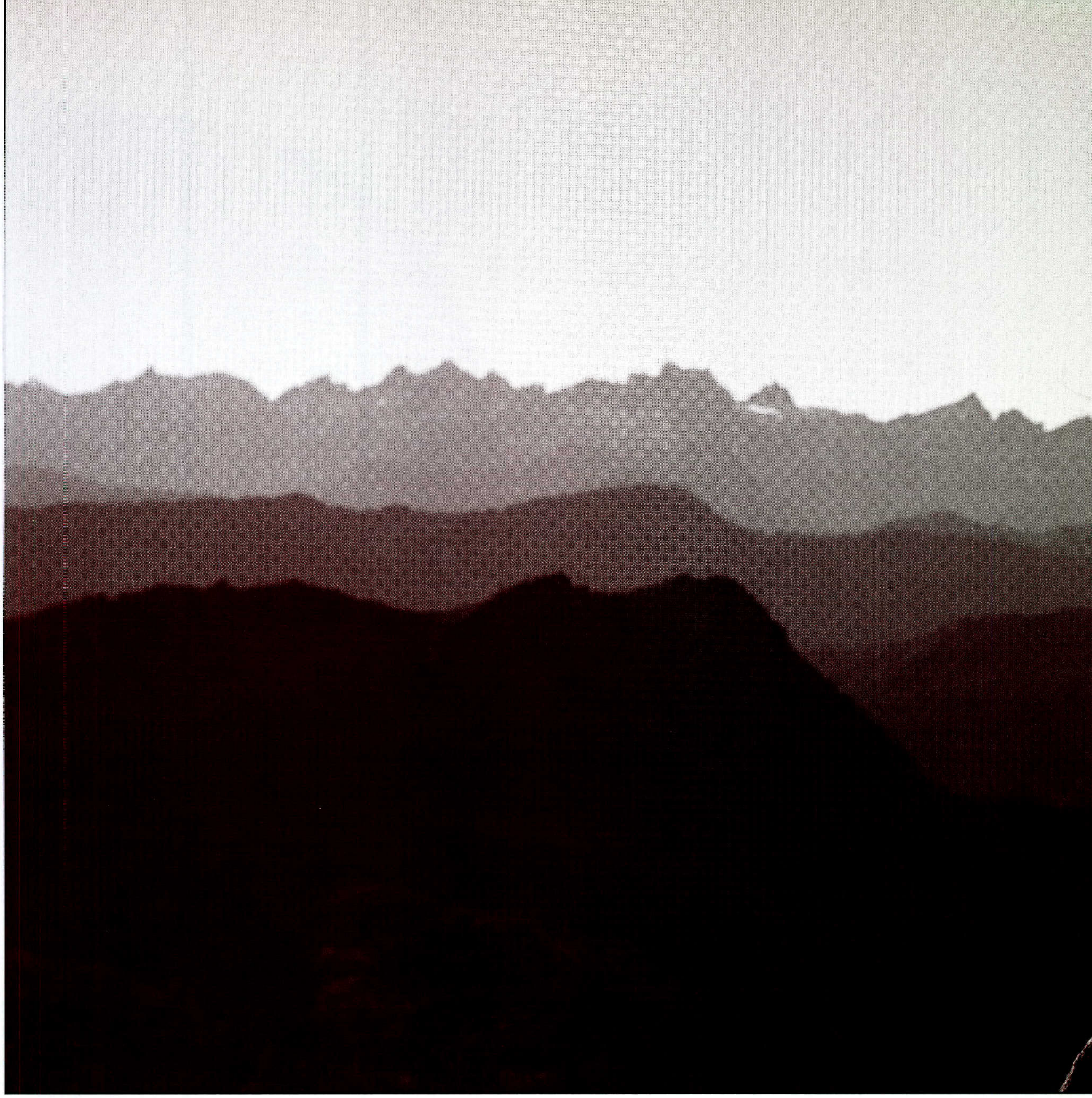
Responding to these concerns, the federal government adopted a series of acts designed to correct for the perceived myopic market allocation of resources. The National Environmental Policy Act (NEPA), passed in 1969, directed federal land management entities to eliminate damage to the environment and promote a healthy biosphere. NEPA, applying only to federal lands, did not reach private property owners. However, the Endangered Species Act (ESA), adopted several years later, applied equally to federal and private lands in its drive to preserve fragile populations of disappearing species.

Earlier in this decade, administration of the ESA by the U.S. Fish and Wildlife Service of the Department of the Interior (USFWS) sparked an uproar among owners in areas with expanses of potentially affected properties. ESA, it seems, affected not only the species in question but also its potential home. Anecdotes of land rendered useless in the wake of USFWS pronouncements circulated throughout the country. Corporate owners purchased acreage to provide permanent preserves for endangered fauna in return for the permit needed to develop areas containing habitat. Emotions surfaced anew when a federal court assumed control over water usage in the Edwards Aquifer to preserve endangered wildlife in the Comal Springs. Voters then sent legions of new legislators to Congress.

Ecosystem Management Approach

Environmental groups and agencies charged with administering ESA and wetlands acts reacted to the criticism by promoting a different approach to preserving endangered species while promising to respect private property rights. A current nation-wide

All plants and animals, rocks and soils, rivers and ponds as well as insects and bacteria within an area compose the ecosystem.



solution proposes an ecosystem approach to management in place of the piecemeal approach focused on individual species. Proponents argue for a proactive management plan that simultaneously addresses all elements of an interrelated ecological system rather than dealing with problems on a species-by-species basis. Ecologists contend that this management stance will allow agencies to anticipate problems and enlist the assistance of those involved to reach the most effective solution.

