

**Larry Fonts, President  
Central Dallas Association**

will present

## ***Happenings in the Central Business District***

at the North Texas Chapter's Monthly Business Meeting

**Thursday, January 18, 2001**

**\*\*Cityplace Conference Center\*\***

**2711 North Haskell**

***(\*\*New Meeting Location for January Meeting Only\*\*)***

**Cocktails:** 5:00-5:45 p.m.

**Dinner and Chapter Business:** 5:45-6:15 p.m.

**Program:** 6:15-8:15 p.m.

**Meal Cost:** \$25.00 per person (No Shows Will Be Billed)

**Reservations Required:** Call 972/233-2244 (Deadline-Wednesday, January 17)

***Application pending with the Appraisal Institute for 2 hours continuing education credit***

## **GOOD NEWS FOR COMMERCIAL BROKERS AND APPRAISERS!**

*By Richard Hinds, MAI  
Attorney at Law*

In 1999, the Broker's and Appraiser's Lien on Commercial Real Estate Act, which will be referred to as the "Act," was signed into law. It is codified as Chapter 62 of the Texas Property Code (go to [www.capitol.state.tx.us/statutes/statutes](http://www.capitol.state.tx.us/statutes/statutes) to review the Act). According to the legislative history of the Act, it was intended to provide a "Broker" with a legal mechanism to secure the payment of their commission arising from a commercial transaction by obtaining a statutory lien on the property involved (similar to a mechanic's lien). The definition of "Broker" in the Act includes "a person who is licensed or certified as a real estate appraiser under the Texas Appraiser Licensing and Certification Act (Article 6573a.2, Vernon's Texas Civil Statutes)."

Following is a brief overview of some of the major provisions and exemptions in the Act. This article should not be construed as, nor is it meant to be, legal advice. The Act is a very complicated statute and competent legal advice should be sought concerning its implementation and/or applicability. There are many very specific, hypertechnical provisions in the Act. Failure to follow them can result in a waiver of the right to a lien, and possibly being held liable for actual damages and a civil penalty (for gross negligence or bad faith) up to three times the commission claimed.

As with many statutes, the Act does not explain what it covers so much as it explains what it does not cover. According to Section 62.003(2) of the Act, exempt real estate (the Act does not apply) generally includes:

- real estate improved with one-to-four single-family residential units (condos, townhouses, detached single-family residences, or any single-family units if conveyed on a unit-by-unit basis),
- real estate that is, or includes, a person's homestead, and
- unimproved real estate zoned for residential use, or restricted for single-family use, or used for farming/ranching (if located more than three miles from the nearest corporate/city limit).

Per Section 62.002(b), transactions exempt from the Act generally include transactions where the:

- broker's commission (also read as appraisal fee) is \$2,500 or less in the aggregate, or the
- commission is \$5,000 or less in the aggregate for the sale of real estate if the real estate is the principal place of business of the record title owner (their name is on the deed), is occupied by two to four tenants, and the gross building area of the improvements is 7,500 SF or less in size.

Under provisions in Section 62.021 a person is entitled to a statutory lien if the:

- broker has earned a commission/fee (it must be earned and payable) under an agreement signed by the seller or lessor of the real estate interest (or the prospective buyer or lessee, if applicable) or their authorized agent,
- notice of lien must be recorded and indexed by the county clerk of the county in which the real estate is located,
- commission/fee agreement discloses the broker's right to claim a lien, and
- the lien is only available to the broker named in the commission/fee agreement.

In order for brokers and appraisers to obtain a perfected (legally enforceable) statutory lien under the Act, their contract/fee agreements must be carefully drafted. In addition, the party with the real estate interest (existing or to be acquired), or their authorized agent, must sign an enforceable fee/commission agreement. There are other very specific requirements in the Act including, but not limited to, disclosure of the right to a statutory lien in the fee agreement, the contents of the notice of lien, who is entitled to be notified of the filing of notice of lien, and when and how they must be notified. The law is typically very unforgiving of mistakes in matters of this nature.

