

Progressive

December 1994/January 1995

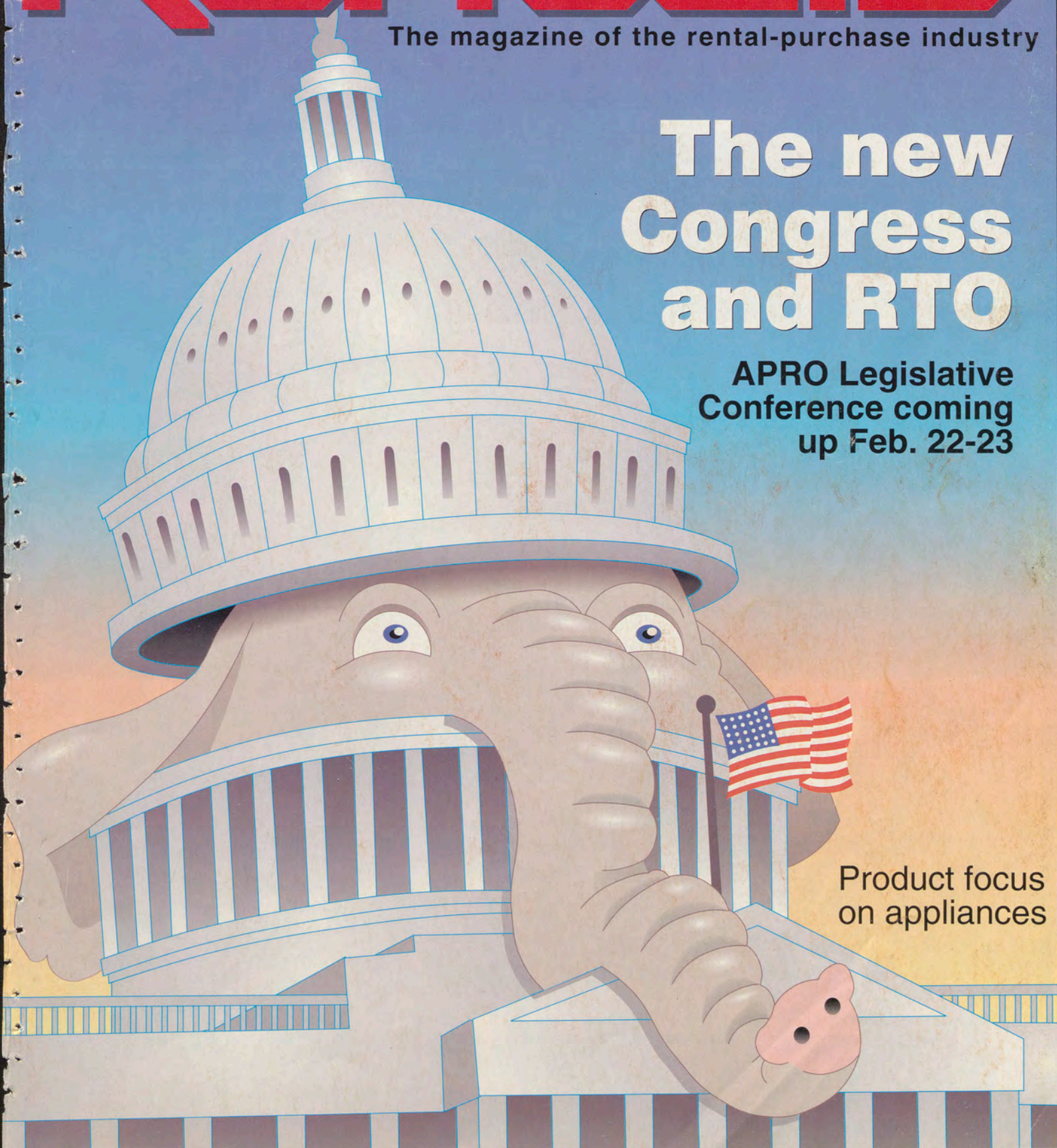
# Rentals

The magazine of the rental-purchase industry

## The new Congress and RTO

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**APRO**

**PR**

# Progressive Rentals

December 1994/January 1995

The magazine of the rental-purchase industry

**Volume 14, Number 6**

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Republicans are typically pro-business and against heavy-handed government regulation. That should be good news for the rental-purchase industry, but it's far too early to claim victory.



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.....

This new year promises exciting change. There is a new Congress—a Republican Congress. There hasn't been a Republican Congress in 40 years, which is unique to me, since I'm not yet 40.

In my last column I wrote about the new members of Congress having a picture of the Boston Tea Party on their walls to remind them of what the American people can and will do when pushed so far by taxes and regulation. If these representatives don't get a picture of the Boston Tea Party, maybe they need to look again at former colleagues, such as Reps. Foley, Rostenkowski and Brooks and Sen. Sasser.

Members of Congress cannot lose sight of why they were elected. Voters have become impatient with old-style government.

I have talked to a lot of people in our industry about our future with this new Congress. Do we have a better chance of getting the things done that we've been working on for the past two years? I really think so, but only IF. And why's that?

Members of this industry will enjoy success only if they remain involved in this process. Our success will involve all of us. We will have to continue to grow and change. But as we grow, we must realize that we become more visible. This can be good and bad.

This industry has grown to a point where rental-purchase attracted some highly vocal enemies, but our industry

is also now large enough to demand to be heard.

Remember the attacks on the industry last February? It looked like the negative press would never go away. But all through that, we were spreading the truth about this industry with our grassroots lobbying efforts. Congress heard us last year on Capitol Hill, and it's important that we intensify our efforts in 1995.

Don't ever forget that we can lose this battle if we let up. Not everyone in this great country likes a free-market economy, so every successful industry in the nation has enemies. Members of this industry have learned that sticking their heads in the sand is the worst possible reaction to adversity.

The folks at U.S. PIRG, Legal Aid and Rep. Henry B. Gonzalez's office don't care that you have a family to feed. To these zealots you are always going to be the enemy. They continue to use a sympathetic news media to spread lies about this industry. Give your goods away, house the homeless in your warehouse, and they'll still find fault with you.

Fortunately, we now have many things on our side. We have a Congress that knows who we are. We have a Congress that is already demanding changes in tax law. We have a president who now appears ready to cooperate with Congress, because he wants to be re-elected in 1996. A fair rental-purchase law is entirely possible this year.

In sizing up the teams on Monday Night Football, Dandy Don Meredith liked to say of the favorite: "They have 'mo' on their side." And he didn't mean one of The Three Stooges. We have 'mo' on our side in this battle. Let's not stumble around like the Stooges. Let's finish the job like a championship football team. If we fumble, we'll get the ball back and fight to get into the end zone.

We are so very close to a victory. We can and must finish the process we've started.

PR

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BY

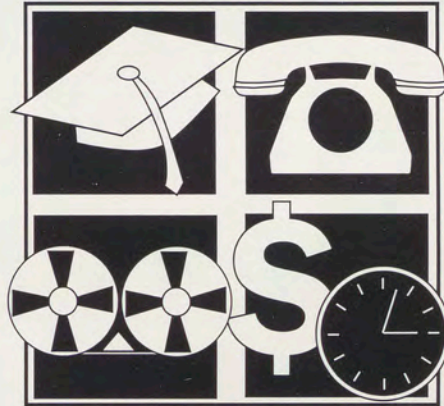
KEVIN QUINN

# MCI offers latest cost savings for APRO dealers

APRO has entered into an agreement with long-distance phone carrier MCI to provide participating association members with special discounts on MCI's basic rates. The savings are based on overall long-distance usage.

"APRO has selected MCI because of its commitment to quality service and value as well as the special discounts offered to our members," says association membership director Carolyn Fitzsimmons. The agreement with MCI takes effect on Jan. 15. Also on that date, the association's working agreement with Allnet ends.

MCI offers complete packages of services at an extra 5-percent discount to members. MCI Preferred® is service for businesses spending up to \$3,000 a month and includes out-bound, 800 number, international, fax, calling-card services and even home—combined for volume discounts and consolidated on one monthly bill. MCI Vision® service is for larger businesses and also includes



## MEMBER SERVICES

data services. Extra discounts are also available to members on MCI 800 Services®, data applications and MCI Forum® for conference calling.

With 1993 revenues of nearly \$12 billion, MCI Communications Corp.

is one of the world's largest communications companies. Headquartered in Washington, D.C., MCI has more than 65 offices in 58 countries.

"We're very happy to begin this partnership with MCI," Fitzsimmons says. "The people I have dealt with at MCI are anxious to begin working with APRO members and APRO members will be very pleased with MCI's service. Not only will members benefit from long-distance savings, but the association will benefit as well."

To inquire about the MCI benefit program for APRO members, call MCI at 1-800-424-7207.

Through their membership in APRO, rental-purchase dealers are eligible for discounts of up to 30 percent with Airborne Express package delivery service and special rates with association-sponsored group major medical, life insurance and optional disability and dental coverage.

Dealers interested in this or any other APRO member benefit may call Fitzsimmons at (512)794-0095. **PR**

## Dealers continue customer info campaign

Dealers across the nation have shown great enthusiasm over the association's ongoing consumer education campaign, ordering 870,000 customer education cards since the campaign's kickoff in late October.

Begun in conjunction with National Consumer Week, APRO's campaign offers valuable information to rental-purchase customers about the RTO transaction, the benefits, costs and consumer rights. All APRO members have been encouraged to continue the year-long campaign by APRO Executive Director Bill Keese.

"We're very happy with the enthusiasm shown by our dealers so far," says Keese. "I just hope every company will remain committed to the campaign through next year. We'd like to see every customer leave a store with an information card, even if they choose not to rent."

*In addition to the in-store education campaign, a movement is under way to strengthen the existing APRO Code of Ethics.*

Keese adds that the legislation the rental-purchase industry has supported and continues to support federally and in the states is based on full disclosure to consumers. The customer information cards disclose consumers rights and dealers' responsibilities in rental-purchase transactions.

Dealers may order the education cards by calling June Dale at (512)462-2661. Cost for the cards is two cents apiece. Dealers pay an initial \$6 packaging charge (per 10,000 cards), plus any shipping charge by United Parcel Service (UPS).

"Because of sloppy reporting by the news media and falsehoods spread by

the opponents of rental-purchase, this industry's public image has suffered unfairly," Keese says. "This is a way to take our case straight to the public. If we rely on newspaper and television reporters to spread our message, we'll suffer. This is an aggressive educational campaign."

In addition to the in-store education campaign, a movement is also under way to revise and strengthen the existing APRO Code of Ethics. In late October a survey was sent to all APRO-member home offices asking for dealer input for a revised code of ethics. Suggestions for the APRO Code of Ethics may be faxed to the APRO office, attention: John Massey, (512)794-0097.

Charles Cloud, chairman of the APRO Ethics Committee, will gather all responses and begin work on the revised code during the spring. Cloud says he plans to unveil the new code no later than the 1995 APRO convention and trade show.



*Association's mission remains clear, vital.*

# **APRO strong as it enters 15th year**

FIFTEEN YEARS AGO, A SMALL GROUP OF RENTAL DEALERS JOINED TOGETHER FOR COMMON PURPOSES AND CREATED THE ASSOCIATION OF PROGRESSIVE RENTAL ORGANIZATIONS.

•••••

The original goals for the organization were to encourage name-brand consumer electronic manufacturers to sell their products to rental dealers and to create a more secure legal environment for dealers to rent televisions to customers on whom retailers had turned their backs, and also give those customers the option to own.

It is obvious those original goals were met. But today dealers need and receive much more than that from APRO.

Just a few years ago, the three major finance companies who carried the bulk of the rental industry decided to withdraw their financial strength from our industry. APRO responded. Although unable to find a major new finance company for RTO, we developed numerous educational tools to enable many dealers to secure local bank financing. We also put together a network of experienced bankers to talk with uninformed bankers about our industry. On many occasions this communication between bankers helped to solidify dealers' requests and secure even more loans for the rental-purchase industry.

A few dealers have recently decided to "go public." These dealers and their agents are utilizing APRO's information and tools in their quest. I have been pleased, at the number of requests from brokerage houses about our industry.

Rental-purchase was once an industry reluctant to be acknowledged in the public eye. However, we have been forced,

through circumstances beyond our control, to deal openly and aggressively with the news media. This is a major undertaking and, in all candor, we are seeing more "success" than catastrophe. This process will take time to show the overwhelming positive results we have experienced in other arenas, but success will happen. Our story is beginning to be reported in the newspapers, on radio and television throughout the country.