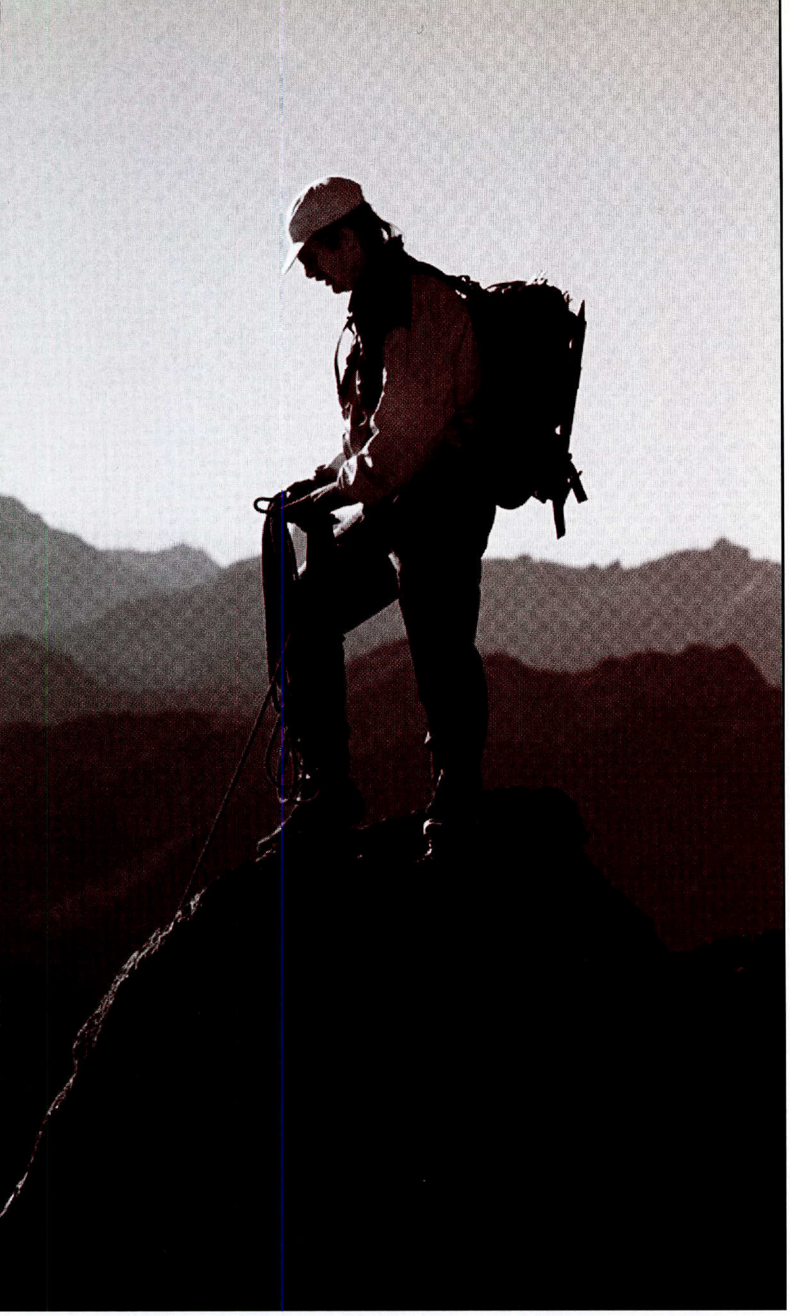
However, between the idea and the reality falls the shadow of human implementation. Understanding this gap requires an understanding of the idealized concept. This article first explores the ecosystem management concept and then examines the proposed system as it is taking shape in numerous federal agencies today.

Defining an Ecosystem

Studies of plants and animals can focus on individual specimens or a single species population. Within a habitat, various species begin to interact and form a community. Mutually dependent but competing for space, members of this community respond to other biological beings beyond the bounds of the community. In fact, the original community encounters community groups functioning as an interdependent system over a geographic range. Occurrences in one area affect the health and well-being of communities in other areas. This network of communities is an ecosystem. Finally, the ecosystems combine into the earthly biosphere generally called a landscape.

An ecosystem comprises a specific space including its living as well as inorganic components. All plants and animals, rocks and soils, rivers and ponds as well as insects and bacteria within an area compose the ecosystem. In concept, the ecosystem has no finite limits. In fact, ecosystems change with time and respond to occurrences both within and without their boundaries. Ecosystems can grow or contract; they can even disappear.

From a practical perspective, a particular ecosystem is defined by the objectives of the persons



describing it. An ecosystem can be an all-encompassing reference to the biosphere, that skin of living things stretching across the surface of the earth, or it can be as confined as a mud puddle drying after a flood. Thus, the operational concept of ecosystem management requires specified goals and objectives that permit the managers to describe the space involved and the elements of the management plan.

Management bias in favor of consumable products reduces biological diversity, ecologists argue. They cite changing technology coupled with an ever-expanding population for the unprecedented acceleration in the rate of change in ecosystems. Increased focus on traditional management practices threatens to weaken these changing systems and reduce their genetic ability to respond to mutation. From this viewpoint, continuing this approach to natural resource use threatens the future.

Ecologists recommend ecosystem management, a program of operations designed around ecological interactions. This new approach to management must embrace sustainability of the system as its primary foundation, ecologists insist. Here, sustainability refers to a capacity to continuously provide for the elementary needs of the ecosystem into the foreseeable future and to deliver that ecosystem intact to future generations. Sustainability is the bedrock of ecosystem management.

Although the definition of *ecosystem management* has no consensus, leading ecologists have identified some necessary elements of such a plan. Ecosystem management must focus on a set of measurable goals selected to achieve sustainability. The goals must be based on sound ecological models that incorporate the complexity of the system. However, evolution marches on, sweeping all ecosystems before it in a natural progression of change. Therefore, goals must not seek to freeze the ecosystem in its current configuration but to provide the strength to meet and adapt to change.

Ecologists readily admit their incomplete understanding of the complex web of interrelated processes composing an ecosystem. In fact, ecosystem management could be characterized as a sequence of steps to reach goals that ecologists believe will sustain the ecosystem. Each step can yield measures of its efficacy, making the plan an experimental process by nature that demands active and continuing research programs.

The experimental nature of the ecosystem management process has led some ecologists to suggest a need for a set of experimental "control" ecosystems. Pristine areas corresponding to each identifiable ecosystem would be interconnected and untouched by any but natural processes. Sustainability measured on these unspoiled, unmanaged areas would then be compared to results from similar but managed ecosystems to establish the credibility of the plans used on managed lands. Some scientists have even suggested a need for an "endangered ecosystem act" to ensure ecosystem preservation.

Humans play a pivotal role in management activities impinging on these natural processes and are ceded an active role in ecosystem management. Ecologists recognize that expanding world populations will lead to more intensive use of natural resources. They insist that the ecosystem management plan should pursue its objectives within a self-correcting process based on democratic principles and scientific study. Perhaps stung by violently negative reactions to ESA actions, ecologists increasingly acknowledge that plans must deal constructively with private property owners' concerns and not rely solely on potentially disruptive regulations.

