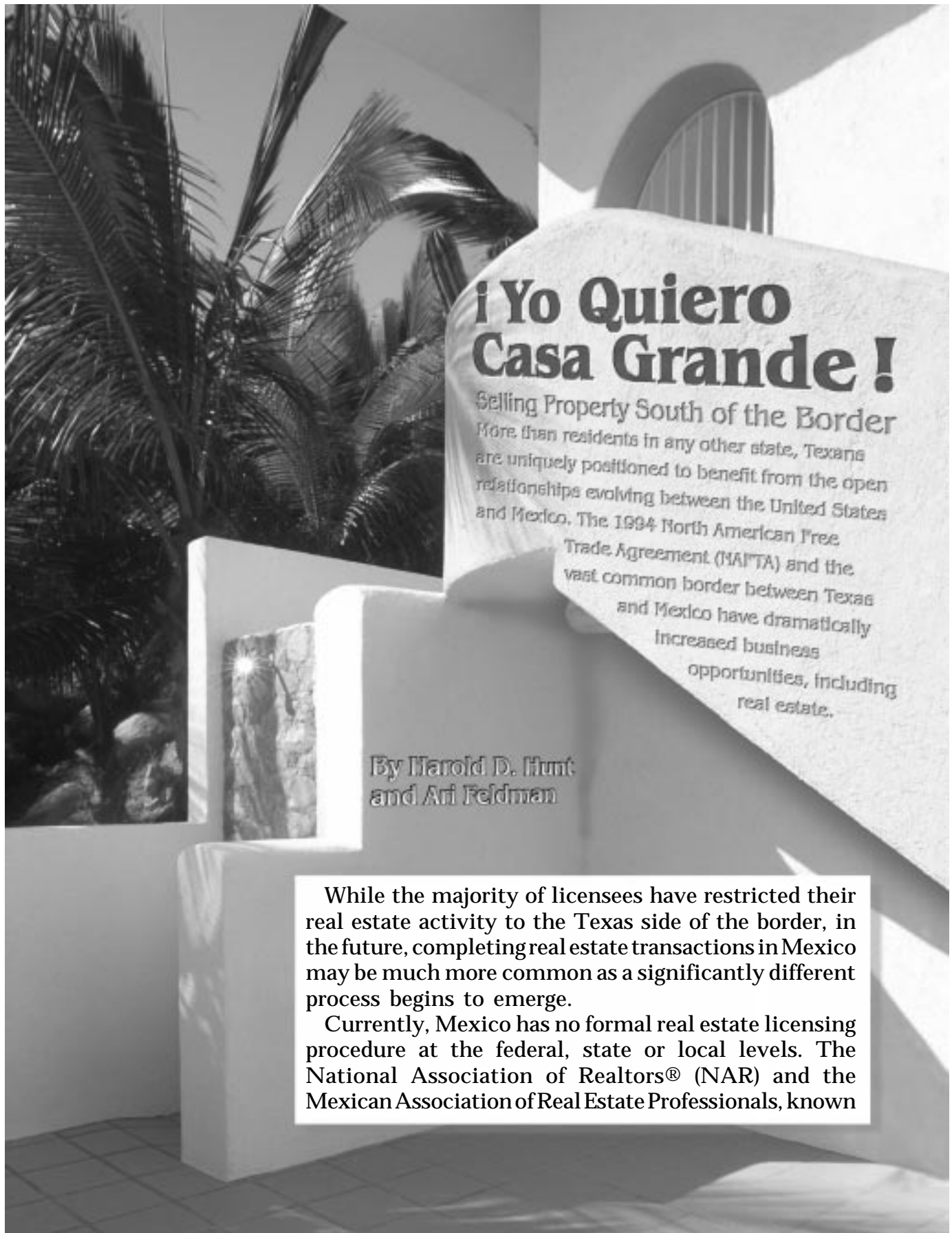


A Reprint from *Tierra Grande*, the Real Estate Center Journal



¡ Yo Quiero Casa Grande !

Selling Property South of the Border

More than residents in any other state, Texans are uniquely positioned to benefit from the open relationships evolving between the United States and Mexico. The 1994 North American Free Trade Agreement (NAFTA) and the vast common border between Texas and Mexico have dramatically increased business opportunities, including real estate.