Fifteen years ago, we were an industry that was totally unregulated. Some have always said that businesses should remain unregulated. The truth is that this point of view has been unrealistic in the environment in which we live.

Among other benefits, a responsible world of regulation allows for a level playing field where all participants know the rules and play by them. Today, more than 90 percent of the U.S. population is covered by responsible RTO regulation. This regulatory effort is a mature program and we now enjoy the benefits.

As we begin the 15th year of our national trade association, let us not forget who we are. APRO is not a "thing" out there in the rental world. APRO does not exist and function in a vacuum, making decisions that affect us all without consideration of the whole. The Association of Progressive Rental Organizations is what it began as—a group of rental dealers teamed together to promote the industry called rental-purchase, not only for the betterment of all as a group, but also for the betterment of each individual.

If you can honestly say that you and your business have not been directly benefited by your association, then please use this year to discuss your needs with members of the board or with me. This is your association—use it.

*PR*

•••••

BY

**BILL KEESE**

## APRO Facts Line updated for '95; fax system provides latest news

FOR DEALERS WHO HAVE NOT YET HAD THE OPPORTUNITY TO USE IT, APRO FACTS LINE IS A USER-FRIENDLY SERVICE THAT GIVES APRO MEMBERS ACCESS TO VITAL INFORMATION 24 HOURS A DAY, SEVEN DAYS A WEEK. THE PHONE NUMBER IS (512)794-0258.

•••••

The APRO Facts line, a FAX-on-demand system, was completely updated in December to include information on association and industry events for 1995. Also, new information is now available from the legislative (Catalog No. 5), tax and accounting (No. 6), and media information (No. 7) catalogs.

Here's a list of selected documents that reflect new information:

**Document 500**—provides the latest intelligence on the industry's federal legislative agenda.

**Document 514**—a listing of who among industry supporters survived the November congressional elections.

**Document 606**—a copy of the Nov. 7, 1994, Internal Revenue Service abeyance order directing IRS agents in the field to halt audits of RTO companies until further notice.

**Document 718**—background on the latest scheme by anti-industry zealot David Ramp in Minnesota.

Users of the Facts Line will find the system stores seven convenient catalogs, each capable of holding hundreds of pages of documents. A dealer working late at night, or perhaps on the road during the weekend, can access important information even when the APRO office is closed. All that is needed is a touch-tone phone and a FAX machine to receive the document.

When calling into Facts Line, at (512)794-0258, users are guided through the system by voice prompts. Callers who already know the document numbers they need may order immediately to save time. For those new to the system, there's a brief description on how APRO Facts Line works and the invitation to order a list

## F APRO FACTS LINE X

*The APRO Facts line, a FAX-on-demand system, was completely updated in December to include information on association and industry events for 1995.*

of available catalogs, which outlines the information categories available—such as membership, legislative, convention, etc.

Callers may prefer to order specific catalogs, which list document numbers and descriptions. Here's a list of currently available catalogs on APRO Facts Line:

**Catalog 1**—membership benefits and services.

**Catalog 2**—exhibitors and advertising information.

**Catalog 3**—APRO convention information.

**Catalog 4**—APRO-sponsored seminar information.

**Catalog 5**—legislative updates.

**Catalog 6**—tax and accounting information.

**Catalog 7**—media information.

To order an individual catalog, simply type in the catalog number followed by the pound (#) sign on your touch-tone keypad. For example, if you wanted to get an idea of what kind of information is available on member benefits, you would enter the numeral 1 and then # to order Catalog No. 1. The catalog you receive on your fax machine will show document numbers, list number of pages, and include a brief description of all Facts Line documents pertaining to membership.

Non-members of APRO have the option of ordering all catalogs, but are limited to ordering only documents from catalogs 1-4. Documents in catalogs 5-7 are protected by member-access codes.

When APRO has sensitive information to pass along to board members and members of special committees, specific codes are assigned to the documents to limit access. The security measures are particularly important, considering some of the measures anti-RTO forces have already taken to attack the rental-purchase industry.

Just more than a year ago, all APRO-member home offices received a package from APRO which included a basic introduction to APRO Facts Line, user instructions and member access codes.

As an APRO member you've got access to one of the latest available communications tools, the APRO Facts Line. So go ahead. Dial the APRO Facts Line at (512)794-0258.

If you have suggestions on ways APRO might improve this FAX-on-demand information service, please contact John Gormley at APRO's main line, (512)794-0095. He will look up your access code—if you've misplaced yours—so you can order members-only documents from catalogs 5-7. **PR**

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*To escape the hassles of heavy regulation, some dealers are shopping for options and*

# Looking at leasing

THE UNRELENTING MEDIA AND CONSUMER ADVOCATE CRITICISM OF THE RENTAL-PURCHASE CONCEPT HAS CAUSED SOME DEALERS TO SEEK ALTERNATIVE METHODS OF DOING BUSINESS. THE CURRENT IRS POSITION ON THE LEASE-VS.-SALE ISSUE IN THE RENTAL-PURCHASE INDUSTRY HAS CONTRIBUTED TO THIS SEARCH.

.....

BY

ED WINN III

In addition, competitive pressures have pushed dealers to seek ways to distinguish themselves better in the marketplace. These dealers want to stay in the rental business. At the same time, they want to get from under the brush that continues to tar rental-purchase and solve some or all of the other perceived problems with the industry.

A seemingly attractive option for some of these dealers is to offer consumer leases which are regulated under the federal Consumer Leasing Act. This article will explore some of the issues confronting rental dealers who are considering making a switch from rental-purchase to consumer leasing.

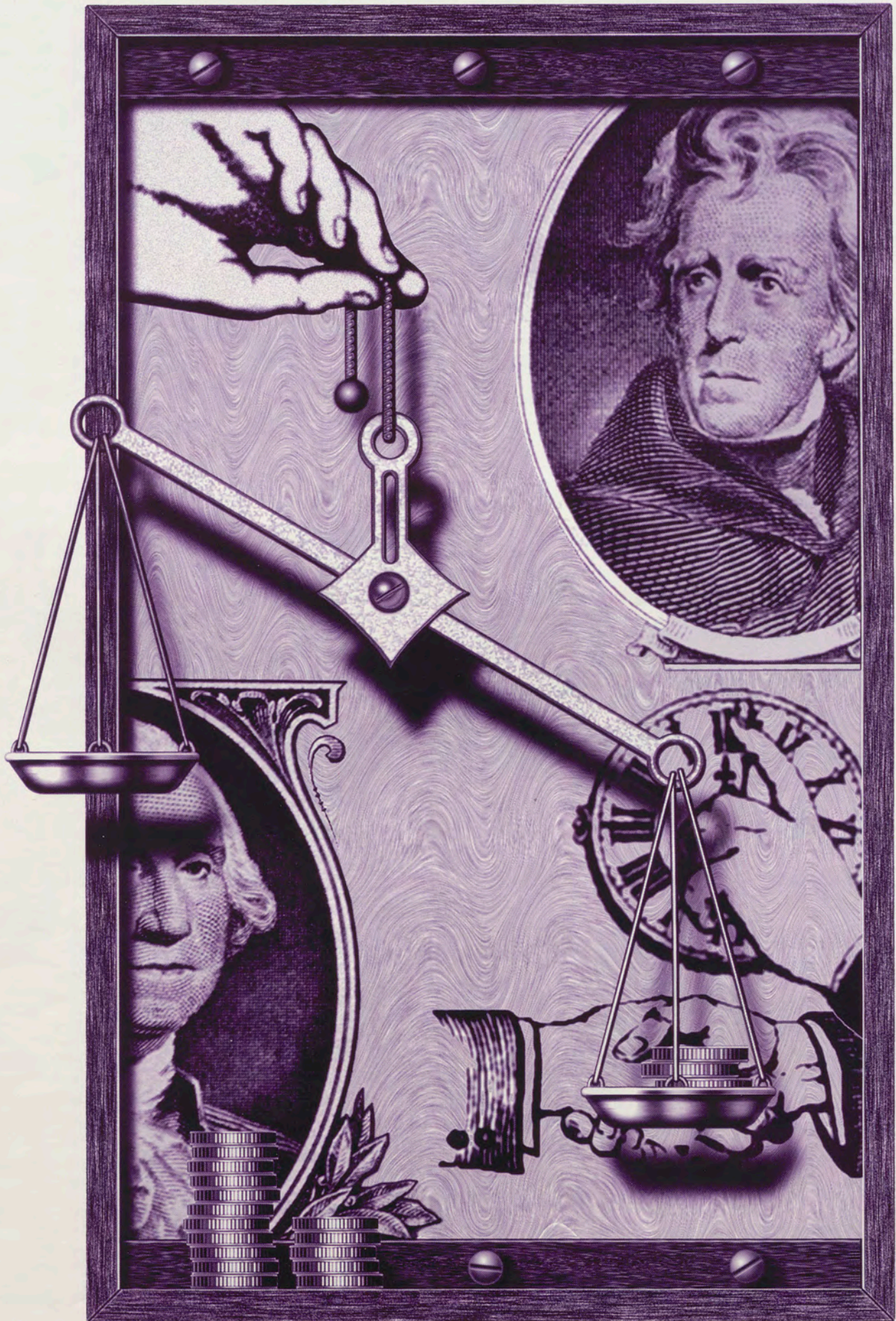
There has been since 1976 a comprehensive federal law regulating certain aspects of consumer leases which are precisely defined in the statute. The Consumer Leasing Act is a part of the Consumer Credit Protection Act (15 U.S.C. §1667). The statute has been supplemented by Regulation M (12 C.F.R. §213), promulgated by the Federal Reserve Board and by Official Staff Commentary of the FRB. Regulation M provides three different mod-

el lease forms, including a model furniture lease.

Rental dealers may already have some familiarity with consumer leases if they have ever leased a car for "personal, family or household purposes." That transaction was probably a federally regulated consumer lease. As much as 25 percent of the U.S. car industry involves leasing, both consumer and commercial, and the transaction has proven itself to be a flexible and attractive one in the automobile marketplace. Consumer leases are also the transactions historically used by traditional furniture lessors.

The Consumer Leasing Act provides a uniform framework for contract and advertising disclosures in all states. The disclosures, when compared with federal Truth-in-Lending disclosures or even with rental-purchase disclosures in some of the more restrictive states, are relatively benign. There is generally no requirement, for example, that lessors disclose the cash price of the leased property. Since the transaction is a lease, there is no finance charge or interest-rate disclosure. If the lease con-

CONTINUED ON PAGE 12



Continued from page 10

tains a purchase option, its terms must be disclosed, but the terms of purchase options are not regulated. Nor are there any limitations on any "other charges" which a lease may impose on a lessee, although all such charges must be disclosed.

The act concerns primarily disclosures and has few limits on lessor conduct or business practices. A few states have added consumer leasing statutes to supplement the federal act. These statutes may add some substantive limits on consumer leasing operations, but none attempt to control prices, for example, or otherwise seriously intrude into responsible business practices.

There has been relatively little litigation involving alleged Consumer Leasing Act violations, even though use of consumer leases is widespread. This is likely because the act and regulations are clear and not unnecessarily cumbersome, which was not the case with the original Truth-in-Lending Act, out of which lawsuits against lenders sprang by the thousands.

*Rental dealers are cautioned that Legal Aid lawyers may be expected to scrutinize consumer leases with fully as much fervor as some of them are currently examining rental-purchase agreements that come their way.*

Despite the lack of difficulties under the Consumer Leasing Act, the National Consumer Law Center nonetheless has felt compelled to assert that "lessor compliance with the Consumer Leasing Act is generally worse than creditors' compliance with Truth-in-Lending." (NCLC, *Truth in Lending*, second edition, page 38).

Rental dealers are therefore cautioned that Legal Aid lawyers may be expected to scrutinize consumer leases with fully as much fervor as some of them are currently examining rental-purchase agreements that come their way.

Legal Aid lawyers are being encouraged to attack consumer leases because the statute provides for statutory damages plus actual damages plus attorney fees, which are the same remedies that many state rental-purchase statutes also provide.

With the uniformity, relative lack

of intrusion into reasonable business practices, model lease forms and other apparent advantages offered by the Consumer Leasing Act, one might well wonder why rental dealers ever sought separate state rental-purchase legislation in the first place? There must surely be some good reasons why the rental-purchase industry grew up alongside the consumer leasing industry instead of becoming a part of it. And there are.