Implementing Ecosystem Management

Under direction from the National Performance Review chaired by the Vice President, federal agencies have begun to develop plans to incorporate cross-agency ecosystem management programs. Agencies involved include varied entities such as the U.S. Navy and NASA as well as the U.S. Forest Service (USFS) and the USFWS, the agency administering the ESA. The far-reaching plans under development at these agencies provide insights into the implementation phase of ecosystem management and the impact on individual property owners.

Implementing an ecosystem management plan presents an intimidating challenge to the more than 15 federal agencies undertaking the task. At the outset, the focus must be on sustainable goals and objectives. Although supplying human needs is an important part of ecosystem management, all commodity and amenity goods must be subordinated to sustainability in the final plan, ecologists insist. Given those requirements, the agencies must define specific measurable goals and objectives to foster long-term sustainability. Furthermore, because the geographic extent of ecosystems varies greatly, the plan must find a mechanism to establish a consensus among those affected by the plan.

The final feature of an effective ecosystem management plan provides for adaptation as change inevitably washes over the ecosystem. Implementing federal agencies must strive to be flexible and accommodating while resisting temptations to adopt radically new actions. This feature calls for continuous timely adjustments as new knowledge is discovered. Unfortunately, federal agencies are not particularly well-known for flexibility and timely responses to changing conditions.

Regardless of which path plans take, implementation of ecosystem management programs implies many changes are ahead for Texas property owners.

The USFS has whole-heartedly adopted the ecosystem approach to managing USFS resources. The USFS has pledged to "protect ecosystems, restore deteriorated ecosystems, provide multiple benefits within the capabilities of ecosystems, and ensure organizational effectiveness." USFS has initiated plans to implement ecosystem management throughout their holdings and to solicit voluntary cooperation of private forest landowners.

USFWS has also begun a process to implement ecosystem management across its areas of responsibility. Presumably, the plans include USFWS' role in enforcing ESA on private lands. The service has adopted a set of principles that coincide well with those outlined above. The service had adapted the U. S. Geological Survey's Hydrologic Unit Map as the foundation for its ecosystem management initiative. This means that the defined ecosystems are organized around watersheds. Using these maps, the service has identified 52 U.S. ecosystems. Six cover all of Texas and parts of some neighboring states.

East Texas Ecosystem Plan

Within the local ecosystems, USFWS plans to create a team composed of personnel from all of the service units. These teams will devise a plan for each ecosystem. An early draft of the East Texas Ecosystem Management Plan provides an insight into this process as it promises to impact the local areas.

The East Texas Ecosystem Plan applies to 73 counties in East Texas and a portion of western Louisiana, including the drainages of the Brazos, Trinity, Neches and Sabine Rivers above their coastal regions (the Gulf coast is in another ecosystem). In this region development and logging of hardwoods, mineral extraction, building numerous dams, highways, transmission lines, intensive short-rotation management and introduction of exotic species are perceived as major threats. The service proposes to "restore and maintain the natural diversity of the East Texas Ecosystem."

The draft plan also includes several objectives with related strategies. The first objective centers on protecting and restoring habitat. Strategies include enlisting other agencies, both federal and state, as well as private citizens in initiatives aimed at preserving the ecosystem. Enforcement of existing laws, including ESA, also ranks high in the list of actions envisioned in the draft. The second objective focuses on environmental education and includes strategies such as emphasizing the importance of biodiversity in contacts with schools and the public as well as promoting ecologically responsible recreation. The final listed objective seeks to enhance biodiversity by protecting habitat of listed endangered and threatened species as well as candidate species. Envisioned strategies include plans for specific species and consultation with other agencies.

This ecosystem management plan emphasizes cooperation with private landowners through initiation of conservation agreements with private landowners in restoring and developing native prairies. The draft contains a number of budgeted items, including an enforcement office in Tyler, along with projected budgets. In short, the ecosystem management plan signals USFWS willingness to influence much of the economic and social activity in East Texas.

Several conclusions follow from these facts. The current federal government is dedicated to the ecosystem management concept, and federal agencies are fully engaged in developing ecosystem management plans. The plans are designed to modify current behavior among citizens within the ecosystem.

The plans generally follow recommended outlines for ecosystem plans as articulated by ecologists. However, the proposed ecosystems cross multiple political and social boundaries. Furthermore, although all the plans include wording that pledged respect for private property rights, these initiatives signal a willingness to design and implement blueprints for at least rudimentary land-use planning on a national scale. As these plans are implemented, controversies similar to the Edwards Aquifer battle may be repeated over such far-reaching solutions to foster biodiversity.

If the ecosystem management plans supplant current regimens, the land-use decisions will reflect a collective decision-making process similar to zoning. Land-use decisions will revolve around political considerations with less emphasis on market forces. Presumably, the plans will focus on sustainability; however, governmental agencies with vast power frequently succumb to corruption. This reality implies a degree of risk if the current planning process results in consolidation of land-use decisions within a few federal agencies.

Current plans do call for eliciting cooperation of private property owners. However, the lack of emphasis on enhancement of sustainability through subsidizing behavior contributing to biodiversity means that the plans are likely to be primarily regulatory. That solution to the perceived sustainability problem creates several potential difficulties.

First, landowners and other members of the "human populations" involved may remain unconvinced that reduced biodiversity threatens the future. Although plans call for education, regulation without persuading the human actors in an ecosystem area invites contempt and cynicism.

Second, ecologists readily admit that they do not understand the complex linkages within an ecosystem. Therefore, steps taken to ensure sustainability may backfire and produce an unanticipated outcome. By orchestrating ecosystem management from the top down, federal agencies ensure a uniform approach. If plans are indeed mistaken, society could lose on a broad front. When individuals plan and manage lands, the diversity of opinions and practices tends to avoid this unfortunate outcome as some property owners are likely to preserve some of the species through variations in approach.

Finally, market failure is second only to nonmarket or governmental failure in producing undesirable results. The case of the dusky seaside sparrow, now extinct because of federal mismanagement of its habitat, illustrates the danger of imposing a global governmental solution. If the habitat had remained in private hands, perhaps some of it would have been properly managed for the sparrow, and the species would have persisted.