By Harold D. Hunt
and Ari Feldman

While the majority of licensees have restricted their real estate activity to the Texas side of the border, in the future, completing real estate transactions in Mexico may be much more common as a significantly different process begins to emerge.

Currently, Mexico has no formal real estate licensing procedure at the federal, state or local levels. The National Association of Realtors® (NAR) and the Mexican Association of Real Estate Professionals, known

as AMPI (Asociación Mexicana de Profesionales Inmobiliarios, A.C.), have worked on this process, albeit unsuccessfully.

Agency, as known and regulated in the United States, does not exist in Mexico. Individuals representing themselves as real estate agents range from lawyers to taxi drivers to hotel concierges to shoeshine boys.

The concept of a fiduciary, single agent, dual agent or buyer's agent is not discussed, not even by AMPI. Often, the philoso-

in Mexico. Negotiated fee splits between acknowledged and cooperating agents range from 30 to 50 percent of the total commission, depending on local custom.

Referral fees are negotiable in Mexico. Generally, they range from 20 to 30 percent of the full commission. The major problem in referring a client to a Mexican broker is getting paid. Trust plays a major role in securing referral fee payment. If no trustworthy firm or individual is known, U.S. licensees can contact either a CIPS or a local member of AMPI to initially establish a Mexico connection.

A number of the North American real estate franchisers, including RE/MAX, Century 21, Realty World and ERA, operate in Mexico, but they do not dominate the market. In addition, Coldwell Banker Corporation has sold a master franchise in Mexico and expects to begin operations this year. Although the franchise influence is spreading, independents currently form the majority of firms. Resorts have a number of foreign nationals working as both broker-owners and sales agents.

Firms operating in the interior of the country where there are no large foreign populations are operated by Mexican nationals. Foreign clients typically prefer to conduct business with the franchises, while Mexicans prefer to deal with people they trust, regardless of their affiliation.

How do Texas licensees prefer to conduct business in Mexico? Those who have contacts on both sides of the border often rely on referrals.

According to Rosalinda Cordoba, an agent with a Brownsville real estate firm, "I like doing referrals. Now that I have established contacts in Mexico, I can send them clients. Over time, I have built an ongoing business relationship, and I don't have to operate in Mexico."

'The important factor in being successful in Mexico is establishing yourself and your reputation. It took time to earn the Mexicans' trust, but it has been worth it.'

phy in Mexico is that the agent is operating his or her own independent business for their exclusive benefit and not that of the buyer or seller.

No Mexican real estate designations exist, although some private schools in Mexico City offer diplomas for completing real estate courses. Many college graduates use the title *Licenciado* after receiving a business or economics degree. Some AMPI members have a Certified International Property Specialist (CIPS) designation from NAR.

Commission rates are not fixed by law in Mexico. Rates typically range from 5 percent in Mexico City to as high as 10 percent in the resort area of Los Cabos. However, an agent without a strong commission agreement may receive a lesser fee at closing. In some cases, the seller may actually refuse to pay the commission, sighting little delivery of service.

"It may take as long as ten years to collect commissions owed if a suit is filed in Mexico," according to Juan Aribé, an El Paso broker who conducts extensive real estate business

AGENCY, AS KNOWN AND REGULATED in the United States, does not exist in Mexico.

Individuals representing themselves as real estate agents range from lawyers to taxi drivers to hotel concierges to shoeshine boys.



Some agents choose to operate real estate firms on both sides of the border. Jacob Casanova, a San Antonio broker who also owns a real estate firm in Guadalajara, Mexico, says, "The important factor in being successful in Mexico is establishing yourself and your reputation. It took time to earn the Mexicans' trust, but it has been worth it. I enjoy having a real estate business in Mexico."

Listing a property for sale requires membership in the local private multiple listing service (MLS), if one is available. Similar to the United States, both smaller and larger MLS systems are used. MLS listings are generally limited to commercial, luxury residential or farm and ranch properties.

A high proportion of middle- and low-income residential properties trade without the aid of an agent. A popular method for advertising listings in major markets is to hang banners and flags in trees or across streets. Potential buyers look down secondary streets to see if any properties are for sale. Mexicans do not typically drive residential areas searching for properties the way Americans do. Other advertising methods include newspapers, Internet web pages and booklets of available properties.