In the first place, the notion of "no obligation," the linchpin of the rental-purchase transaction, does not exist in a consumer lease. In a consumer lease, by definition, the lessee must be obligated to make payments for *longer than four months*. When the Consumer Leasing Act legislation was originally proposed, rental yard dealers, short-term car rental companies and other rental companies offering products by the day or by the hour, argued successfully that even the mea-

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ger disclosure provisions of the Consumer Leasing Act would be unduly burdensome to their businesses. Therefore, a lease or rental agreement can only become a regulated consumer lease when the initial lease term is for longer than four months.

A four-month obligation is of sufficient duration that a rental dealer using a consumer lease and still advertising "no obligation" or some equivalent phrase would run the risk of allegations of false advertising. Rental dealers could perhaps attempt to use such phrases as "no long-term obligation" and argue that, in common sense terms, a long-term obligation is one year or more.

While the definition of consumer lease provides a minimum term, there is no maximum term. A lease could be for 12 months, 18 months or 24 months. Furniture leases often used to run for 36 months. Some car leases run for 60 to 72 months, or even longer. After the initial minimum term, the lease term can convert to terms of any length, such as one week, two weeks or one month.

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If rental dealers want to market consumer leases to their existing customer base, it may be difficult to sign customers up to make lease payments for four months and one day when the rental store down the street has a one-week deal. But for the definition in the Consumer Leasing Act, legally there is no real difference between renting and leasing. Both transactions contemplate the payment of consideration for the use of something for a period of time. The marketplace makes some distinction, at least for transactions involving personal property, by considering leases to last longer than rentals.

Beyond marketing the concept, there is also the question of what a rental dealer/lessor must do when a lessee returns the property during the four-month term, which is a breach of the lease. In the rental-purchase context, large numbers of customers return property early on during the agreement. As many as 75 percent of units are returned during the first four months in some companies.

If a rental dealer had all of those customers on consumer leases, there would be the specter of 75 percent of customers in default. A rental dealer, now lessor, might ordinarily be tempted to look the other way, forget about all those defaults, and get on with the business of re-leasing product, which activity is more likely to result in some positive cash flow than taking judgments against defaulting lessees.

The problem is that if dealers were regularly to forgive all of the defaulting lessees, they might be accused of not really being in the consumer leasing business after all. If the "obligation" is never enforced, is it really an obligation at all? If not, then the dealer is inadvertently back in the rental-purchase business with several hundred agreements that probably do not comply with the now applicable state rental-purchase statute. If that is potentially the case, then how many lease obligations must a lessor enforce—presumably by suing defaulting lessees—to be in the consumer leasing business? Unfortunately, there is no easy answer to such a question.

How many unenforced threats can a parent make to a child before losing credibility? It depends. The lessor had

better enforce some agreements, certainly. The parent had better follow through on some threats. The more the better.

These, then, are some of the uncertainties facing rental dealers at the front end of the consumer lease transaction, and there are equal or greater uncertainties at the back end. The Consumer Leasing Act does not require an early purchase option. Some car leases do not have one. The Consumer Leasing Act merely provides that if there is a purchase option, the lessor must disclose at what price and time the option arises.

If a lessor wants to allow the lessee the opportunity to own the property by offering a purchase option, the size of the option becomes immensely important and thrusts the lessor back into the murky waters of lease-vs.-sale. The federal Truth-in-Lending Act provides that some leases are sales. The Consumer Leasing Act provides that if a lease is a sale, it cannot be a consumer lease. A lease is a sale when the lessee (1) is obligated to make payments equal to or greater than the property and services involved and (2) has an option to acquire ownership for nominal consideration.

It is possible, and perhaps likely with some used merchandise, that even with a lease obligation of four months and one day, the lessee will be obligated to pay an amount equal to the value of the property and services involved. (The rental-purchase industry argues that its rental or lease services, including, notably, the right to terminate at any time, which services disappear in a consumer lease, have significant value. A Wisconsin court has held that rental-purchase services have minimal, if any, value. It is an issue that has yet to be finally resolved.) Obviously, the greater the obligation—six months, or 12 months, or longer—the greater the likelihood of satisfying this prong of the credit sale test.

Therefore, it is important that any purchase option offered be for a price greater than nominal, lest the purported lease transaction be recharacterized as a sale. "Nominal" sometimes means "in name only," e.g., a mustard

CONTINUED ON PAGE 38

Photo by Ernie Lewallen



*Business and industry has to wonder: What will the new Republican-controlled Congress do, and how will those actions affect the economy? Will the 104th Congress represent a path to opportunity?*

*Republicans' Contract With America promises reform; what's that mean for*

# Congress and taxes?

.....

BY

MARK E.

**BATTERSBY**

THERE IS LITTLE DOUBT IN ANYONE'S MIND THAT 1995 WILL SEE A GREAT DEAL OF CHANGE IN THE WAY THE FEDERAL GOVERNMENT REGULATES AND TAXES AMERICAN BUSINESSES. BUT THE MAJOR QUESTION FACING EVERY RENTAL-PURCHASE BUSINESS IS WHAT SHAPE THOSE CHANGES WILL TAKE.

Last year, our lawmakers failed to pass the legislation necessary to extend a number of expiring tax provisions, including the targeted jobs tax credit, the exclusions for employer-provided educational assistance and the deduction for gifts of appreciated property to private foundations.

The deduction for 25 percent of health insurance costs to self-employed individuals, which expired after 1993, has not yet been extended.

This year, Congress may or may not act on those expired provisions. They may, or they may not, act to raise or to cut taxes. But one thing is certain in the midst of all of this uncertainty: Change of some type is coming. And expect to see some heated battles.

Last October, President Clinton floated a draft agenda for his next two years in office that called for, among other things, an increase in our taxes. More recently, President Clinton proposed tax cuts for

the middle-class if he could find a way to pay for them.

The Republicans, prior to last fall's elections, signed the much discussed Contract With America, which outlined a number of changes to our tax laws. While the Republicans won the election, the exact shape of any future changes, particularly those to our tax rules, and the impact those changes will have on the businesses and the pocketbooks of rental-purchase dealers remains in doubt.

For the last 40 years, Democrats have controlled the U.S. House of Representatives. This means that the Democrats have (1) controlled which bills are brought to a vote, (2) controlled how long bills can be debated and what amendments may be added to them, (3) chaired every committee and subcommittee and (4) managed all day-to-day operations.

CONTINUED ON NEXT PAGE

Continued from previous page

On Sept. 20, 1994, more than 300 Republican members of Congress and candidates for Congress signed a Contract With America to bring 10 important and popular bills to an up-or-down vote within the first 100 days of a Republican-led U.S. House of Representatives.

In the U.S. Senate, the Republican leadership offered "Seven More in '94." Although somewhat less ambitious, this plan also includes a balanced budget amendment and a series of incentives to remove "anti-family" and "anti-business" statutes from our income-tax laws.

It is still far too early to predict or even guess what legislation will emerge from the new Congress. However, there are a number of proposed changes to our income-tax laws that—if they become a reality—will impact significantly on every dealer.

That Republican Contract With America, for example, contains a number of specific tax measures that will affect dealers. The major provisions

*It is still too early to predict or even guess what legislation will emerge from the new Congress. However, there are a number of proposed changes to our income-tax laws that could impact significantly on every dealer.*

of interest to the rental-purchase industry include:

- Capital gains tax cuts. The most controversial of the proposed incentives for economic growth, the capital gains tax cut would exclude 50 percent of net capital gain from income. Reverting to the old capital gains tax incentives, this proposal would mean no tax on up to 50 percent of the profits when a business—or any investment property—is sold.

Going one step further, the new rules also propose indexing for inflation the basis or book value of assets when attempting to compute any capital gains. According to the Democratic Study Group, combining the 50 percent exclusion and indexing will, on average, effectively exempt 70 percent of capital-gain income from tax.

- Increase Unified Estate and Gift Tax Credit. The Unified Estate and

Gift Tax exclusion in our present law would be increased, over a three-year period, from \$600,000 to \$750,000 and would be indexed for inflation thereafter—if approved. This would obviously make it far easier for any family-controlled rental business to be passed, intact, to the dealer's heirs without a large tax bill.

- Increase depreciation allowance. The proposed changes to our tax rules would increase depreciation (through indexing, again) on business property placed in service beginning in 1995. Changes to the corporate alternative income-tax depreciation rules are also included in this section of the proposed legislation.

By applying a so-called "neutral cost recovery," the proposed rules would permit rental-purchase businesses to recover more than the cost of new equipment over the life of those assets. The proposal also calls for increasing the limitation on the amount eligible for immediate write-off from the present level of \$17,500 to \$25,000.

That first year, the Section 179 expensing election was raised from \$10,000 to \$17,500 by the 1993 tax-law changes in an effort to help dealers offset the up-front, out-of-pocket cost of acquiring new equipment. Nothing, however, has been mentioned about the \$200,000 ceiling, beyond which this first year write-off is reduced, dollar-for-dollar, making this a tax break for only those dealers who acquire less than \$200,000 in equipment each year.

- Home offices. The Republicans' Contract With America would also expand the definition of "home office" as it is used in our tax law. The expanded definition, as proposed, would permit tax deductions for certain expenses if an individual conducts essential administrative or management activities at home on a regular basis because there is no other location to perform those activities.

As matters now stand, the dealer who has no place at his or her place of business to perform management

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or administrative chores is currently denied a tax deduction for the expenses of maintaining an office at home. So, too, are those rental-purchase business owners with multiple business locations denied a home-office expense deduction on the grounds that they have no, one fixed business location.

Rep. Bill Archer is slated to become the new chairman of the House Ways and Means Committee, thus radically changing the committee's agenda. In addition to being a proponent of the capital gains proposal included in the Contract With America, Rep. Archer also favors a research and experimentation tax credit which would include many more industries—including rental-purchase dealers—than the expiring R & E credit in the present tax rules.

Other proposals Rep. Archer has supported in the past include incentives for small businesses and savings. His proposed Savings and Economic Growth bill would combine a capital gains tax cut with "family savings accounts," where earnings that were held seven years would be exempt from tax.

The removal of the anti-business bias so long prevalent among our lawmakers, combined with this increased emphasis on family savings, appears to mean less onerous government regulation combined with the availability of more funds to fuel business growth. This is a combination of circumstances that cries out for business expansion and growth in every industry.

According to some experts, the House Ways and Means Committee process will likely operate in a more open and bipartisan fashion under chairman Archer's leadership. On the Senate side, Sen. Bob Packwood will chair the Finance committee. Sen. Packwood, it should be remembered, is one of the architects of the 1986 Tax Reform Act, a major restructuring of our tax laws.

In addition to the balanced-budget constitutional amendment, we can expect to see early consideration of a capital gains tax cut, perhaps coupled with some sort of relief for families with children.

Other tax initiatives likely to come before the Republican-majority

Finance committee include expansion of individual retirement accounts (IRAs) as vehicles for family savings and investment; additional incentives for small business, such as increased expensing and accelerated depreciation; extension of the health insurance deduction for self-employed dealers; and a permanent research and experimental tax credit.

There is no longer a specific tax deduction for the expense of letting those lawmakers know what changes would benefit rental-purchase businesses, which laws should be changed or repealed to help the average dealer survive, and what incentives should be created to provide the funds necessary for that growth.

While many dealers are content to ignore the entire legislative process, many others realize that the complexity of our economic system requires participation.

The proposed tax incentives designed to encourage family savings may be dismissed as of little interest to a rental-purchase business. At least they are of little interest until the business owner is forced to pay the high-

er interest rates resulting from the competition for available funds.

In the coming months, our lawmakers have promised to introduce 10 bills. Among other things, the so-called Fiscal Responsibility Act would require a balanced budget/tax limitation amendment and the much-touted line-item-veto desired by so many presidents.

The Job Creation and Wages Enhancement Act includes many of the small-business incentives outlined earlier; the capital gains tax cut, indexation and liberalized depreciation rules. The Common Sense Legal Reform Act, if enacted, would place limits on punitive damages and reform our present product liability laws.

Will these and the other bills promised by the incoming Republicans become a reality? What will the White House do? **PR**  
Stay tuned.