Encompassing all lands in an ecosystem management regimen designed and administered by the federal government may not achieve the goal of sustainability as surely as compensating existing landowners to cooperate. Regardless of which path the plans take, implementation of ecosystem management programs implies many changes ahead for Texas property owners.

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

Agency Internet Addresses

Many agencies involved in environmental regulation at the national and state level offer information on the Internet. These are useful addresses.

Federal Sites

EPA http://www.epa.gov/ecoplaces/
EPA ecosystem management information

National Performance Review
http://www4.ai.mit.edu/npr/user/structure/develop-cross-agency-ecosystem-planning-and-management.html

U.S. Forest Service
http://www.fs.fed.us/land/welcome.htm
Table of contents for USFS ecosystem sites
http//www.fs.fed.us/intro/speech/jwtsp.html
Speech about USFS land management by Chief
http//www.fs.fed.us/land/comanor1.html
Speech about ecosystem management by Deputy Chief
http//www.fs.fed.us/intro/speech/spunger.html
Speech about USFS land management by Associate Chief
http://www.fs.fed.us/land/emterms.html
Glossary of ecosystem management terms

U.S. Fish and Wildlife Service
http://www.fws.gov/
Introduction to USFWS
http://bluegoose.arw.r9.fws.gov/nwrsfiles/habitatmgmt/concept.html
Table of contents for USFWS ecosystem sites
http://bluegoose.arw.r9.fws.gov/nwrsfiles/habitatmgmt/EcosystemManagement/Delineation.html
Maps of USFWS ecosystems nationwide

Associations

Ecological Society of America
http://www.sdsc.edu/SDSC/Research/Comp_Bio/ESA/ecmpage.htm
In-depth report on concepts of ecosystem management

Classroom Evolution Assigns Thinking to Machines

By Wayne E. Etter

Financial calculators and personal computers—both at the university and in the workplace—have generated significant changes in real estate analysis during the last quarter century. Indeed, it is almost impossible to believe that these presently indispensable tools were unavailable such a short time ago.

Today, however, these technological developments seem to define the financial analysis of real estate. Simple calculations, once performed with pencil, paper and a mechanical calculator, have been replaced by extensive computer analyses. What, however, has been the effect of the rapid development of financial calculators and personal computers on the teaching and practice of real estate analysis?

Teaching Real Estate Analysis

In the early 1970s, as expensive hand-held calculators became available, college faculty debated whether or not students should be allowed to use them during examinations. The faculty's concern was that those students who could not afford them would be at a disadvantage. The debate soon ended as prices declined sufficiently to allow everyone to buy a basic calculator, although easily affordable financial calculators were still in the future.

During these same years, computer programs were developed to perform discounted cash flow analyses of real property investments. Through its support of real estate programs at Texas colleges and universities and through special educational programs, the Real Estate Center provided many students and real estate professionals the opportunity to use a discounted cash flow computer program. The Center's program, originally named RE001, calculated an income property's expected internal rate of return and net present value and also produced extensive output that detailed the property's expected performance during the planned holding period. The program ran on the university's mainframe computer and required two or three boxes of computer cards.

Later, as personal computers and financial calculators became available, the Center continued to provide instructional material and other information to assist users of the new technology. For example, the Real Estate Center developed an investment analysis program for personal computers and began publishing a directory of real estate software. (Much of Texas' real estate information now is listed on the Center's Internet site at http://recenter.tamu.edu.)

Today, less classroom time is spent teaching the basic mechanics of discounted cash flow analysis. Most real estate students are proficient with their financial calculators and can use them to correctly and quickly solve rather complex present value problems. Students often consider that noting the

Hand-held calculators, then and now. When students rely on them, are fundamentals of real estate analysis overlooked?

calculator key strokes sufficiently demonstrates how they worked a problem. Some calculators are programmed and/or programmable; students using these calculators actually are led through the problems by prompts that ask them to provide the next bit of required data.

Comprehensive discounted cash flow models are even easier than calculators for the students to use; the problem's inputs must be collected and entered, but no effort is required to organize the problem for analysis and perform the intermediate steps.

As a result, some students may never learn certain fundamental steps in real estate analysis, such as separating the mortgage payment into its principal and interest components, calculating the annual depreciation expense or estimating the annual tax on operations and capital gains tax at resale. They seem reluctant to master these calculations without relying on the computer.

Furthermore, calculators and computers appear to decrease students' willingness to think through the present value aspects of a problem—why work out the problem in a general way in your mind when it can be solved quickly with the computer or the calculator? For example, when asked whether a property's investment value will increase or decrease

Instructor's Notebook presents a lecture on a basic real estate subject. Written by an expert, *Instructor's Notebook* takes readers into the classroom to hear the professor's talk. This regular feature is designed as an introductory lecture on a different topic each issue. This special Instructor's Notebook compares the real estate classroom of 25 years ago to today's technologically advanced setting.

when the mortgage loan interest rate increases, some students want to calculate the change using a specific set of data. To the extent that this is true, it is a shame because present value analysis provides a framework for understanding the general relationship between changes in the timing and quantity of cash flows. One need not be solving a specific problem to benefit from the time value of money concept.

But with less time spent on teaching mechanics, more time becomes available to focus on the use and interpretation of the discounted cash flow models. Topics such as the effect of anticipated supply and demand conditions in the market, expectations about rents, vacancy and collection losses, operating expenses and capitalization rates at resale, risk analysis and the choice of the discount rate can be more fully explored in the limited time available for each class. Ultimately, an understanding of these topics is more important for investment decision making than a mastery of the basic mechanics of discounted cash flow analysis.

Real Estate Analysis in the Workplace

The need or desire for real estate professionals to be proficient users of financial calculators and personal computers who can perform a financial analysis of real estate is apparent in several ways. Professional associations, for example, continue to offer well-attended programs which teach participants to use financial calculators and personal computers to perform both basic and advanced real estate analysis. Former students, when offering advice to current students on how to succeed as real estate professionals, often communicate the need to be comfortable with using the latest computer software. And a number of potential employers consider those students knowledgeable about real estate analysis software programs to have an advantage over those students without such knowledge.