In conclusion, the Act gives brokers and appraisers the ability to secure their claim for earned and unpaid fees/commissions with a statutory lien, which is generally much more cost-effective and timely than a judicial lien (one obtained after a verdict and judgment in a court of law). This lien can be perfected prior to closing, and the escrow agent, if known, must be given notice of it. The lien attaches immediately upon filing a notice of lien. Once the escrow agent is given notice of the filing, the escrow agent and other parties to the sale or lease may not close the transaction unless: 1) the lien is released, 2) the buyer or tenant purchases or leases subject to the lien, or 3) funds (or a bond) to secure the disputed commission are held in escrow.

This is a powerful legal tool, if used properly, and every commercial broker and appraiser in Texas should become very familiar with it.

*Richard Hinds, J.D., MAI is an attorney\*, broker, general certified appraiser, and co-owner of HINDS & ASSOCIATES, a firm specializing in real estate valuation and litigation support. He is available for seminars and speaking engagements concerning various real estate and related legal issues and can be reached at 903.675.5500 or [hindsro@aol.com](mailto:hindsro@aol.com).*

*\*Licensed by the Supreme Court of Texas. Not certified by the Texas Board of Legal Specialization.*

---

**NOTICE:**

THIS ARTICLE MAY BE REPRINTED IN ITS ENTIRETY WITHOUT THE WRITTEN PERMISSION OF THE AUTHOR. HOWEVER, DUE TO THE NATURE OF THE SUBJECT MATTER, NO INDIVIDUAL PART OR SECTION MAY BE REPRINTED OR PUBLISHED IN ANY MANNER, APART FROM THE WHOLE, WITHOUT THE AUTHOR'S WRITTEN PERMISSION.

ALL OTHER RIGHTS ARE RESERVED.

# Welcome New Member!

Congratulations to newly designated member:

**Martin J. Heines, MAI**

## New Member Campaign

*by Jack Poe, MAI*

The results are in from our fall New Member Campaign. This year we send direct mail invitations to 800 potential new members of the Appraisal Institute North Texas Chapter. The prospects were selected from the database of certified or licensed appraisers in the geographic jurisdiction of our chapter who were not associated with the Appraisal Institute. These prospects received a letter that offered them benefits worth approximately \$400 if they joined by October 31, 2000. Five responses to the offer came in by the deadline and we would like to welcome them to our chapter. They are:

Kelly D. Lintner  
Tom G. McKaig  
Carolyn M. Moody  
Marcus Pruitt  
John T. Robinson, Jr.  
George H. Walker

Thanks to you all for joining the Appraisal Institute, and we look forward to a long and mutually beneficial relationship.

## Legislative Update

*by George N. Naeter, MAI*  
*Chair, Legislative Committee*

### **Mirror, Mirror on the Wall...**

A recent report by the Department of Housing and Urban Development has infuriated some members of Congress, who are charging HUD is using the report as a promotional piece. HUD released 30,000 copies of the report, "A Vision for Change: The Story of HUD's Transformation," each complete with a self-narrating CD-ROM, at the cost of \$750,000 in early December.

Representative Bob Ney, R-Ohio, considered to be the front-runner for the Chairmanship of the House Financial Services Committee Subcommittee on Housing sent a letter to HUD Secretary Andrew Cuomo expressing concern about the report in late December. Said Ney, "As we approach a change in administration, HUD is spending hundreds of thousands of dollars on what may appear to some to be a flagrant political public relations document. If it saves money, fine, but it needs not to be a promotional piece, so obviously political," concluded Ney.

HUD has said the report provides a glimpse of the overall management reform of the Department and has indicated the Congressional inquiry is purely political. Cuomo said, "This is a strategy of harassment, Congressional harassment of the Executive." The Subcommittee on Housing is expected to

continue to pursue its oversight obligations on this issue through the administration changes. To obtain a copy of the HUD report, contact HUD at 202-708-0417.