*Mark E. Battersby is an Ardmore, Pa.-based financial and tax consultant who writes columns and feature-length articles for a number of business publications.*

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# *Fuzzy logic takes control*

APPLIANCE TRENDS ARE AN EVOLUTIONARY PROCESS, SAYS DICK GOSSOM, A 38-YEAR VETERAN OF GE APPLIANCES. AND HE SHOULD KNOW. TODAY, MANUFACTURERS ARE FOCUSING THEIR EFFORTS ON CONSUMER-FRIENDLY, DEALER-FRIENDLY AND ENVIRONMENTALLY KIND PRODUCTS.

For example, GE has incorporated into the RTO industry a pocket handle or recessed refrigerator handle, removal of the kick plates, and removal of coiling from the back of refrigerators for easier mobility.

"The 18-cubic-foot top mount is by far the most popular-sized RTO refrigerator," Gossom says. "It is 28 inches wide and fits easily through a greater percentage of American doors. These are significant savings to the dealer in handling."

Repair costs can easily add up. "Rental national accounts spend exorbitant amounts of money annually on replacing handles," says Gossom. "Dents, leakage problems and handles get beat up. This gets rid of all that stuff as a cost factor and saves our RTO dealers after-market costs."

Over at Whirlpool, Tom Kitchens says the rental-purchase industry has proven to be a steady customer over the years. "We don't have a lot of seasonal purchasing," says Kitchens, "but we do try to get a fast start with orders at the first of the year. We're doing a lot of promotions right now."

Kitchens reports: "Our RTO dealers are staying mostly with the mid-range products, with an emphasis on real value. Appliances still account for 25 (percent) to 30 percent of our dealers' business."

If anything, the RTO appliances market has gotten more competitive, Kitchens adds. "Pricing is a major consideration

these days. With the consolidation that's been going on in the (rental-purchase) industry lately, companies are getting bigger and they're looking for more competitive pricing on their inventory purchases."

Kitchens says laundry and refrigeration still comprise 85 percent of his business with rental-purchase companies. "Nineteen-ninety-four was a very good year, and I'm looking forward to 1995," he says.

Laundry products are the mainstay of the RTO appliances business. "The product mix is about two-thirds laundry in the RTO industry," says GE's Gossom. "GE is going to introduce a redesigned washer that will use less water and energy in 1995. And, rather than redesign the dryer, most manufacturers have added automatic temperature-control capability to each dryer model to comply with the DOE (Department of Energy) regulations that went into effect in May, 1994. This saves an average of 12 percent in energy costs."

The dryer simply cuts off when the humidity level inside the dryer drum reaches a certain level of dryness, preventing overdrying.

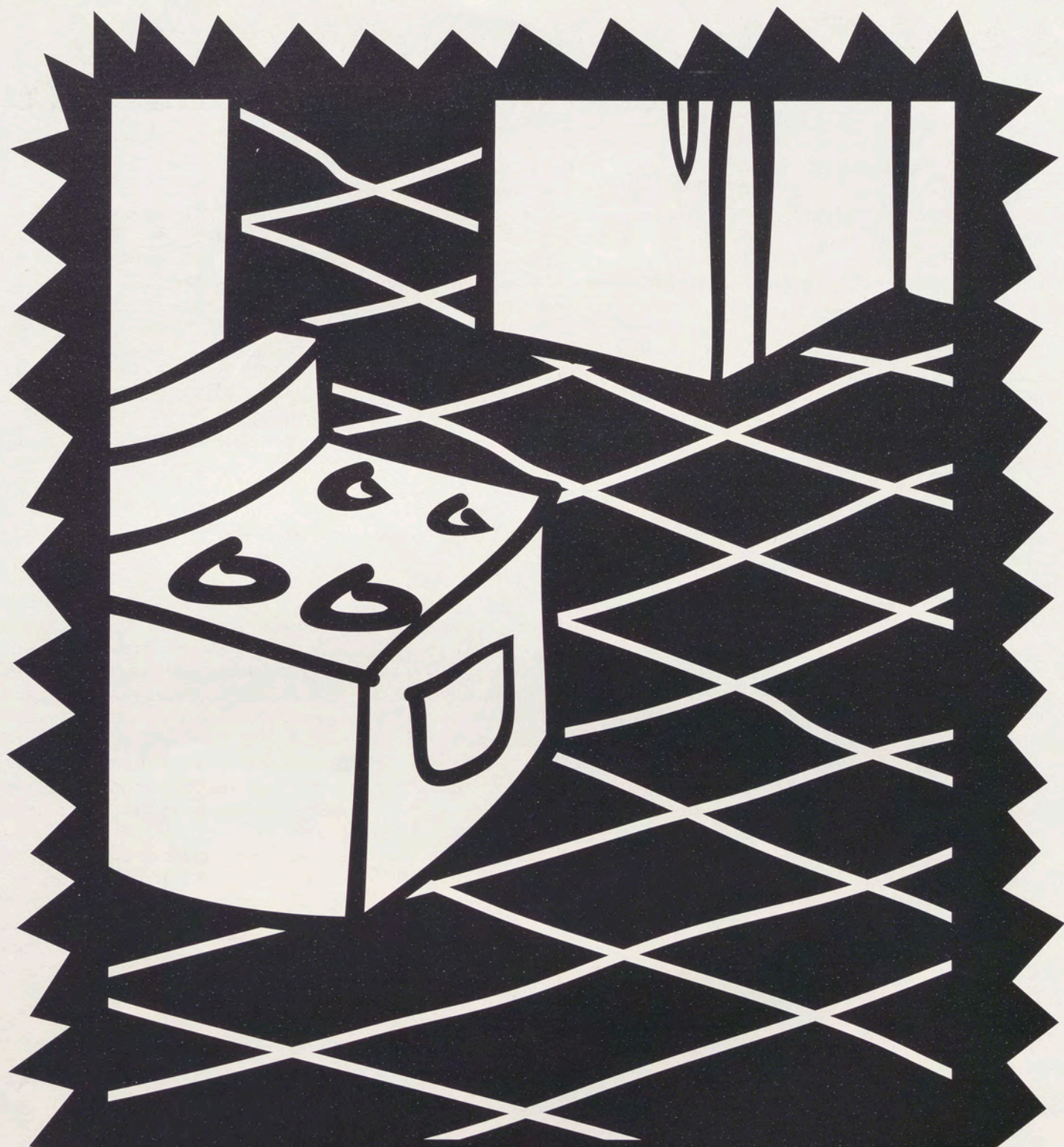
Microwaves are being redesigned to provide self-cycled controls that make popping popcorn, defrosting and reheating simple. For example, push a button, walk away and the unit will shut off when the popcorn is cooked. This method of con-

.....

BY

ELIZABETH FRENCH

CONTINUED ON PAGE 20



# APPLIANCES

Continued from page 18

trol is referred to as fuzzy logic.

"Radiant surface ranges are the fastest growing segment of the electric range business in the retail industry," says Gossom. "Although the \$600 market price is really above the level that makes sense for the RTO industry, there is certainly a small base."

Dwayne Ramsey, the manager of ColorTyme in Oklahoma City, agrees that today's RTO customers are going for higher-end features in their appliance choices. Ramsey's store has an 11-year old customer base with more than 1,200 BOR. "Almond is our best bet in color popularity," Ramsey reports. "Some customers are requesting white because white and black kitchens are becoming very popular."

Ramsey says laundry units seem to work best for his ColorTyme store. "Unlike most of our competitors, we carry the upper-line model Whirlpool washers and dryers rather than the basic units," says Ramsey. "These are large capacity with the extra heavy-duty motor. In some models we carry the seven-cycle and some the eight-cycle. These are all features that our customers are actually looking for."

Ramsey also thinks, as an add-on at least, that vacuum cleaners are a good rental item any time of the year.

Al Zagorniak of Sears Contract Sales in Overland Park, Kan., believes that, because of the innovative marketing techniques of rental-purchase dealers, vacuum rental is experiencing a surge.

As an example, Zagorniak cites "the clean-up bargain of the month. 'For a limited time we are offering an upright vacuum for only ninety-nine cents a week when you rent a six-piece sectional or bedroom set.'"

Zagorniak adds: "The floor-care industry has projected 11 million units in sales for '94—certainly an excellent profit potential in the rental-purchase industry, ranging from \$2.70 to \$9.99 a week."

During the 1994 APRO convention in Orlando, Zagorniak polled exhibit-hall appliance vendors. Part of his report reads like this:

"Orders for specific products con-

## *Comprehensive handling of appliances is important, especially for RTO operations that do a lot of pickups and deliveries.*

tinue to be requested by good customers; upgrade refrigeration laden with features, large black on black and white on white sized 23 to 27 cubic feet, with ice and/or ice and water through the door; self-cleaning ranges; and portable dishwashers."

Every RTO dealer has to contend with the economic conditions in the cities and states where his company has stores. Bill Kasper of Today Rentals in Baltimore, Md., offers this perspective:

"We tried a lot of different things in 1994, but Maryland is one of the last states to recover from the recession, so we've been relatively flat. Of course we had a good year for my company, but at the same time it hasn't met the projections that I support."

In some cases, pooling and networking are needed to help weather the economy. An organization called TRIB Group, short for The Rental Industry Buying Group, was developed with this basic premise. Kasper is a member and former president of the 11-year old organization.

"Currently we represent 935 stores, which creates a large buying power," Kasper says. "Among the biggest benefits of TRIB is the sharing of ideas. We have a 'meeting of the minds' once a year where we sit down and someone will throw a problem out on the floor, and any other member in attendance will say, 'Hey, I have the same problem and I don't have an answer.' But maybe someone on the other side of the room says, 'You know, I had that same problem, and here's how we resolved it.'"

"Another benefit is that we are able to buy merchandise at a better price," Kasper continues. "The third benefit is we can negotiate rebates to come back at the end of the year that we all share in."

Since 1987, Kasper has also served as president of the Maryland rental dealers' association. The group was formed to work on getting a state RTO law passed.

"We were successful at getting a law passed our first year in existence," he recalls, "and since then we have

become one of the 37 states in the country to have a law on the books defining rent-to-own."

"We have to be a little ahead of the game," says Jerry Minnery of the Appliance Connection in Goshen, Ky. The Appliance Connection provides a multitude of items to make life easier for everyone involved, from the manufacturer to the dealer to the customer.

For example, the new "quick connection" is a strain-relief which protects the cord on the back of the appliance product. "It speeds up installation and provides safety," says Minnery. "If the range or dryer was pulled away from the wall to clean behind it, or during installation, and you didn't unplug it, you could actually rip the terminal connection off the wall or pull the terminal loose. Then when you turn the unit on, you could short it out and cause a fire. The quick connection keeps those terminals tight, and there is no strain on them. This is something new that will help the delivery guys out in the field."

Another helpful item is an appliance cover. Minnery offers a real-world application: "Let's say you ordered a refrigerator; the dealer has to unpack it to make sure it hasn't been damaged. These covers are made of furniture pads that have been cut and sewn to fit refrigerators, washers, dryers and ranges, all designed with velcro to tighten them. That way they can wrap them up, put them on their dolly, put the straps on, and deliver them to your home. And if they bump the side of your doorjamb or something else, it doesn't scratch the appliance, nor does it do any damage to the house."

Product handling naturally dovetails with safety concerns, Minnery points out. "We have a lot of rent-to-own dealers who order back supports from us. This is a full program. It comes with a tape, a guide book to answer questions about how to lift properly and a poster for the warehouse so the employees can be

CONTINUED ON PAGE 40



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# Sale-vs.-lease audits halted by IRS order

IT'S FAR TOO EARLY TO CELEBRATE A VICTORY NOW, BUT RENTAL-PURCHASE DEALERS IN THE UNITED STATES ENJOYED A BREATH OF RELIEF IN EARLY NOVEMBER WHEN THE ASSOCIATION OF PROGRESSIVE RENTAL ORGANIZATIONS PUT SOME POINTS ON THE BOARD IN ITS ONGOING BATTLE WITH THE INTERNAL REVENUE SERVICE.

•••••

For the past year or more, IRS field agents around the country have been aggressively conducting random audits of rental-purchase businesses on the sale-vs.-lease question and presenting owners with enormous tax bills. On Nov. 7, that process was brought to a screeching halt by a Service-wide "abeyance order" to regional chief compliance officers of the IRS from John J. Monaco, the Service's assistant commissioner for examination. Every audit by the IRS that concentrates on the sale-vs.-lease issue has been halted until the powers within the IRS can determine the true nature of the "rent-to-own" industry.