Thus, computer skills are necessary for those who want to succeed in real estate investment analysis—without them, the latest software can not be used. Again, however, the more basic question is: How does the use of these software programs affect the quality of real estate analysis?

As real estate investment analysis changed from simple to complex calculations, a significant opportunity was created for obtaining excellent insights into a property's expected future performance. Questions such as whether or not a current retail tenant will re-lease space should lead the analyst to issues such as expected changes in the market area's demographic profile, the future supply and demand for space in the market area, expected rental rates, vacancy rates and discount rates.

Not only do the programs facilitate incorporating these considerations into the value estimate, but the sensitivity of the value estimate to changes in the important variable can be tested. As is true in the classroom, these programs release the analyst from the need to focus on the mechanics of the calculations. Instead, attention can be focused on analyzing and forecasting only those variables that are fundamental to estimating the property's value.

However, long-term estimates sometime seem to be developed just to satisfy the computer program's input requirements rather than to reflect the analyst's conviction that carefully developed estimates will lead to a better value estimate. Forecasting the variables required to estimate the project's value should be done carefully or not at all. A value estimate based on a carefully developed direct capitalization of a single year's net operating income would be far superior to improper estimates of key variables in a discounted cash flow model.

Computers are used to produce pages of detailed forecasts of future operating performance along with ratios and rates of return calculated to several decimal places; this introduces a heightened sense of accuracy to real estate analysis. With such impressive results, it is sometimes forgotten that these calculations are based on forecasts reaching five, ten or more years into the future. But even when careful estimates are made by the most knowledgeable analysts, estimates are still estimates.

Finally, elaborate discounted cash flow analyses sometimes seem to be included in appraisal and feasibility reports only to impress readers. Such reports often contain several pages of computer output portraying the analyst's *pro forma* income expectations for the property. Although these income expectations result from the analyst's specific assumptions about the property's future performance, the report often includes a statement that little importance was given to the values indicated by the discounted cash flow analysis or that its principal use was to confirm the findings of other analyses.

Positives and Negatives

The development of financial calculators and personal computers and their application to real estate analysis has had both positive and negative consequences. On the positive side, it is easy for both real estate students and real estate professionals to make extensive financial analyses of real properties. On the negative side, however, it is easy for an analyst to reduce the focus on understanding the critical elements that make a property a successful investment while increasing the attention given to collecting the specific data and making the particular assumptions required by the discounted program. Unless such data and assumptions are important to understanding the potential risks and returns of the property, these technological tools may result in a poorer decision.

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

Metropolitan Employment

By Jared E. Hazleton

Throughout the 1990s, Texas has been one of the leading states in creating jobs. Last year was no exception. Average nonfarm employment in the Lone Star State climbed 3.8 percent, compared to about 2.2 percent growth for the nation. However, state employment trends varied widely across both industries and metropolitan areas.

Only three of the 26 Texas metropolitan areas managed to surpass the state average in nonfarm employment growth in 1995. Leading the way, as it has for several years, was the state's capital city. **Austin's** 6.5 percent increase in jobs not only garnered it first place in Texas but also ranked it among the nation's top job growth cities. Recent corporate relocations to Austin read like a who's who among high-tech computer-information companies.

Nearby **Killeen-Temple** placed second in job growth last year, with nearly a 6 percent gain—largely the result of troops being transferred to Fort Hood as part of the post-Cold War restructuring of the nation's military forces.

Coming in third in the race for new jobs was another IH-35 corridor city, **San Antonio**, which managed a 4 percent overall increase in payroll employment—impressive results in light of Mexico's economic problems and the Alamo City's ties. The popularity of San Antonio as a retirement and tourist destination helped buoy employment in the services, construction and trade sectors.

The major change recorded in the pattern of metropolitan employment growth last year was the drop-off in job gains in the Lower Rio Grande Valley. Cities in this area, which had placed near the top in job growth for a number of years, were battered by the devaluation of the peso in December 1994 and the resulting austerity program adopted by Mexico's Zedillo administration.

Laredo, the state's second fastest growing metro area between 1989 and 1994, experienced a 0.4 percent drop in nonfarm employment. Job gains in **Brownsville-Harlingen** and **McAllen-Edinburg-Mission** fell to slightly less than the state average, while **El Paso** managed just a 2 percent increase. Job losses in these cities in retail trade and services were partially offset by the fact that a declining peso led to growth in the *maquilas* by making their exports more competitive internationally. Some of their growth spilled across the border in the form of increased demand for supporting services.

Payroll employment growth in **Dallas** equaled the state average last year. The "Big D" economy is well diversified and tends to track changes in the nation's economy, although with a bit more vigor. Nearby **Fort Worth-Arlington** recorded a 3.3 percent increase in nonfarm employment, despite the continued seepage of defense-related jobs. **Houston** employment climbed 3.1 percent in 1995, a relative improvement from the lackluster performance of the previous two years. While development of the medical center and NASA have given Houston more economic diversity, the changing fortunes of the energy and chemical industries still exert a strong influence on Bayou City growth.

With the notable exception of Houston, the Texas Gulf Coast economy continues to lag. Nonfarm employment in **Brazoria County** fell 1.5 percent, placing this petrochemical area dead last in job growth among the state metro areas. While **Beaumont-Port Arthur**, **Galveston-Texas City**, **Corpus Christi** and **Victoria** managed some job growth, they all ranked in the bottom quartile.

A number of metropolitan areas, such as **Amarillo**, **Lubbock**, **Odessa**, **Tyler** and **Waco,** have prospered in recent years as regional trade and service centers for a large hinterland. **Longview-Marshall** also falls into this category, but its employment base also has benefited from the presence of significant petrochemical manufacturing capacity.

The problem posed by this type of growth is demonstrated by the declining performance last year of **Bryan-College Station**. Despite the fact that Texas A&M University capped its enrollment growth, this area had nonetheless been among the leaders in employment gains for the past several years as the result of expansion in medical and other services and the entry of large discount retailers. However, this type of growth can be self-limiting. While one super discount store, regional mall or health facility can pull in customers from a considerable distance, a second such establishment is unlikely to be built unless the area's population is growing rapidly.

The challenge facing these cities, as well as cities such as **Abilene**, **San Angelo** and **Texarkana** (which also are losing military jobs), is to find a way to attract new industry to their area.

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.

Road Trip . . . What's Deductible?