### **Strong as an Ox**

The House convened the 107th Congress January 3 and immediately began reorganizing committee structures, approving a plan to replace the Banking Committee with a "Financial Services Committee." A more powerful offspring of the Banking Committee, the new panel takes jurisdiction over securities and insurance activities from the Commerce Committee (now called the Energy and Commerce Committee). In addition to its new powers, the Financial Services Committee will have authority over banking, housing, government-sponsored enterprises and community development.

The House formally approved Rep. Michael Oxley, R-Ohio, as committee Chairman January 4. Oxley chaired the Commerce subcommittee on Finance for the past four years. Senior House Banking Committee members Reps. Marge Roukema, R-N.J., and Richard Baker, R-La., who had been vying for the chair, are expected to get consolation prizes, most likely being named chair of the more powerful Financial Services subcommittees. Baker is likely to chair the subcommittee overseeing the government-sponsored enterprises (Fannie Mae, Freddie Mac and the Federal Home Loan Bank), while Roukema, or possibly Rep. Bob Ney, R-Ohio, will likely chair the subcommittee on housing. Subcommittee structures and chairs will be decided shortly. Should you have any questions regarding the new Financial Services Committee, contact the Appraisal Institute's Bill Garber, Director, Government Affairs, at 202-298-5586, or by email at bgarber@appraisalinstitute.org.

### **HUD's Roster on the Disabled List?**

The Appraisal Institute Washington office has received inquiries from members of Congress regarding the Department of Housing and Urban Development's recently implemented Appraiser Roster Removal program. Senate offices have received complaints from constituent appraisers complaining that HUD was wrongfully removing them from the appraiser roster in accordance with new guidelines set forth in the HUD Homebuyer Protection Plan.

On May 5, 2000, HUD announced new rules setting forth the reasons and procedures for removing and/or reinstating an appraiser and types of remedies available to HUD against an appraiser found to have violated HUD statutes or regulations. In August, HUD empowered selected FHA Single Family Homeownership Centers (Philadelphia, Atlanta, Denver, and Santa Ana) to remove unsatisfactory appraisers.

The HUD regulations state an appraiser can be removed from the roster for cause. Cause includes, but is not limited to, significant deficiencies in appraisals, failure to maintain standing as a state certified or state licensed appraiser and prosecution for committing or attempting to commit fraud, misrepresentation or other offence that may reflect on the appraiser's character and integrity. The Congressional inquiries are apparently sparked by the Homeownership Center's new power to remove appraisers from the list.

The Washington office is keeping close tabs on this situation as it develops. Should you have any comments on the new system established by HUD, contact the Appraisal Institute's Bill Garber, Director, Government Affairs, at 202-298-5586, or by email at bgarber@appraisalinstitute.org.

### **"Can't you just leave me alone!"**

Federal Trade Commission Chairman Robert Pitofsky predicted on December 19 that the newly elected Congress would take up privacy legislation soon after convening in January. "I will be astonished if privacy is not a major issue within 90 days of Congress returning," Pitofsky said at a luncheon sponsored by a national housing organization.

Pitofsky said that most polls show Americans are concerned about threats to their privacy and would like to see a federal law that expands consumer protections. He said some business groups have opposed new law, arguing that market forces should determine rules on privacy. Others have sought solutions in self-regulation. Pitofsky said, "I think there should be a combination of these three ideas. I don't think any idea alone is adequate and that market forces, self-regulation and new laws could all play a role."

Pitofsky further stated that the privacy protections in the Gramm-Leach-Bliley Act are an important step but that they should be expanded as part of a broadening of privacy laws for all industries. He said the FTC supports legislation that would:

- Require companies to keep such data secure, as well as notifying customers about how their information is used and disbursed.
- Give people a chance to block the sharing or selling of confidential data.
- Offer them the chance to correct any error.

Further information on the FTC privacy initiatives can be obtained on the FTC Web site at:  
<http://www.ftc.gov/privacy/index.html>.