The abeyance letter comes at a time when APRO's legal counsel on tax issues, the law firm of Vinson & Elkins, is pushing to have the industry's case heard in U.S. Tax Court.

At issue is a Technical Advice Memorandum issued by the IRS early last year which claimed that the rental-purchase transactions of one dealer were conditional sales rather than leases. The industry was led to believe that the IRS would soon draw up a "coordinated issues paper," which would effectively etch in stone the IRS stance on rental-purchase, making the overall industry liable for an estimated \$1 billion in back taxes, late fees and penalties. To date, the IRS has not come up with a coordinated issues paper.

APRO responded to the Service's aggressive stance by filing suit. It is



Photo by Ernie Lewallen

**Based in Washington, D.C., the U.S. Treasury Department's revenue-collection arm is the Internal Revenue Service.**

the industry's assertion that it is the tax court, and not the tax-collectors, that should decide the sale-vs.-lease issue. APRO is represented by the Vinson & Elkins team of Samuel Sterrett, former chief tax court judge, Jeff Ferguson and Mike Henke.

The issue is at a stand-still until industry representatives and IRS representatives meet in Washington, D.C., to work out either a compromise or decide to hear the issue in front of the tax court. As of mid-December no meeting had taken place. The key to the industry's success is APRO's ability to "deliver" the majority of the nation's rental-purchase dealers.

Should an acceptable offer be extended by the Service, the association would recommend full compliance by its membership, which includes the industry's largest companies and more than half of the nation's rental-purchase stores.

"I am very pleased that the Internal Revenue Service has expressed an interest in resolving the sale-vs. lease question on a national basis," says former APRO president Wayne Chambers, chair of the association's tax and accounting committee. "Their agents in the field are obviously having trouble determining the sale-vs.-lease issue. We are willing to meet with the Service to see if we can come up with a conclusion we can all live with."

The industry's representatives will not budge on the sale-vs.-lease issue. Thirty-eight state legislatures now rec-

*The issue is at a stand-still until industry representatives and the IRS meet to work out either a compromise or decide to hear the issue in the tax court.*

ognize the unique rental-purchase transaction as a lease, and industry survey results have always shown that rental-purchase dealers are in the rental business and not the credit sales business. To assert otherwise would misrepresent the nature of the no-obligation transaction and deny the industry's identity.

"The higher-ups within the Internal Revenue Service have apparently realized that this is not as clear-cut an issue as some agents in the field believe," Chambers says. "They've put an abeyance on all sale-vs.-lease audit activity until some decision is made. That they are apparently willing to work with the industry is, perhaps, a good sign. We are looking forward to some dialogue. We expect regular audits to continue, with the exception of the sale-vs.-lease issue."

One of the issues that had been on the table was the method by which rental-purchase dealers depreciate inventory. On Dec. 8, the tax court judge in the ABC case ruled that income forecasting was not an appropriate method for rental-purchase. On the bright side, the judge said MACRS is an appropriate method and rental-purchase merchandise is depreciable property. That decision could be helpful in settling the sale-vs.-lease case.

Dealers undergoing audits should mention the abeyance order to the auditor. If an IRS agent appears to ignore the abeyance order, dealers should contact APRO Executive Director Bill Keese at (512)794-0095. For a copy of the abeyance order, call the APRO Facts Line at (512)794-0258 and request Document No. 606. A member access code is required.

—John Massey

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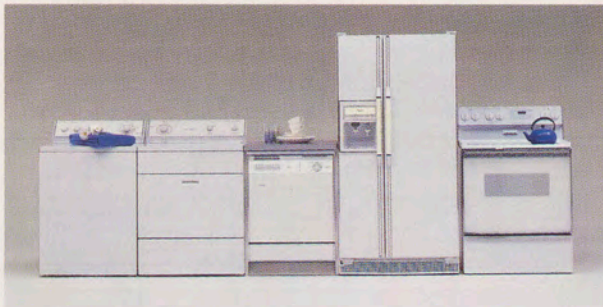
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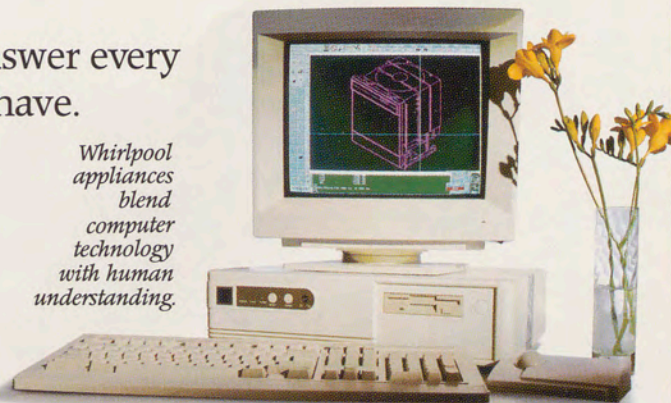
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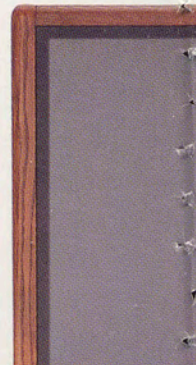
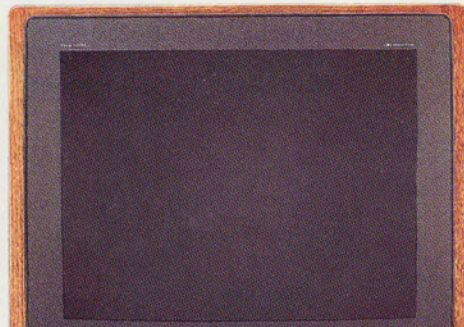
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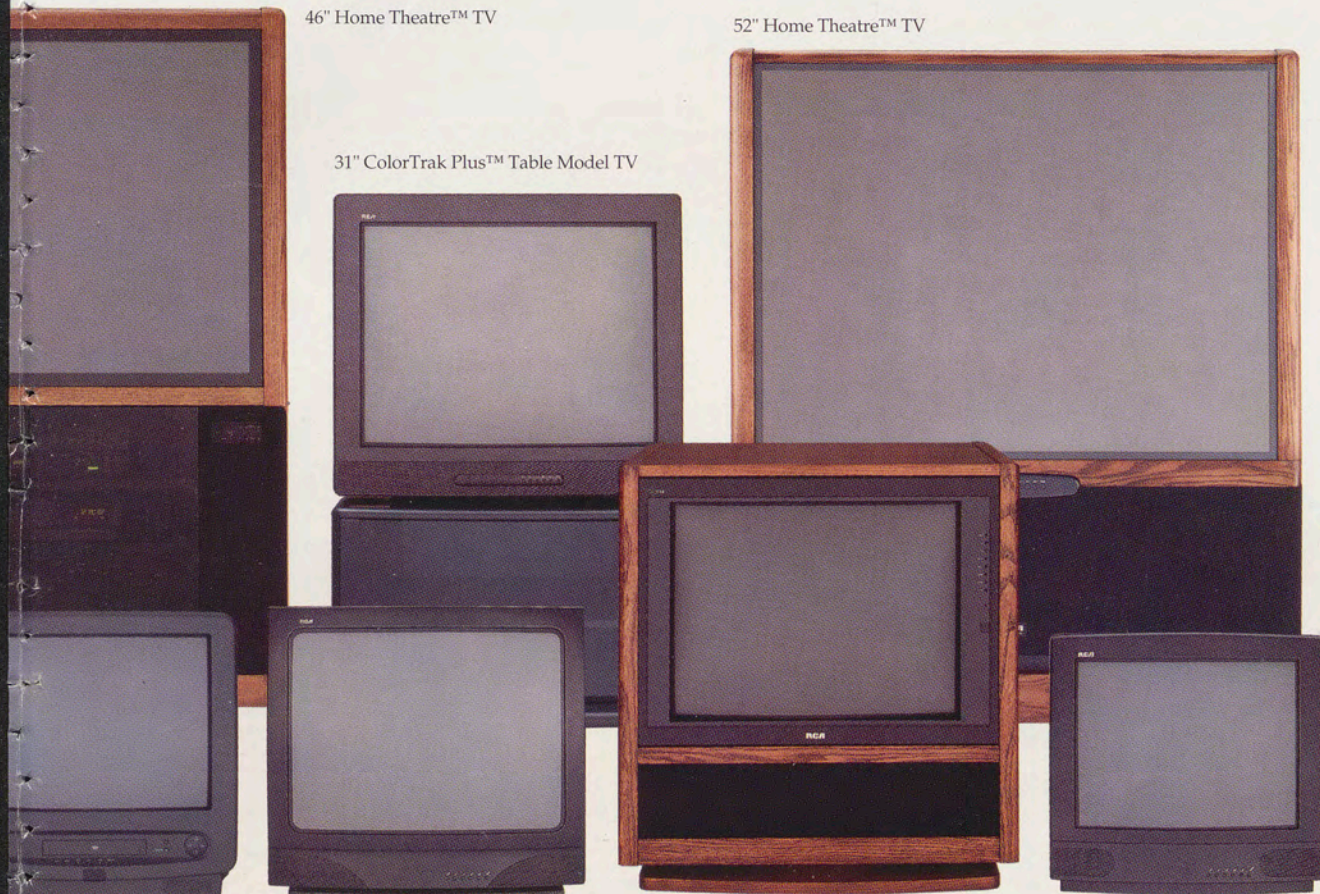
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Jay Carr

*Republicans have won control of the U.S. House and Senate ... what's likely to happen with the*

# *New Congress* *AND* *rental-purchase?*

THANKS TO REPUBLICANS' OVERWHELMING VICTORY ON NOV. 8, 1994, U.S. CITIZENS WILL—IRONICALLY—GET SOMETHING REMINISCENT OF DEMOCRAT FRANKLIN D. ROOSEVELT'S DEPRESSION-ERA "NEW DEAL" IN THE 104TH CONGRESS, WHICH CONVENEED JAN. 4.

A VAST SOCIAL AND ECONOMIC OVERHAUL IS BEFORE US, WE ARE TOLD, AND THE FIRST 100 DAYS OF THE SESSION WILL PROVE TO BE CRITICAL.

The agenda includes sweeping reform of our nation's welfare, crime, defense, budget, banking, health care, housing, lobbying and campaign finance, tax, agriculture, labor and environmental policies—to name just a few of the targeted areas.

Only this time, the new deal comes from an unlikely political party.

The Grand Old Party may be in a position to reclaim a dominant role in American government that it has not had since the 1920s. History will show that Nov. 8, 1994, was the day voters gave Republicans their first Senate majority in eight years, their first majority of governors since 1970 and their first House majority since 1954.

The brash new House speaker, Rep. Newt Gingrich, R-Ga., extolled the virtues of the GOP's "Contract With America" throughout the congressional elections and since. Now it's time to deliver. And there's a lot of conjecture on just how

Republicans will back up their campaign rhetoric with performance. (For a more general look at how the Republican Congress may treat business, see page 14.)

But what does the new Republican Congress mean for the rental-purchase industry, which during the past year grew leaps and bounds in its political acumen on Capitol Hill?

Republicans' solid midterm election victory means a kinder U.S. Congress for rental-purchase and a window of opportunity in 1995 for the industry to settle its federal legislative issues once and for all. On dealers' federal wish list is safe-harbor RTO legislation similar to laws in 38 states, and possible amendments to the tax code to settle the sale-vs.-lease and depreciation issues.

CONTINUED ON NEXT PAGE

Photo by Ernie Lewallen



*Voters made clear their mandate for change during the congressional elections in November.*

Continued from previous page

Not all the election results are positive—industry supporter Larry LaRocco, a moderate Democrat and RTO champion in the U.S. House, was caught in the anti-incumbent, anti-Democrat tide and swept out of office by a challenger.

And, rental-purchase dealers lost 15 sponsors of industry-supported legislation to a combination of unsuccessful re-election bids and self-imposed retirement. But overall, congressional election results are good for RTO.

“Generally for business it’s going to be better,” says APRO Director of Government Affairs Ron Waters. “But, you can’t assume it’s going to be a slam dunk—passing legislation.”

With a Republican-controlled 104th Congress, chairmen of the key committees of jurisdiction over RTO have changed.