Foreign nationals can obtain title to Mexican real property except in the "restricted zone" that lies within 60 miles (100 kilometers) from any border and 30 miles (50 kilometers) from the coastlines. Subsequent to the 1993 Foreign Investment Law passing, direct (fee simple) ownership by foreigners in the restricted zone has been allowed for commercial use only.

Foreign nationals purchasing residential properties within the zone must establish a beneficial trust (Fideicomiso) by registering the property with an authorized national bank that acts as administrator. The cost is a minor fee for documentation and an annual fee of \$500 to \$800 to pay taxes and service the trust. The life of the trust is currently 50 years. Fifty-year renewals are available but must be applied for.

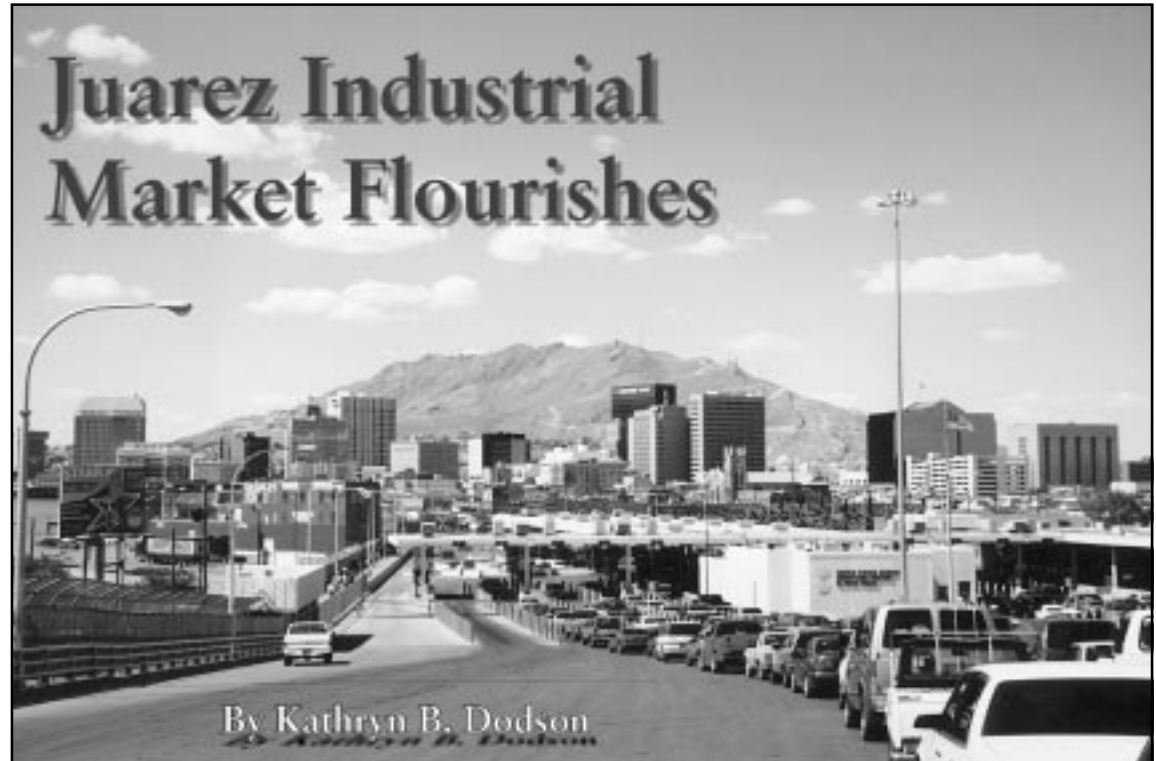
Although Mexico does not use promulgated forms, contract negotiations generally begin with a "letter of intention" outlining the price, agreement terms and conditions and a reasonable (5 to 10 percent) earnest money deposit. The selling agent holds these funds.

If the letter of intention is signed, a formal purchase and sales agreement (Convenio de Compra/Venta) is executed,

and additional funds of as much as 50 percent are deposited. No secure escrow accounts exist, and agents co-mingle any funds received from buyers with their own personal funds.

Within a 90-day period, the formal deed (Escritura) is drawn up by, and signed in the presence of, a *notario publico* chosen by the buyer. Approximately 1,500 notarios currently operate in Mexico. Notarios act as both attorney and title company and are appointed for life to a specific district by the governor of each state.