### **Privacy Here, Privacy There... Privacy Everywhere**

The Federal Trade Commission is seeking public comment on proposed interpretations of the Fair Credit Reporting Act that permit affiliated companies to share consumer information without incurring the obligations of consumer reporting agencies. The proposed interpretations clarify that institutions may only share "transaction experience information" and "other" information provided that the consumer has been informed that such information may be communicated, the consumer has been given an opportunity to opt out and the consumer has not done so.

The Gramm-Leach-Bliley Privacy Act passed in 1999 set standards for financial institutions' disclosure of nonpublic personal information to nonaffiliated third parties. The GLBA privacy regulations do not "modify, limit or supersede" the operation of the Fair Credit Reporting Act. Thus, both the privacy regulations and the FCRA may apply to a financial institution's disclosure of certain consumer information. Moreover, if a financial institution provides an opt-out notice under the FCRA, that notice must be included in certain notices mandated by the privacy regulations, including annual notices to customers. Therefore, the FTC anticipates that financial institutions will design their information-sharing policies and practices taking into account both the GLBA (and its privacy regulations) and the FCRA.

The deadline for comment is January 31, 2001 and comments should be addressed to Secretary, Federal Trade Commission, Room H-159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. A copy of the proposed interpretations can be obtained on the FTC Web site at:  
<http://www.ftc.gov/opa/2000/12/fcra.htm>.

### **Do You Have What it Takes?**

The Appraiser Qualifications Board of the Appraisal Foundation will gather recommendations for future minimum qualifications for real property appraisers at a public forum on February 9, 2001 in San Francisco. Officials at the AQB have indicated changes will be made to the qualifications in the near future. The intent of the upcoming meeting is to hear the views of organizations and individuals directly impacted by these changes. The public forum will consist of a series of panels composed of Federal regulatory agencies, state appraiser regulators, appraisal organizations, users of appraisal services and academicians. Following these panel presentations, there will be an open forum during which any meeting attendee will be invited to address the AQB.

The AQB was given the responsibility of setting the minimum qualifications for real property appraisers by Congress in 1989. The original qualification criteria, adopted in 1991 and modified in 1993, set the minimum requirements for education, experience, examinations and continuing education. State appraiser regulators use these criteria for licensing and certifying real property appraisers.

Organizations interested in appearing on one of the panels should contact Jim Park, Director of Research and Technical Issues, Appraisal Foundation, at 202-624-3044 or via e-mail at [jim@appraisalfoundation.org](mailto:jim@appraisalfoundation.org).

### **Mortgage Insurance Cancellation Clarified: Appraisers Have Opportunities**

As we reported in the last edition of the PLAN, Congress passed the Home Ownership and Economic Opportunity Act on December 7, encompassing a number of housing-related bills considered during the 106th Congress. However, missing from that article was a discussion of one provision of the final legislation that clarifies a 1998 law that allowed for the cancellation of private mortgage insurance, legislation the Appraisal Institute was actively involved with. That provision, originally a bill sponsored by Rep. Marge Roukema, R-N.J., clarifies and streamlines the 1998 law regarding adjustable rate mortgages, balloon mortgages and the treatment of loan modifications. The changes are expected to spare mortgage servicers, who complained the original legislation was too ambiguous, from costly litigation.

The revised legislation:

- Includes balloon mortgages within the definition of "adjustable rate mortgages."

- States that if a residential mortgage loan is modified (with mortgagor-mortgagee agreement) the cancellation date, termination date or final agreement shall be recalculated to reflect such modifications.
- Extends PMI cancellation rights beyond the cancellation date for a qualifying borrower who is current on required payments.
- Revises the automatic termination date with respect to a mortgagor who is not current on payments as of the mortgage termination date.
- States that the cancellation or termination of private mortgage insurance shall not affect the rights of any mortgagee, servicer or insurer to enforce any accrued obligation for premium payments.

For further information on the PMI corrections legislation, contact Rep. Marge Roukema, 202-225-4465.