Perhaps the best news is that populist Henry B. Gonzalez will no longer chair the renamed House Banking and Financial Services Committee, for-

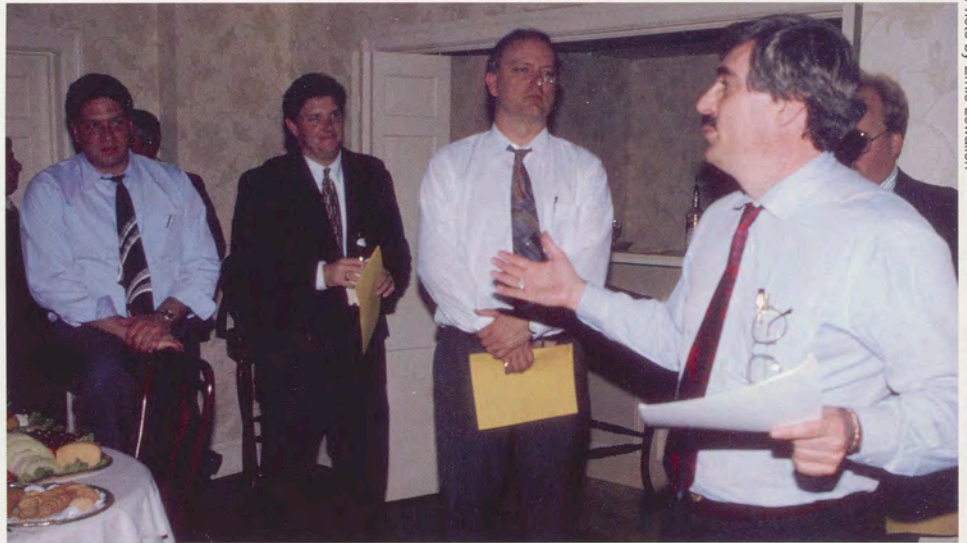


Photo by Ernie Lewallen

*APRO Director of Government Affairs Ron Waters leads a debriefing session after a day of dealer meetings on Capitol Hill last spring. In 1995, dealers will again go to our nation’s capital to educate the new 104th Congress on rental-purchase issues.*

merly known as the House Committee on Banking, Finance and Urban Affairs. Rep. Gonzalez will be even more politically challenged than he was during the 103rd Congress, when RTO dealers—participating in APRO’s grassroots campaign to educate their federal representatives—successfully

blocked Gonzalez’s anti-RTO legislation in his own committee.

However, APRO’s Waters believes that blocking bad legislation is only half the job.

“In this case, I think a majority of our industry has come to the conclu-

CONTINUED ON PAGE 30

## APRO Legislative Conference convenes Feb. 22-23

More than 200 dealer meetings with members of the U.S. Congress during 1994 accounts for the rental-purchase industry’s newly established presence on Capitol Hill.

To continue the industry’s momentum and build upon the relationships already fostered in Washington, APRO is encouraging dealers to attend the Feb. 22-23 APRO Legislative Conference.

The conference will be at the Grand Hyatt in Washington, D.C. Please make travel arrangements on your own. The Grand Hyatt’s phone number is 1-800-233-1234 or 202-582-1234. The hotel is located at 1000 H St., NW. Here’s the itinerary:

### Wednesday, Feb. 22

• 9-10:15 a.m.—“RTO, Republicans and the New Congress.” Find out how and where RTO fits within the new powers and the new members of Congress.

• 10:30 a.m.-noon—“A Room with a Viewpoint.” Listen to the political



©Andrew Lautman

*A night at famous Ford’s Theatre is part of the agenda for the APRO Legislative Conference in Washington, D.C.*

perspectives and agendas of the Senate, House and the White House for the 104th congressional session.

• Noon-5 p.m.—“A Washington Experience.” Take the afternoon off to enjoy the museums, monuments, exhibits and sights.

• 8-10 p.m.—“An Evening at Ford’s Theatre.” Spend your evening at one of the most famous theaters in the world. The newly renovated Ford’s Theatre hosts the famous play “A Raisin in the Sun.” Experience culture and history.

### Thursday, Feb. 23

• 8:30-9:30 a.m.—“Capitol Hill Briefing.” Gather for breakfast and tips for your visits on Capitol Hill.

• 9:30 a.m.-5 p.m.—“A Day on Capitol Hill.” Spend the day meeting your U.S. senators and representatives. Discuss and express support for fair and balanced RTO tax and regulatory legislation.

• 5:30-6:30 p.m.—“Debriefing Reception.” APRO’s grassroots soldiers gather to reflect and analyze the day’s activities on the Hill.

• 6:30-9 p.m.—“Casino Night.” Buy play money to gamble and win a number of prizes at the end of the night. Have fun and raise money for the PAC. Mingle with your invited congressional staff members, APRO colleagues and political junkies. Try your luck for one of many prizes and help raise money for the APRO-PAC.

For more information on the APRO Legislative Conference, call Richard May or Sheila Mitchell at the APRO office—(512)794-0095. **PR**

January, 1995



Dear *Progressive Rentals* reader:

Thank you for your interest in *Progressive Rentals* magazine, "The magazine of the rental-purchase industry."

At APRO, we constantly strive to bring association members the best level of service. Part of that commitment involves building the best possible industry magazine. To do that, we need your help. Please take a moment to fill out this reader questionnaire. By knowing what you want and need out of your magazine, *Progressive Rentals*, we'll be able to make better editorial and design decisions.

Just photocopy this handy questionnaire, fill it out and **fax to us at (512)794-0097**. It's easy. If you have any questions, call **John Gormley or John Massey at (512)794-0095**. We really appreciate your help.

— APRO communications staff

...

### PROGRESSIVE RENTALS READERSHIP QUESTIONNAIRE

1. What category best describes your title? (Please check one)

- |  |  |
|--|--|
| <input type="checkbox"/> Owner             | <input type="checkbox"/> Store Manager |
| <input type="checkbox"/> Executive Officer | <input type="checkbox"/> Salesperson   |
| <input type="checkbox"/> District Manager  | <input type="checkbox"/> Other _____   |

2. What do you typically read first \_\_\_\_\_ ?  
second \_\_\_\_\_ ?  
third \_\_\_\_\_ ?

3. Do you prefer feature articles or regular departments/columnists? (Please elaborate, if you want)

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4. What are your suggestions for a better magazine?

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5. What do you like and dislike the most about *Progressive Rentals*?

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Continued from page 28

sion, over time, that the best way to keep Congress out of your business is to settle on a set of ground rules that everyone can agree with and be able to defend from attack later," he says. "Put it in writing; get a contract. The Republicans are big on their Contract With America. Well, we want part of their contract. We want safe harbor for rent-to-own, and we'll put in writing what we'll do for the consumers."

However, the new House banking committee chairman, Rep. Jim Leach of Iowa, may not be much friendlier to the rental-purchase cause. In the past, the 18-year veteran of the banking committee has privately acknowledged having a problem with "rent-to-own." Although the reason for Rep. Leach's disdain is not totally clear, legend has it that the September, 1993, *Wall Street Journal* story made a lasting negative impression.

It's unlikely that rental-purchase will be a top-of-mind concern for Leach. The moderate Republican will have his hands full with banking deregulation issues—part of his party's Contract With America. On Leach's agenda: reform of the Federal Reserve Bank, federal home loan and bank reform, fair trade in financial services, counterfeiting and reform of the municipal securities market.

On top of all that, it will be new chairman Leach's job to conduct Whitewater hearings this spring and summer—something Democratic chairman Gonzalez ignored and then bungled last session, much to

President Clinton's embarrassment. You can bet the Republicans will pursue the hearings with great gusto.

But getting back to the rental-purchase issue: The new chairman may, after all, gladly support rental-purchase legislation—especially if most of Rep. Leach's committee members have co-sponsored the industry-supported bill. Early during this new session, APRO's grassroots communications efforts will be focused on garnering co-sponsors for the industry-supported bill.

One thing's for sure, the House banking committee will no longer be the venue for anti-industry kangaroo courts such as those presided over by ultra-liberal Reps. Gonzalez and former consumer subcommittee chairman Joseph P. Kennedy II, D-Mass.

In fact, the whole structure of the House banking committee has changed since last year. The committee, which used to have six subcommittees, now has five: financial institutions and consumer credit; capital markets, securities and government-sponsored enterprises; housing and community opportunity; general oversight and investigations; and domestic and international monetary policy.

On the Senate side, industry foe Howard Metzenbaum has retired. But look for him to remain a thorn in RTO's side from his new post as head of the Consumer Federation of America. And the specter of anti-industry, debilitating legislation is omnipresent.

"We still will probably be under attack in 1995," Waters believes. "We've already picked up indications

that Gonzalez and Metzenbaum and Joe Kennedy are still planning on coming after us. They'll do it from a minority position, but Joe Kennedy's already trying to get people in his home state of Massachusetts to back a Gonzalez-type RTO bill there."

With the notable exception of LaRocco, a majority of RTO's supporters in the 103rd Congress were re-elected on Nov. 8. Out of 53 sponsors of industry-supported legislation in 1994, roughly two-thirds of those return this year as part of the 104th Congress. Of course, industry-supported bills will have to be reintroduced in both houses.

"While we're saddened by the loss of moderate Democrats like Larry LaRocco—who seemed to be the ones who got hurt the most in the purge of Congress—we're now busy making new friends," says Waters. "Our best new friends are going to be the Republicans. We're waiting to see who's actually on the committees before we can decide all the details of our strategy."

RTO's champion in the Senate, Richard Shelby, brought dealers credibility with the 103rd Congress because, like LaRocco, he was a moderate Democrat. The two could appeal to Republicans and Democrats alike. Shelby's decision last November to join the Republican camp will only help the RTO cause, since he can continue to be an effective advocate of reasonable rental-purchase legislation.

Unlike 1994, any industry-supported bill will probably originate in the Senate this session since Sen. Shelby will be the ranking expert on the RTO issue. The House version of RTO legislation for the 104th Congress will ideally be companion legislation to Sen. Shelby's bill.

Republicans are generally pro-business. But they are also anti-regulation. Dealers' challenge for the next Congress is convincing the new ruling party that reasonable and fair regulation of the rental-purchase industry is necessary. That's because consumer zealots such as U.S. PIRG still wield enough influence with liberal Democrats to make bad legislation a real threat.

"We lost 15 sponsors for our bill; Gonzalez lost one," says Richard May, APRO assistant director of gov-

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ernment affairs. "So that vocal left wing is still there. It doesn't matter who's in control. No one defeated these ultra-liberal congressmen because they represent very liberal districts. Although the Republicans have gained a majority, we still have this very vocal liberal wing that could still hurt us during the compromise process."

May believes another obstacle for rental-purchase's goal of getting a fair federal bill passed is the Republicans' ambitious agenda. "Just because the Republicans are in control doesn't mean we've got a green light for getting federal legislation passed," he cautions. "We're still the obscure, minuscule issue we were last session; it doesn't mean we're going to become a big issue this session. The message will take on a different spin, but we'll have some of the same hurdles."

The focus won't be so much on consumers as it was in the past, but toward a stronger economy.

"We'll still use a lot of the same talking points that we did during the last session of Congress—it's all

in the emphasis," May says. "With Republicans, we'll talk economics and the fact that, with federal regulation of our industry, we'll have more credibility with the lending institutions, which is good for the economy."

Waters believes dealers, through the power of APRO's grassroots network, should convince Republican representatives and senators that rental-purchase legislation logically goes hand in hand with their goals.

"Now our job will be to educate Republicans that regulation of the industry is a good thing, because they generally are anti-regulation. We're actually going to run into friends of ours—people who supported us against Gonzalez—who are going to say, 'Well, guys, you don't need it (legislation) now. We'll protect you.' Our basic premise will remain the same: No man's or woman's life or property is safe while Congress is in session, whether it's Republicans or Democrats in control. We'll thank them for their verbal assurances, but add that we'd like to have it in writing.

"We hope the Republicans will not

be too busy with their Contract With America to discuss our little part of it."

May, who has helped coordinate more than 200 dealer meetings with members of Congress and their staffs during the last session, says it's still a matter of education.

Only 1995 will mean a change in curriculum. Rental-purchase dealers—even those who have participated on Capitol Hill in the past—will need to get up to speed on the strategies of dealing with the new ruling party. Republicans, meanwhile, will see something quite uncommon: business people asking Congress for regulation.

