

# 24th Annual Outlook For Texas Land Markets

San Antonio, Texas April 17–18, 2014

The **Texas Land Markets** seminar provided information on a variety of **legal, economic, social** and **natural resource** issues influencing current land market dynamics.

If you need more evidence that the Texas economy continues to strengthen, look no further than the attendance numbers for the Real Estate Center's 24th Annual Outlook for Texas Land Markets conference.

Some 460 people — a near record for the conference — convened in San Antonio April 17 and 18 to hear a distinguished lineup of speakers covering such topics as Texas water issues, marketing rural land, the Agricultural Act of 2014 and legal issues affecting landowners.

If you weren't able to attend this year, here are some of the conference highlights.

## *QMs and the Revenge of Dodd Frank?*

Center Research Economist Dr. Jim Gaines opened the conference by explaining certain components of the Dodd-Frank Act and what

they mean to home mortgage lenders and borrowers. The act took effect in January.

Under the law, if a lender makes a loan, and it can later be shown that the lender failed to adequately evaluate the borrower's ability to repay the loan, the borrower can sue the lender if he (the borrower) defaults on the loan, and it goes into foreclosure.

The law also says that if a lender makes what is known as a qualified mortgage (QM), the lender is automatically presumed to have met all of the requirements to ascertain the borrower's ability to repay. A QM must meet certain criteria. For example, there are limits on fees the lender can charge up front for closing costs and points, as well as a 43 percent debt-income ratio the borrower has to meet. Also, the loan can't be for more than 30 years, and it can't include balloon payments or have negative amortization. Interest-only loans are not allowed.

If Freddie Mac or Fannie Mae will buy the loan, or if FHA will insure it, it's automatically classified as a QM, whether it meets the QM performance criteria or not. This gives the lender protection on the borrower's ability to repay.





Gary Maler, Real Estate Center director, welcomes this year's attendees.

Because the law only recently took effect, there have been no court cases yet to test it. How the law will be interpreted is unknown, so lenders are currently being conservative with their loan underwriting. Gaines predicts it will take a couple more years for lenders to work through this. All of this may create an opportunity for some lenders to specialize in non-QM financing.

### *Market Drivers of the Energy Sector*

The U.S. energy sector will experience a boom over the next 20 or 30 years, said Texas A&M University Clinical Assistant Professor and Reliant Energy Trade Center Director Dr. Detlef Hallermann.

Hallermann discussed factors driving the nation's energy sector and where that sector is headed. He said that, because of shale activity and horizontal drilling technology, the United States should be producing as much or more natural gas and refined products than it's consuming within three years. After that, we will be exporting these products. Companies will come to North America to put in infrastructure

because our natural gas and crude oil will be less expensive, making the United States a less expensive place to operate.

### *New Indicators for Residential Construction in Texas*

Center Research Economist Dr. Luis Torres reported on his work with the Dallas Federal Reserve on a new indicator for measuring the state's economic activity. The indicator will look at different variables that represent residential construction in Texas, then use those variables (and co-movements from those variables) to produce a single estimator that can measure overall economic activity in Texas.

"Variables by themselves do not capture the underlying state of the sector," Torres said. "Currently, there is no reliable summary indicator to measure the business cycle for residential construction at the regional level. This is a useful tool in analyzing and measuring the residential construction sector in Texas, and it can be applied to other states."

In the same way, they will estimate another indicator to help measure future economic activity.



## Marketing Rural Land from a National Perspective

George Clift, president of Realtors Land Institute, offered advice on marketing rural land from a national perspective. Here are his top three tips.

- Understand the type of property you're selling so you can more effectively target your advertising.
- Convince potential buyers that they're dealing with a competent broker. This means keeping up to speed on local issues; being able to talk about production costs and stocking rates; having current, reliable data; and simply being able to answer any question the buyer has about the property.
- Make sure the sellers in your market understand the outreach you have and the advertising options that are available to them.

## Emerging Legal Issues in Texas Real Estate

Judon Fambrough, an attorney with the Center, covered legal issues Texas real estate professionals need to be aware of. Here are his top three.

- Indemnification. "If you give others permission to enter your property, make sure they sign an enforceable indemnification agreement," Fambrough said. "In the agreement, they agree to indemnify you (save and hold harmless) if a claim is filed against you because of their presence or activities on your property. To be enforceable, four things are

required: (1) the parties have equal bargaining positions, (2) consideration is given, (3) the word 'negligence' is used, and (4) the wording is conspicuously placed and gives fair notice to the person signing the document. Sometimes a fifth element is added. The agreement must be signed by an adult for the adult. An indemnification agreement from a minor or from the minor's parents or guardian is unenforceable.