### **Lawyer Yourself**

The Appraisal Institute Washington office recently attended a seminar on performing legal research, the host of which, compiled an excellent Internet Web site categorizing other Web sites that provide information on legal issues at the federal, state and local levels. Just about everything related to the law can be found through this one Web site: <<http://www.TheCapitol.Net/Recommended/legalFTL.htm>>.

## **North Texas Chapter Education Schedule**

The North Texas Chapter's 2001 Education Schedule is enclosed with this issue of the newsletter. A complete catalog will be mailed to Chapter members by the end of January. Please refer to this schedule in making your education plans for the year. Contact the Chapter Office (972-233-2244) with any questions.

## **New Ad Program Available for Members**

As the Appraisal Institute steps up its collective advertising campaign to increase its prominence in the industry, they are extending an opportunity for all designated members to benefit as well. Recognizing the importance of a prominent local presence, the Appraisal Institute has developed a series of ads for the membership to be used in locally promoting themselves and their business.

The ads, in a variety of sizes and messages, are geared towards financiers, attorneys and accountants, along with the residential and commercial property valuation clients. They will allow members to reach out to new markets with a targeted message that showcases their knowledge, experience and integrity - in short, to showcase the "designated difference."

Prototypes of the ads and order forms for customization are available from the Chapter Office (972) 233-2244. The prototypes and order forms are also available at [www.appraisalinstitute.org/download/](http://www.appraisalinstitute.org/download/) under "Membership Ads."

## **Announcements**

**Adopt A Family Thank You** - A sincere thank you to all members who generously contributed to the Adopt A Family charity in December. Your thoughtfulness helped provide a wonderful holiday to a very needy family.

**2001 Committee Volunteer Registration Form** – All members are invited to get involved in the Chapter and enjoy the benefits of participation. Select the committee(s) that interest you, complete the enclosed 2001 Committee Volunteer Registration Form, and return it to the Chapter Office by February 2, 2001.

**TALCB Trainee Rules** – The TALCB has specific guidelines/rules regulating advertising materials and business cards for appraiser trainees. You are encouraged to ensure compliance with those rules before the materials are printed.

## Calendar of Events

### January

18 Chapter Meeting-Cityplace Conference Center

### February

15 Chapter Meeting-Lincoln City Club

### March

15 Chapter Meeting-Lincoln City Club  
23-24 *Standards of Professional Practice, Part C* (430)  
25-31 *Appraisal Principles* (110)

### April

1-7 *Appraisal Procedures* (120)  
9 *Appraising Manufactured Housing Seminar*  
10 *Real Estate Fraud Seminar*  
19 Chapter Meeting-Lincoln City Club  
25-May 1 *General Applications* (320)

## North Texas Chapter

### **2001 Officers**

President .....Ken P. Wilson, MAI, SRA  
Vice President .....Jack Poe, MAI  
Secretary .....MacKenzie S. Bottum, MAI  
Treasurer .....John Hirschy, MAI, SRA

### **2000 Committee Chairs**

Membership Development  
and Retention .....Shannon Dykes, MAI, SRA  
Education ..... Jay M. Massey, MAI, SRA  
Finance ..... John Hirschy, MAI, SRA  
Guidance .....Shannon Dykes, MAI, SRA  
Legislative Affairs/FACT .....George N. Naeter, MAI  
Programs ..... Charles Bissell, MAI  
Social and Charity Events..... Tracy Law, MAI  
K. Lynn Naugher, MAI  
Symposium .....MacKenzie S. Bottum, MAI  
Telephone .....MacKenzie S. Bottum, MAI  
Web Site.....Richard Baker, MAI

### **Chapter Office**

972/233-2244  
972/239-6857 (fax)  
[www.appraisers.net/ai-northtexas](http://www.appraisers.net/ai-northtexas) (web page)  
rdkelton@altinet.net (email)  
Executive Director .....Ruth A. Kelton  
Assistant..... Nancy Young