"We have 84 freshmen to educate," May says. "We have to assume they know absolutely nothing about our issue. Last time, there were 108 new members. There are actually fewer freshmen this session, yet the turnover has been so much more dramatic because of the party shift." **PR**

*APRO Communications Director John Gormley compiled this issue's cover story.*

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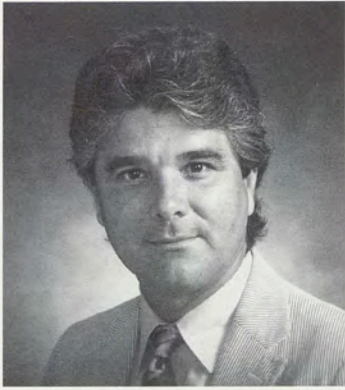
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*The war continues, but the industry has been slowly*

# Counting victories

WHEN YOU DO LEGAL WORK FOR THE RENTAL-PURCHASE INDUSTRY FOR A LIVING, WHICH IS WHAT I DO, YOU CAN GET A JAUNDICED VIEW OF HOW THINGS WORK, MUCH LIKE THE STORE EMPLOYEES WHO HAVE TO CHASE BAD ACCOUNTS ALL DAY EVERY DAY FOR A LIVING; THEY SOMETIMES START THINKING THAT EVERYBODY WANTS TO WATCH TV FOR FREE.

.....

For me, plaintiffs' lawyers and consumer-advocate types keep oozing through the cracks of the legal edifice that I and others are working steadily to build which will once and for all distinguish the rental-purchase industry from the retail sales world.

That issue is why the industry needs as many lawyers as it does, incidentally. It is where the rub is.

Every now and again some good things happen, and it is worth pausing, at least briefly, to acknowledge these little victories along the way. A couple of weeks ago the powers that be in the IRS saw fit to issue an abeyance order halting audits of rental-purchase companies on the lease-vs.-sale issue for the time being. This order does not resolve the issue by any means. The industry will still have to duke it out on the merits of the issue in court with the IRS, which will certainly take a long, long time and cost a lot of money.

In the meantime, however, some dealers can sleep better at night without the fear of an IRS deficiency letter coming that would put them out of business.

The IRS has within its ranks some "true believers," ideologues who see nothing wrong with reading the tax code in a way that will further their idea of how the society should work. That view includes taxing rental-purchase transactions as sales. But happily, these ideologues have bosses who are less interested in ideology than

in the orderly management of the IRS system of collecting taxes and auditing returns.

These officials have acted in an entirely reasonable manner by granting the industry's request for a delay on lease-vs.-sale audits. It is not as if the industry is going to take the money and run, after all. If the IRS is ultimately successful in its legal position, the industry will still be out there chugging along, and the IRS can go collect its taxes plus interest. In the meantime, rental dealers, whether currently under audit or not, can get on with business without being paralyzed with fear over the IRS issue.

As if that were not enough good news this holiday season, on Dec. 14 the Wisconsin Commissioner of Banking issued a definition of nominal consideration for rental dealers in the state, which, once again, is a responsible administrative resolution to a thorny problem.

Readers may recall that ever since the Wisconsin Court of Appeals affirmed the decision in the *Hall* case exactly one year ago, the industry in the state had been in turmoil because of the legal confusion that case caused. Rental dealers simply did not know how to offer a transaction to consumers that allowed them, the consumers, to terminate the deal and, at the same, to be able to purchase the rental property.

The industry had been working in the Wisconsin Legislature for an acceptable regulatory solution for more than a decade without success, and then along comes the state Commissioner of Banking. Here again is an administrator with enormous power, the authority to do great good or great ill in the marketplace. While the commissioner made it clear that the ultimate regulation of the industry in the state is still very much an issue for the legislature, in the meantime the commissioner could, and did, tell the industry what nominal consideration means in the state so that rental dealers can get on with their businesses, and Milwaukee plaintiffs' lawyers can quit salivating over the prospect of class-action lawsuits into the millennium.

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BY

ED WINN III

*The IRS has within its ranks some ideologues who see nothing wrong with reading the tax code in a way that will further their idea of how society should work. That includes taxing rental-purchase transactions as sales.*

It is a new year, and our industry should give thanks for being in a country where the regulatory system for the most part will listen to both sides of an issue and make rational decisions. The outlook can be a little brighter for rental dealers, certainly in Wisconsin, and for those under audit, but really for all dealers everywhere. The system is showing signs of working. Hallelujah. **PR**

*Ed Winn is APRO's legal counsel and a veteran writer on industry issues.*

## Ramp touts credit card pilot program as 'RTO alternative'

The sun rises in the east and sets in the west. Two plus two equals four. Minneapolis Legal Aid lawyer David Ramp obsessing over the rental-purchase industry. In this ever-changing world, there are still some absolutes.

The rental-purchase industry's most determined nemesis, David Ramp, climbed atop his soap box once again in early December to recite his usual rantings against his least favorite industry. This time Ramp's outbursts came in conjunction with a new pilot credit card program for low-income consumers in the Twin Cities.

Ramp was touting the benefits of a local program called ACCESS which, in cooperation with retailers Dayton's and Target, plans to offer limited credit cards to 200 pre-screened, low-income consumers in the Minneapolis/St. Paul area. ACCESS, an acronym for Aggressive Consumer Education and Support Strategies, will

give the credit cards to the consumers upon completion of financial planning and development programs to be taught by a number of area community groups. After receiving their cards, consumers will see their credit limits raised as payments are made.

As the program was unveiled, Ramp suggested it would be an alternative to doing business with "rent-to-own" companies. For years Ramp has suggested that the rental-purchase industry preys on low-income consumers.

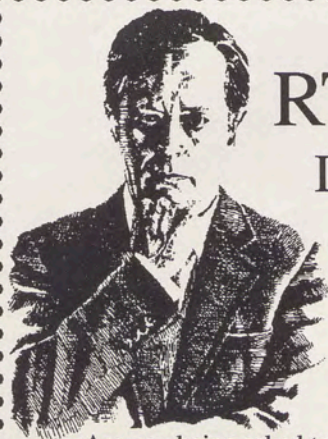
"David Ramp used the unveiling of this program to take his usual cheap shots at our industry," says APRO Executive Director Bill Keese. "He knows what to say to attract press coverage. But this new program is not an alternative to rental-purchase, as Mr. Ramp claims. As this industry sees it, the program in Minneapolis offers one more option in the marketplace to consumers. The program offers low-income consumers an opportunity to buy goods on credit, which is not an option in our stores. Rental-purchase dealers do not extend credit. There is no qualification process to rent our goods."

Keese says it is rare to see large retailers get involved with lower-income consumers, who don't usually have the credit rating to make purchases on credit. He says he wishes Dayton's and Target well.

"If this program works out in Minneapolis/St. Paul, 200 consumers will benefit from having one more option in the marketplace," says Keese. "These retailers may find that it is a bit riskier and more expensive to do business with this customer base, but we hope Dayton's and Target can eventually expand this program."

According to a story written by Dave Sheaffer of the St. Paul Pioneer Press, participants in the ACCESS program will have to attend two or three meetings a week for six weeks and turn over their financial affairs to a financial counselor. A counselor was hired for the program with a \$20,000 grant from the McKnight Foundation.

—John Massey



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*Whenever things look bleak, turn to politics*

# Laughs

IN CASE YOU THOUGHT WRITING ARTICLES LIKE THIS WOULD BE A NIFTY JOB TO HAVE WHEN ALL YOUR CUSTOMERS FINALLY GET WISE AND SWITCH OVER TO THAT NEW ONE-MONTH ERRANT'S RENTAL-PURCHASE DEAL, THINK AGAIN. I CAN TELL YOU, IT'S NO PIECE OF CAKE COMING UP WITH THIS STUFF BI-MONTH AFTER BI-MONTH.

.....

For starters, there's the pay. Check the trade association budget and you'll find a big, fat zero under "Salaries for guys who send in stuff." Zip. Zero. Nada.

The rental business isn't exactly a mother lode of funny material, either. Let's face it, when's the last time the Comedy Channel featured a standup route man? Pulling out old material can be tiresome. By now everybody knows about the driver who ran over a pedestrian and was warned he'd be fired if he did it again (it was never clear whether that meant he'd be fired only if he ran over the same guy again, or just anybody; just in case the original victim moved to another state where rental-purchase is little known).

No matter how hilarious it seems at the time, you can pick apart other people's pay plans and poke fun at furniture salesmen only so long before you start eliminating possible retirement options. There are better ways to not get paid.

But finally things are different. The skies have opened, the floodgates are swung wide and the light at the end of the tunnel turns out to be the Comedy Spotlight!

Yep, when they told me this issue addressed the political scene, I knew things were looking up. With politics, you don't even have to develop new material. You just dig out some old news-magazines and change the names.

Iran-Contragate suddenly becomes Whitewatergate and 'Ol Coot becomes Newt. Ted's in but Ann's out, Bob replaces Bill, North went south and Ross (Mister-Nineteen-Percent-and-Holding) Perot is still all ears, except now they look a lot like antennas trying to pick up the latest signal from a fuzzy electorate. You couldn't make this stuff up if you tried. Well, maybe if you really tried.

In between all the talk about legislatin' and lobbyin', however, it must occur to somebody upstairs that there are far more line employees than owners in this business, and most of those account managers, delivery persons, clerks and salespeople might be more worried about meeting this month's light bill than who passed what bill. In other words, Boss—what's in it for us?

Owners don't have to send employees to seminars or even stuff fliers into their pay envelopes to create political awareness. Just find the nearest video store, rent Woody Allen's "Bananas" and let everybody watch it one afternoon while chowing down on company-bought pizza (the Power Lunch of working stiffs). After 30 minutes of this, even the guy who thinks I-9 is an interstate will begin to understand the meaning of Government To The People By Some Other People.

About the only thing an owner shouldn't do is encourage customers to sign petitions for one cause or another at the payment counter. It's been my experience

.....

BY

**BUD HOLLADAY**

that any time you ask rental customers to sign anything that isn't a rental receipt, rental agreement or rental extension, you can expect to hear soon from assorted lawyers, brothers-in-law who think they are lawyers, Channel 10's EyeWitness NewsTeam and four guys from the law department down at the community college who happen to think that doing without picture-in-picture is God's way of punishing poor people for not voting Libertarian. Skip it.

Better to expend your energy and efforts on something than can produce immediate and tangible rewards. Like bribery, for example. Now it's my belief the bribe has been much maligned as a political tool. Consider its definition. The dictionary says a "bribe" is a "gift to corrupt those in power." So there you have it. Everybody knows you can't corrupt somebody who's already been corrupted, just as you can't get pregnant twice on the same day, have three appendixes or make more than one car payment in the same month. It's contrary to the laws of nature.

So if you offer bribes only to the politicians who are already corrupt, you can get things done quickly with

very little risk, get back to work and sail smoothly along until the next election. You haven't corrupted anyone.

The hard part in all this, at least for some, will be sweating it out until somebody else bribes the guy first. There is nothing more tempting than a freshly elected pol, just sitting around ripe for the corrupting. As for all those ex-politicians sitting around in jail, it's obvious what happened. They lied about their first time.

If you prefer to play it straight, don't be surprised to discover that grassroots organizing is harder than anybody will admit. Even the most loyal workers manage, for example, to schedule bowling tournaments on the very nights they're supposed to stake out yard signs. If the Nelsons and the Johnsons show up at your Wednesday night rally in bowling shoes, it's a sure bet you won't find your guy's face smiling back from too many front yards on Thursday.

Other volunteers will conveniently have a parent or loved one struck by lightning or fall victim to Lyme Disease on the very night of the big envelope stuffer. Sometimes this doesn't happen until after the refreshments. Finding yourself with a garage

full of cardboard signs and 50 pounds of recyclable handbills after you'd promised APRO to deliver up your local legislator like a truckload of melons, can be an embarrassment.

If this happens to you, there is a way out. Just paint "Garage Sale" over your guy's kisser and pay the kids to stick a sign in every yard within five miles (kids will do this for money; volunteers won't). Then wrap all your jelly jars, old Brady Bunch lamps and anything else lying around the basement in those recyclable handbills. If your prices are low enough and the weather's warm enough, you can relax with the knowledge that all over town that afternoon, hundreds of people will stand around reading your political tracts as they unpack their little Saturday treasures. This could be how revolutions get started (but perhaps not in your subdivision).