Before closing, foreign nationals must obtain a letter of permission (basically a waiver) from the Foreign Ministry, obligating the purchaser to abide by the Platte Amendment.



Just across the border from El Paso, the industrial real estate market in Juarez has been growing since Mexico started the 1960s maquiladora program of tax incentives. Today, the city has approximately 36 million square feet of industrial space used by more than 300 manufacturing facilities employing 250,000. Fifteen thousand people commute daily from El Paso to work in Juarez, making the Juarez-El Paso region one of the largest international manufacturing centers in the world.

In Juarez, companies represent a wide variety of industries, including the manufacture of televisions, automotive components, medical equipment, consumer electronics, wire harnesses and aerospace equipment. Philips, Thomson (RCA), Delphi (a subsidiary of GM) and Johnson & Johnson are some of the largest Juarez employers.

An increasing number of high-tech companies are opening facilities in this busy city, including Lexmark, Acer, Scientific Atlanta, Delta/Axxion and Toshiba. High-tech products include DSS satellite dishes, printer cartridges, cable boxes and computers. The number of high-tech and Asian companies in the region is expected to

continue growing as companies take advantage of favorable NAFTA regulations.

Until recently, the industrial real estate market consisted primarily of build-to-suit facilities. Over the past two years, this has started to change as several Mexican developers and international development companies, such as Prologis and IDA, have built speculative manufacturing facilities. This trend is expected to continue.

Manufacturing growth in Juarez has spurred industrial development in El Paso as well. Most of the companies that manufacture in Juarez have warehouse and distribution facilities in El Paso to take advantage of the U.S. transportation network and lower real estate prices.

Competitive labor rates attract companies to Juarez, while warehousing and capital intensive manufacturing businesses often stay on the U.S. side of the border. The region is poised for more growth on both sides of the border, and this means the industrial real estate market will continue to strengthen. □

Dr. Dodson is with Best de Mexico Real Estate in El Paso.

Under this amendment, purchasers must agree not to bring suit in foreign courts or ask foreign governments for assistance in Mexican land matters. The letter is largely a formality and can be secured by either a civil lawyer, a notario or the purchaser.

Sellers typically pay only the sales commission, while buyers pay all other closing costs. Taxes, legal fees and other closing costs can range from 5 to 15 percent of the purchase price. A major expense unique to Mexico is the 2 percent acquisition tax. Notarios typically receive an additional fee of approximately 2 percent for drafting the deed, searching the title and registering the property. Other mandatory closing costs involve expenses for the survey, an appraisal for tax purposes and title registration.

Occasionally, additional costs are incurred when bank mortgages or release of liens are necessary. Although bank mortgages are quite rare, especially when Mexican nationals purchase residential property, banks often require a second appraisal when issuing a mortgage. A number of U.S. mortgage firms, including Irwin (formerly Inland) Mortgage and Collateral Mortgage, have entered the resort markets with programs designed to specifically accommodate U.S. and Canadian citizens. The beneficial trust serves as the vehicle to assure payment.

Several U.S. companies currently offer title insurance to U.S. citizens who own property in Mexico, including Stewart Title and First American Title. The cost involves a preliminary, non-refundable fee for a title search, in addition to a policy premium based on the insured value of the property. For more information on Mexican title insurance, see "Viva Mexico" by Mitch Creekmore, *ALTA Title News*, July/August 1997.

"The notario is not obligated to help with resolving a title problem," according to Creekmore. "Recourse against the notario for a mistake by the notario or anyone else is not grounds for repayment unless there is proof of fraud, gross negligence or known misrepresentation in a Mexican court."

Mexican citizens use the notario's opinion of title as a perception of guarantee and have not embraced title insurance. However, the Mexican government and the banks have come to realize that, for the creation of a secondary mortgage market to recapitalize the banks, title insurance will be necessary.

Closings usually occur at the office of the notario. The time between the buyer signing the sales contract and receiving title is generally 30 to 90 days, depending on the notario's work load.

Concluding a successful real estate transaction in Mexico requires considerable attention to detail. As border relations continue to grow and Americans become more receptive to direct foreign investment, the number of Americans owning real property in Mexico should increase. Texas licensees who understand the procedures and risks may consider positioning themselves to take advantage of this trend. ☐

Hunt is an assistant research scientist with the Real Estate Center at Texas A&M University, and Feldman, CCIM, CIPS, is a real estate consultant based in Mexico City and operating through the republic.