Also, make sure the word "defend" is inserted. Without it, the indemnification agreement is enforceable, but the initial duty to defend the action falls on the landowner.

- Oil and gas leases. When a person is unsure of his or her mineral ownership on a piece of land and is asked to sign an oil and gas lease, that person should:
  1. Never warrant title. "The lessor grants no implied or express warranty of title. The lessee (oil company) takes title at his or her own risk."
  2. Keep all the money. "If title should subsequently fail for any reason, the lessor should keep all consideration tendered to him or her prior to the failure."
- Landowner liability. "An interesting case involving the Unlawful Act Rule is about to go before the Texas Supreme Court," Fambrough said. "The rule states that if your illegal acts cause your injury, you cannot recover damages. The case involves illegal aliens trespassing in a truck on a South Texas ranch. The security guard was chasing them down a caliche road when their truck overturned, injuring the driver and killing the occupants. The ranch was





*Dr. Joe Outlaw gives an interview summarizing his speech on the Agricultural Act of 2014.*

sued. The ranch claims the Unlawful Act Rule protects it from damages. The Texas Appellate Court disagreed, ruling that the cause of the accident was the security guard's pursuit down the caliche road late at night. The Unlawful Act Rule does not apply in this situation."

### *The Importance of Open Meetings Act for Texans*

Donnis Baggett, executive vice president of the Texas Press Association, talked about the importance of the Open Meetings Act for Texans, saying:

"Government accountability is the result of government transparency. The three elements of government transparency are public meetings, public records and public notices. For people to maintain control of their government, they have to know what their government is up to at all levels, and they have to



be engaged with the government. This means asking tough questions and maintaining a dialogue about the direction they want the government to take."

### *The New Texas Water Development Board*

Last November, Texans voted to transfer \$2 billion from the state's "rainy day" fund to help develop water projects over the next 50 years. Texas Water Development Board Chairman Carlos Rubinstein said the board is now on a "very short timeline" to put in place programs that are critical to developing new sources of water.

### *Agricultural Policy Impact on Landowners*

The Agricultural Act of 2014 is a powerful bill in terms of providing a safety net to crop producers. It provides disaster help for livestock producers and conservation assistance and cost-share money for landowners. Dr. Joe Outlaw, professor with Texas A&M University's Department of Agricultural Economics, said producers have plenty of time to educate themselves about the bill before signups begin.

### *Legal Developments in Environmental Law*

Bane Phillippi, an attorney with Weisbart Springer Hayes LLP of Austin, updated conference attendees on legal developments in environmental law. He talked about the taking



*Dr. Mark Dotzour, chief economist with the Real Estate Center, shares his expert advice with the near record number of attendees.*

implications of groundwater regulation in Texas and whether groundwater conservation districts and potential limits they place on withdrawing groundwater can lead to a takings claim by a property owner. Phillippi also discussed a case questioning whether a trespass action can be upheld with a groundwater disposal and disposal wells that potentially migrate under a neighboring property. That case is currently before the Texas Supreme Court.

### *Outlook for Texas Land Markets*

"Land markets in 2013 were a mixed bag," said Center Research Economist Dr. Charles Gilliland. It was a good year for those selling rural land, with land prices rising in almost all areas. The exception being areas where there was a lot of cropland activity. Those markets were flat. But Gilliland said reports indicate those areas started turning around in the first quarter of this year.

"The biggest problem that most cropland people will have at this point is finding listings for land that people are willing to part with," Gilliland said. "The intense price increases that we saw over the past couple of years seemed to have taken a breather in that market."

### *The State of the Texas Real Estate Economy*

In his economic outlook for 2014, Center Chief Economist Dr. Mark Dotzour said he's bullish about the economy this year, especially when it comes to job growth in Texas and the United States.

"Americans have never been richer," Dotzour said. "The net worth of the American household now has jumped from \$55 trillion to more than \$81 trillion just in the last three or four years. And the percentage of our discretionary income has never been higher. Americans have been paying off debt and refinancing loans, getting that debt service down, giving them the opportunity to spend money, and 65 to 70 percent of our economy is based on American consumers spending."



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