By Jerrold J. Stern

Road trips can be educational, economically rewarding and fun for real estate professionals seeking to expand their business. But what qualifies as a "road trip," and which expenses are deductible?

Uncle Sam allows deductions that reduce tax liability when business travel takes the taxpayer away from home overnight. Examples of business travel include trips for conventions, professional education, cultivating business prospects and researching market territories.

Assume Tim Johnson is a salesperson who will be attending a real estate sales convention at a four-star hotel in Lake Tahoe. Tim plans to fly first class ($700) and stay at the hotel for five days ($110 per day). Three days are for the convention and two days are for some well-deserved rest and relaxation. But Tim wonders how much of his expense the government will absorb. The figure addresses Tim's tax questions.

Because the number of Tim's business days (three) exceed his personal days (two), the trip is considered to be primarily for business. Thus, the total cost of the air fare ($700) is deductible. There is no proration between business and personal days. If Tim stays in Tahoe for four personal days, none of the air flight expense is deductible.

One-half of all of Tim's meals during the three business days are deductible. In contrast, the meals on personal days are not deductible.

Lodging costs for the three business days (3 x $110 = $330) are deductible. No deduction is allowed for the two personal days. Entertainment expenses are calculated by another set of rules (see the tax column in the Fall 1995 issue of *Tierra Grande*).

Of course, any reimbursement of travel expenses from Tim's employer reduces the amount he can deduct. If the employer reimburses Tim $75 per night for lodging, Tim would still be able to deduct the $35 difference ($110 less $75).

Transportation, Meals and Lodging for Business Trips

Category	Tax Rule	Documentation	Deductible Amount
Transportation			
Air flight	The primary purpose of the trip must be for business	Ticket stub, canceled check or charge card receipt	Entire ticket cost, (regardless of first class, coach or other designation)
Automobile	Same as above	Records that specify the dates, mileage, location, purpose of trip	31 cents per mile or out-of-pocket-costs
Meals	Meals during business days are deductible.	Receipts, canceled check, or charge card receipt	50 percent of meal cost, including cocktails and gratuities
Lodging	Lodging during business days is deductible	Receipts, etc.	Entire cost of room for each business day, including tax, business telephone calls and dry cleaning

Entertainment expenses are calculated by another set of rules.

For 1995, employees and self-employed taxpayers have the option of using a $28 per diem allowance for meals ($36 per diem for "high-cost" localities) rather than collecting receipts for such expenses. The IRS has not yet announced the 1996 per diem amounts. No per diem rates are given for lodging.

In addition to documentation for specific lodging and meal expenses, documentation also is needed to show the business purpose of the trip. Thus, a brochure, pamphlet, e-mail announcement or a similar item detailing the time, place and business activities would suffice.

For travel by automobile, taxpayers may select one of two methods: an automatic mileage rate of 31 cents per mile (for 1996) or actual out-of-pocket costs. Actual costs include gas, oil, repairs, insurance, depreciation and taxes. Parking fees and tolls may be deducted regardless of the method selected. When gasoline prices are unusually high, taxpayers may find the inconvenience of keeping track of actual costs provides worthwhile tax savings. Ordinarily, the automatic mileage rate is the better choice because of its simplicity.

Documentation is required for lodging, meals and to show the business purpose.

Real estate professionals who are self-employed for tax purposes deduct travel and transportation expenses on tax form Schedule C along with their other business expenses. Employees deduct travel and transportation as a miscellaneous itemized deduction. The total of miscellaneous itemized deductions is reduced by 2 percent of adjusted gross income.

For further specific advice, a tax accountant or attorney should be consulted.

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.

By Judon Fambrough

The effect of recorded judgments on title to homestead property continues to perplex the Texas courts as well as lenders and real estate practitioners. Do they cast a lien on the property contrary to Texas homestead laws? Can the party recording the judgment be sued for slander of title if not released?

These questions caught the attention of the Texas attorney general (AG). On November 20, 1995, he addressed them in Opinion No. DM-366.

Before reviewing this opinion, three things must be kept in mind. First, an AG opinion binds only state agencies. Neither courts nor private citizens are bound by the conclusions. Second, a slander of title is a legal procedure for recovering damages when a lienholder refuses to release a claim that falsely and maliciously disparages title. (See "Legal Principles, Procedures Affecting Title," *Tierra Grande*, Spring 1995.)