Tradition, Customs Dictate Success

By Adrian A. Arriaga

Mexico's market potential, especially in manufacturing and tourism, has enabled many U.S. firms to establish in Mexico. To make a successful transition, these companies need the assistance of real estate professionals willing to do business in Mexico.

Two characteristics are important when doing business across the border: an open mind and flexibility. In Mexico, tradition and customs dictate how business typically transpires. For example, personal relationships are more important than contractual ones. It is necessary, therefore, to invest time in cultivating rapport and establishing trust with clients and prospects.

Enjoy lengthy business meals with Mexican colleagues. The long business lunch (comida) may seem inefficient to Americans, but it is an integral part of conducting business in Mexico.

Closing a business transaction usually takes longer and should not be expected after the first long lunch or breakfast meeting. In most situations, Mexican clients will want to get a sense of who they are dealing with before serious business is discussed.

Another essential tip: learn and use Spanish. A working knowledge of the language will further business dealings.

In Mexico, people often are judged by personal qualities more than performance. Common courtesy and manners, as well as appearances, are important qualities when making a first impression. ☐

Arriaga is the CCIM ambassador serving Mexico and Latin America as well as broker and owner of AAA Real Estate & Investments in McAllen.



Mexicans Ponder Licensure

The Mexican equivalent to the National Association of Realtors hopes to more closely mirror the U.S. organization in the near future. Established in 1956, the Asociación Mexicana de Profesionales Inmobiliarios, A.C. (known as AMPI) currently has approximately 1,200 members operating in more than 1,000 real estate firms across the country.

"In an effort to increase the educational standards and the industry's level of professionalism, the Mexican government and AMPI studied the possibility of licensing for the past ten years," says AMPI President César Paredes. With the passage of NAFTA's reciprocal licensing provisions, even more importance has been given to its implementation.

Progress has been made. In 1993, AMPI first proposed federal real estate licensing to the Mexican congress. In April 1998, the state of Sinaloa passed the first real estate services law—a major step toward licensing. Two additional states, Nuevo Leon and Guanajuato, are close to implementing state licensing as well.

"The law provides for examinations, standardized educational requirements and registration with the Procuraduria Federal del Consumidor (similar to the U.S. Consumer Protection Agency)," says Paredes. "Registry is now mandatory in the state of Sinaloa and voluntary in the remaining states."

AMPI plans to continue supporting passage of a broad federal real estate licensing law as well. It would offer a national license, while individual states could implement more specific licensing restrictions if desired. ☐

☐ REAL ESTATE CENTER

©1999, Real Estate Center. All rights reserved.

Director, Dr. R. Malcolm Richards; **Associate Director**, Gary Maler; **Chief Economist**, Dr. Mark G. Dotzour; **Senior Editor**, David S. Jones; **Associate Editor**, Wendell E. Fuqua; **Assistant Editor**, Jenifer V. Hofmann; **Assistant Editor**, Kammy Baumann; **Art Director**, Robert P. Beals II; **Circulation Manager**, Gary Earle; **Typography**, Real Estate Center; **Lithography**, Wetmore & Company, Houston.

Advisory Committee: Gloria Van Zandt, Arlington, chairman; Joseph A. Adame, Corpus Christi, vice chairman; Celia Goode-Haddock, College Station; Carlos Madrid, Jr., San Antonio; Catherine Miller, Fort Worth; Kay Moore, Big Spring; Angela S. Myres, Houston; Jerry L. Schaffner, Lubbock; John P. Schneider, Jr., Austin; and Pete Cantu, Sr., San Antonio, ex-officio representing the Texas Real Estate Commission.

Tierra Grande (ISSN 1070-0234), formerly *Real Estate Center Journal*, is published quarterly by the Real Estate Center at Texas A&M University, College Station, Texas 77843-2115.

Subscriptions are free to Texas real estate licensees. Other subscribers, \$30 per year, including 12 issues of *Trends*.

Views expressed are those of the authors and do not imply endorsement by the Real Estate Center, the Lowry Mays College & Graduate School of Business or Texas A&M University.