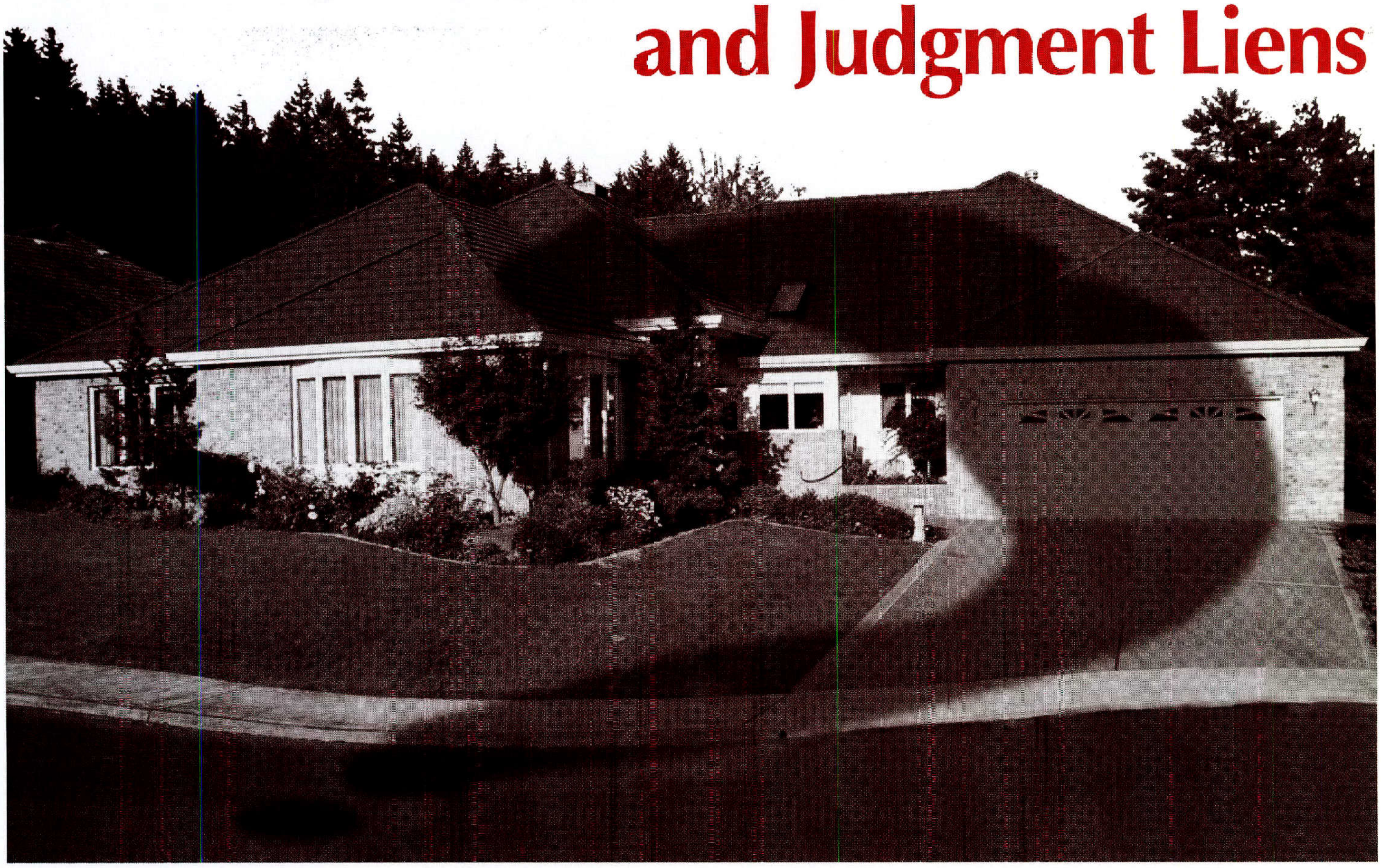
Finally, the case of *Tarrant Bank v. Miller* (*Tarrant Bank*) plays a central role in the opinion. The ruling held the bank liable for slander of title for refusing to release a recorded judgment in Brown County. For that reason, the pending sale of the plaintiff's home failed.

On the first issue, the AG concluded that a duly recorded abstract of a valid judgment **may**, depending on the status of the property when the lien is recorded, cast a cloud on the judgment debtor's homestead. This conclusion was reached after examining the Texas Constitution, statutory law and court cases.

The Texas Constitution protects the owner's homestead from forced sales except in three instances. The exceptions include a foreclosure on a lien created to purchase the property, foreclosure on a property tax lien and foreclosure on a home-improvement lien. (Foreclosure under a federal income tax lien also is permitted.)

Judgment liens are created by statute. A judgment issued by a court, properly abstracted and recorded, constitutes a lien on the

AG Opinion Reviews Homesteads and Judgment Liens



defendant's real property located in that county. The lien extends to any real property subsequently acquired by the defendant.

The use of the property when the judgment is recorded is critical. A judgment that attaches to property **before** it becomes a homestead is valid and enforceable. The subsequent homestead use of the property does not invalidate nor toll (suspend collection of) the lien. The lienholder may foreclose even though the property is being used as a homestead at the time of sale. Such a controversy arose when an owner failed to pay the assessment fee to the homeowners association.

Likewise, a judgment lien recorded **after** it is no longer used as a homestead is valid and enforceable. The homestead character is no longer an impediment.

But what about judgments recorded while the property is being used as a homestead? The AG reviewed three Texas cases establishing that the judgment liens are valid (not void) but unenforceable until the homestead status is removed.

Quoting from the cases, the AG opinion states, "A judgment, though duly (recorded and) abstracted, never fixes a lien on the homestead so long as it remains a homestead." A judgment lien perfected (recorded and abstracted) while the property is used as a homestead is not void. When the homestead character is removed, "the lien arises as if the record (day of recording) were made on the day of abandonment of homestead."

A valid judgment may cast a cloud on the homestead.

How do these valid, unenforceable judgment liens affect a sale of the homestead property? According to the AG's review of Texas cases, the judgment liens have no effect on subsequent transfers.

If a judgment debtor transfers the homestead property, the transferee (buyer) gets clear title against any creditors whose judgment liens were perfected (recorded and abstracted) while the property was impressed with the homestead interest. However, the judgment lienholder may seize the proceeds if not reinvested in another homestead within six months.

On the second issue, the AG concluded that a duly recorded abstract of a valid judgment does not subject the lienholder to damages for slander of title. This conclusion contradicts the holding in *Tarrant Bank* cited earlier.

According to the AG opinion, *Tarrant Bank* can not be interpreted as holding that creditors are obligated to release a judgment lien on demand.

Two reasons are given for this conclusion. First, the court entered the judgment without evidentiary support. The bank, during discovery, refused to respond to the plaintiff's request for admissions, refused to produce documents and failed to answer interrogations. The trial court sanctioned the bank by entering a default judgment in the plaintiff's favor.

Second, in a slander-of-title case, the plaintiff must plead and prove the disputed lien falsely and maliciously disparages the plaintiff's title, causing the plaintiff to incur damages. The court in *Tarrant Bank* never addressed the issue of falsity.

Assuming a valid judgment, the AG concludes that a trial court would not hold a mere refusal to release a potential judgment lien against homestead property actionable for slander of title.

Perhaps this conclusion is supported, in part, by the recent case of *Frappier v. Texas Commerce Bank (TCB)*. In this case, Frappier, acting as trustee under a deed of trust, foreclosed on the Allens' homestead in Houston. The Allens' default on the mortgage lien prompted the action. The property brought $15,000 or $6,300 more than the mortgage. The controversy arose over entitlement to the excess.

In 1986, TCB abstracted and recorded a judgment in Harris County against the Allens for $2,500. In 1989, the IRS filed a tax lien against the Allens in Harris County for $10,000 unpaid income taxes. TCB contends, because it recorded first, that it has priority and is entitled to the excess.

The IRS counters by citing *Hoffman v. Love*: "[A] judgment, though duly abstracted, never fixes a lien on the homestead so long as it remains a homestead." In contrast, a federal tax lien is enforceable immediately against property that is being used as homestead (26 U.S.C., Section 6321).

The court agreed with the IRS. The issue is not which entity recorded first but which lien is first enforceable.

For specific advice, consult an attorney.

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

Internet Site Seeing

By Mark W. Baumann

Real estate professionals are always searching for ways to increase productivity and for new avenues to market their products and services. The Internet is just the tool. The Internet provides access to a nation-wide community of consumers. It also offers immense resources for the real estate professional, including news, e-mail and access to products and services—such as real estate software—that help increase productivity.

Real Estate Listings

Listing real estate is a natural on the Internet. The Internet exposes listings to potential local, state-wide, nation-wide and even international clients. Consumers can browse for real estate by product type, price range, locale and an increasing array of other desired features. Color photographs of property are becoming a standard feature. The address for the property usually is not provided in the listing information, so prospective consumers need to contact the listing agent or office; a phone number is always included along with an e-mail address when available.

The Austin Real Estate Connection, located at http://www.austinre.com, was one of the first Texas organizations to put real estate listings on the Internet. The public can search residential and commercial real estate properties, for sale or lease, by area, property type, price and other characteristics. The site also allows consumers to hire an agent, request relocation information, obtain legal advice, apply for a mortgage and hire an inspector. Information is available detailing new builder products, floorplans, elevations and subdivision locations.

The Austin Board of Realtors (ABoR) was the first Multiple Listing Service (MLS) to go on the net in Texas. Their address is http://www.abor.org. ABoR's web site has a link to the National Association of Realtors (NAR) home search system, which the Austin board uses for its listings. The Austin MLS has more than 5,500 residential listings. Potential homebuyers can search for residential Austin real estate by zip code, price range, square footage, school district and other features. This system also displays color photographs of properties.

Dallas is another Texas MLS that uses the NAR system. To reach the Dallas listings, visit http://hss.homeselect.com/dallas/. Currently, more than 15,000 residential listings are available on the Dallas MLS. All locations that use the NAR system have the same search capabilities described for the Austin web site. San Antonio also is expected to put residential listings online with NAR (http://hss.homeselect.com/seltx.htm).

Real estate from the Metroplex can be accessed at the web site called the Property Network and located at http://www.texnet.com. This site lists more than 7,000 residential properties for sale. Properties can be searched by price range, area, year built, house style, number of bedrooms, number of baths and other characteristics.

The Houston Association of Realtors (HAR) site is presently under construction and is expected to be on the net soon at http:// www. har.com. The Houston MLS will make available more than 30,000 residential and commercial real estate listings. Houston will be the first Texas MLS to put commercial real estate listings on the Internet. Both residential and commercial listings will include properties for sale and for lease.

Numerous web sites are offered by individuals, realty firms and private organizations that provide real estate listings for many Texas markets. Individual addresses can be found in directories and searchable indexes to locate the sites of most interest.

Directories and Indexes

One of the best real estate directories on the net is "IRED News;" it is also a real estate news service. Their main location is http://www.ired.com; to jump directly to the Texas section, use http://www.ired.com/ired/dir/relisutx.htm. IRED provides excellent web site ratings. Their directory, resources and other real estate services sections are thorough, with links to web sites in every state and more than 40 countries.

Another excellent directory and search tool is Yahoo (http://www.yahoo.com). Yahoo is a general directory and search tool for every subject area on the net, including real estate. A current Yahoo search for "real estate" finds more than 1,500 links to web sites. Other excellent directories and search tools include Lycos (http://lycos.cs.cmu.edu), excite (http://www.excite.com), infoseek (http://www.infoseek.com) and OpenText (http://www.opentext.com).

Each directory, index and search-capable web site offers different features. A search for "real estate" on some services will find only sites specifically related to real estate, while other services can locate documents containing real estate information on sites not directly related to real estate. If the desired information or site is not located on a particular site, a rule of thumb is to check another site.

Real Estate Center Joins Cyberspace

The Center's site (http://recenter.tamu.edu) has grown from fewer than 50 unique web documents in October 1995 to a total of more than 890 in late February. The Center's web site offers five main categories.

News. The newsroom has all the Center's current press releases.

Information. The Center's annual report, information on real estate licensing and education and links to the staff's e-mail addresses are in this area.

Publications. The Center's complete publications catalog is here. This also is the place to find the complete text of selected Center reprints. Eventually, all the Center's reprints will be available online.

Data. Looking for timely real estate related data? This is the spot. It also is one of the fastest growing areas on the Center's web site. Currently, data are available on housing activity, building permits and population for major metropolitan areas in Texas and rural land values for various market areas in the Southwest. The housing activity data come from local Texas MLSs and include home sales, average and median prices, new listings and months inventory for more than 45 metropolitan areas.

Cybersites. Links to other places of interest to real estate professionals can be found in this section. All the web sites mentioned in this column can be accessed through the Center's home page.

Baumann is an associate research social scientist for the Real Estate Center at Texas A&M University.

Cyberspeak or Internet terminology

Address. The unique location of a person or computer on the Internet. All communication on the Internet requires an address.

Browser. A software program used to navigate (browse) the World Wide Web. Netscape Navigator and Microsoft Explorer are examples of web browsers.

Cyberspace. The Internet is cyberspace, the realm of information contained in the online universe of interconnected computer networks. The prefix *cyber-* means related to the Internet.

Download. The transfer of an electronic document, graph or video from a host system to another computer.

E-mail. Electronic mail, which is the way to transfer messages over a computer network. The standard form of an e-mail address is username@computername.

FTP. File transfer protocol refers to a system used to transfer files between computers over the Internet. FTP usually displays files on a host computer in a directory tree style similar to Microsoft Windows File Manager.

GIF. Graphic Interchange Format. The most common format used for graphics on the Internet.

Gopher. A text-based menu system used to search for information. It does not support graphics.

HTML. Hypertext Markup Language. Used for creating World Wide Web documents.

HTTP. Hypertext Transfer Protocol. Used to transfer information over the World Wide Web.

Internet. See cyberspace.

Server. Synonymous with host, it is a computer system that provides information over a network.

Upload. The transfer of information from a computer to a host system.

URL. Uniform Resource Locator. The location of a host system. It contains a prefix like http, ftp or gopher followed by an Internet address.

World Wide Web. The collection of hyperlinked information, called web pages, across cyberspace. A graphical, and increasingly more video-based system, for viewing information on the Internet.

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