But that method does have some basis in history. Do you think those guys in the old North Church bought a new lamp just for Paul Revere? **PR**

*Bud Holladay is vice president of marketing for Alrenco. He is a former RTO dealer and founder of APRO. His humor column appears in every issue of Progressive Rentals.*



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*Pop quiz: What's the best possible PR?*

# *Our customers*

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1. THE CUSTOMER'S ALWAYS RIGHT.
2. EVEN IF THE CUSTOMER ISN'T RIGHT, HE'S STILL RIGHT.
3. IF YOU HAVE ANY CONFUSION OVER NO. 1 OR NO. 2, REMEMBER: THE CUSTOMER'S ALWAYS RIGHT.

•••••

That may be a bit overstated, and we can all think of examples when a customer drove us up the wall and made us resolve to take up a new career starting tomorrow. However, the world's best companies are built on the precepts of good customer service—and that goes hand in hand with good public relations.

There's a great story about Nordstrom's, the upscale retailer who has a reputation for customer service. A grimy older man walked into the store and handed the clerk a mangled mess of tire chains; rusted, links were missing and the burlap bag they were in had mildewed from being stuck too many wet seasons in a leaky trunk.

"I want my money back," the man demanded.

The clerk smiled and reached for the phone to call a supervisor. After hearing the situation, the supervisor issued a surprising ruling: "Give him \$80 and take the chains back."

"But, we don't sell chains," the clerk pointed out.

"We do today," the supervisor shot back.

Did they lose \$80 or gain a customer for life? Story after story about good customer service comes from those types of decisions. Ever deal with the mail-order leader, Lands' End? They, too, have a reputation for customer service that has created a favorable impression in the

public consciousness. Can people get the same goods sold in Lands' End for less? Probably, but because of the loyalty to this good customer-oriented company, people keep coming back.

What are the elements of good customer service? To begin with, you have to have happy customers and that happens when they walk in the door.

Are your stores well lighted and inviting? When customers walk in are they greeted warmly and quickly without being tailed? When your customer does make a transaction is he or she thanked warmly? Do you ever go out of your way to accommodate a special case?

There will always be problems that arise in the day-to-day bustle of doing business. That's a given. Your customers will remember how you resolve those problems. So don't panic or show anger when a problem occurs; it's a chance to ensure you've got one more customer for life.

One philosophy in customer service advances the idea of "delighting" customers. Before you dismiss this as unacceptable to our industry, consider that people want to be delighted, surprised and happily accepting your product or service.

Delighting can take many forms: an account manager going the extra step to ask about a spouse or child, or an assistant store manager checking in to see how his job is going or how her mother's doing after surgery.

Since all of this involves a customer-focused approach, why not try some customer focus groups? This unscientific approach to marketing has become a basic business tool. You ask eight to 10 of your customers to meet to discuss your business; you'll probably need to ask this many to end up with a manageable group of five or six. You'll also need to offer some incentive for their participation, such as \$10 to \$15 per session. You or one of your managers host this group and lead a free-wheeling discussion.

CONTINUED ON PAGE 44

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BY

BOB SIMONS

# Dealers from opposite sides of the U.S.

For this issue, we interviewed the vice president for marketing of a three-store rental-purchase chain in Utah and the owner of a one-store operation in south Louisiana. Both companies are APRO members in good standing.

—John Massey, associate editor

...

Bryan Buchanan  
Vice president—marketing  
EZ Rent to Own (three stores)  
Logan, Ogden and Provo, Utah

**On what appliances are moving well:** “Washers and dryers. We do a big business with Speed Queen. We also use Kenmore, because the Kenmore name pulls real well for us. The washers and dryers, we’ve seen, stick better than anything else we’ve got in appliances. We’re looking to expand in appliances this coming year and broaden our selection a bit. We’ll also broaden our advertising in that direction, to that specific market.”

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**On plans for the post-holiday season:** “Our business tends to be real good in January, but then it drops off in February. So, I don’t see us doing anything too different in January, but in February we’re planning a couple of direct-mail pieces, hoping to maybe prop up that month a little bit. For whatever reason, our market tends to be strong in January after the holidays and then drop off in February.”

**On business from universities:** “We do a very good rent-to-rent business with the universities in all three of our markets. There’s not much rent-to-own at all. Mainly it’s TVs and VCRs, or TV/VCR combos, then maybe a few stereos.”

**On recent trends:** “We haven’t seen any dramatic changes lately. There are the same cyclical trends through the year. If anything, maybe furniture’s been moving a bit stronger than in the past.”

**On the new year:** “I see us becoming a bit more aggressive in our advertising. We’ve been kind of laid back. We’re going to try to use more targeted advertising, like the appliance area and with furniture. We came from the electronics area. That’s where we cut our teeth. We’ve only been in furniture for about a year, but it’s coming on for us. This is our year.”

...

Brad Dugas  
Owner  
Supreme Rent To Own, Inc.  
New Iberia, La.

**On appliances:** “Here in New Iberia, there are eight rent-to-owns. The competition’s real heavy. I’m pushing gas appliances right now.”

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A lot of those items you’d consider slow-movers, but I don’t mind stocking them if nobody else has them. The other stores will send people over to me if they don’t stock something, and I do the same for them. If somebody comes in looking for a computer, I send them where I know they can get some help.”

**On pagers being a successful product:** “The hottest items I have are beepers. I guess you could call me the beeper king in these parts. The population here and in the surrounding areas is about 60,000 people. There’s no large pager carrier based in Iberia Parish. Even then, the large companies just sell beepers and service, and they don’t offer accessories that I stock. I stock a full variety of accessories, like housings, chains and leather cases. I probably have 20 or 30 different colors. I do everything over here, service and anything else.”

“I’m a sub-agent. I don’t own a tower, and I don’t plan to. The tower I use is geared toward agents, like me. The company that owns the tower makes its money by quantity, and I’m in a buying group with six other RTO stores, so we get a good quantity price.”

“The big companies, like Mobile Com and Interlink, they don’t want agents. They want to rent the beepers and sell the service themselves. I looked into putting up a tower, but you’ve got to buy equipment, which was \$12,000, put up the tower and then have full-time maintenance.”

**On the post-holiday season:** “After the holidays, we spend a lot of time with pickups. People spend a lot of money during the Christmas holidays. January’s going to be a real good month for beepers. Electronics and jewelry have done well for the holidays.”

**On the downfalls of being the “beeper king” in his area:** “Look out for delinquency and non-returns. Just like with jewelry, you don’t deliver the beeper. We check references to make sure they live where they say, but they leave the store with it.”

“It also takes key personnel to make repairs and switch out cases. But if you do it right, it’s a money-making deal.”

PR

seed, but not in this context.

Judge Magnuson in the *Starks* case in Minnesota (*Starks v. Rent-A-Center*, #3-89-0786, (D. Minn. filed 1989)), after three weeks of testimony on the issue, gave the jury an instruction on the meaning of nominal consideration that will surely live through the ages. It reads:

"You must first determine whether the agreement entered into between a defendant and plaintiff is a sale rather than a rental. Therefore, you must decide whether at the time that the rental agreement was signed, the option-to-purchase price to be charged by a defendant was nominal consideration. It is clearly nominal consideration where the lessee (customer) may purchase the property for one dollar at the end of the rental. On the other hand, if you find the option-to-purchase price equal to or greater than the fair market value of the property, then you must find that the option to purchase is not nominal consideration.

"However, there is a range of values above one dollar and below the fair market value that may or may not be considered nominal consideration. That is, an option-to-purchase price which is 'less than fair market value' is not necessarily nominal. If you find that the option provision has no economic substance or is for an amount that was so small as to bear no relationship to the real value of the property, that is a mere token, then the option-to-purchase price is nominal. If, on the other hand, the option-to-purchase price is a 'reasonable prediction' of what the fair market value of the property will be at the time the option is exercised then the option-to-purchase price is not nominal."

Although cumbersome, the judge's instruction is probably an accurate statement of the law of nominal consideration in most jurisdictions.

The notion of nominal consideration, however, remains an awkward and poorly defined concept. A recent rental-purchase case from the Wisconsin court in *Hall (Rent-A-Center, Inc. v. Hall*, #92-2650 (Wisc. Ct. app. 1993)) made it all the more so. The Wisconsin court in *Hall* jettisoned the notion of fair market value as a measure of nominality and ruled instead that a purchase option in a consumer rental agreement was nominal whenever a consumer lessee had "no sensible alternative to exercising the option," when comparing the option price to the total of rental payments already made.

The law in most jurisdictions is that, when considering a purchase-option price, consideration is nominal when it is materially less than the predicted fair market value of the property at the time of the exercise of the option. If a lessee can purchase the rented property at a bargain price, then some portion of the lease payments must have been going toward the purchase and the transaction taken as a whole may be a sale. If, on the other hand, the lessee can only purchase the rented property for the property's fair market value, then that must mean that lease payments were for the use of the property only, since there is no opportunity for a bargain purchase later on.

While the "no sensible alternative" test may be criticized, that criticism does little to guide lessors in setting

balloon-purchase options at "correct" levels. It is a difficult issue and there are no easy answers.

On Dec. 14, 1994, the Wisconsin Commission of Banking issued a written "interpretation" of the Wisconsin Consumer Act in response to the confusion caused by the *Hall* case and defined nominal consideration as 12 percent or more of the total of rental or lease payments. This is because no one can accurately apply the "no sensible alternative test." An interpretation such as this can be attacked, since it does not carry any legislative approval, but should, nonetheless, give dealers in the state some guidance concerning how to construct their rental agreements in order not be classified as sales.

In North Carolina in 1983, the North Carolina Legislature defined nominal consideration as 10 percent or less of the cash selling price of the rental property, once again in an effort to shed some certainty into an otherwise murky area of the law.

What is not known is whether the precision offered by these two definitions can be used at all beyond the borders of these two states.

Besides determining what the law says, and then accurately estimating the fair market value of the property several months or even years in the future, the tension over the size of the balloon at the back end of a consumer lease also involves marketing the transaction. The marketplace urges a small balloon in order to move units. But, legally, no price is too high, and if the dealer guesses wrong, or succumbs to market pressure, the transaction may get turned magically and tragically into a sale before his very eyes.

The drafters of article 2A of the Uniform Commercial Code, the new section on leases, which has been adopted by 40 states so far, addressed the issue of nominality in lease-purchase options by providing that consideration is not nominal if "when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed." UCC 1-207(d)(1).

The Wisconsin court in *Hall* distinguished the purposes of the Uniform Commercial Code and the

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Wisconsin Consumer Act and held that UCC definitions did not carry over to the Wisconsin Consumer Act. Despite this peculiar ruling, a fair-market-value balloon purchase option should satisfy the nominality requirement in most jurisdictions.

There may, however, still be marketing problems in a contract that provides a purchase option at what is essentially an unknown amount—for instance, the fair market value at the time of the exercise of the option. Customers may not want to lease property when they cannot tell how much it will cost them to obtain ownership.

A response is to provide a purchase option for fair market value which the company agrees will be no greater than a specified amount. The fair market value may be less depending upon the wear and tear on the unit and market conditions. Such a provision would allow consumers to plan ahead for the purchase option with an amount certain and should still satisfy the UCC definition, assuming, of course, that is the applicable law—which is not the case in Wisconsin.

Another issue surrounding purchase options is how they get paid. The preferable legal solution is to require that they be paid in cash. The problem, of course, is that some customers will not have sufficient cash on hand at the time the purchase option arises. It would be dangerous to allow a customer to continue making periodic payments at the same rate as the previous lease payments without more until the purchase-option balance has been paid in full. Then, it may appear as if there is really no balloon-purchase option at all, merely a continuation of lease payments until ownership transfers. Such a practice might cause the entire transaction to be recharacterized as a sale.

A solution in the absence of a cash payment is to have the customer sign a retail installment contract for the balance of the purchase-option price, which contract will have required payments in an amount and over a period of time mutually agreed upon. Payments might be greater or lesser than previous lease payments. Lessors could add an appropriate finance charge to this transaction.

The difficulty here is that the process inserts another layer of paper-

work into the system. Moreover, it is sales paperwork, not lease paperwork.

Lease consumers, now purchasers, might be expected to make the relatively few payments on these retail sales contracts on a timely basis, but if they for some reason do not, all of the protections afforded consumer buyers under state retail installment laws are then descended on the rental company. There are notice requirements, grace periods, limits on collection practices, article 9 requirements concerning the disposition of property upon repossession, and the like.

If it is difficult to train employees to manage the rental business properly, it will be at least twice as difficult

to train them to run a rental, now lease, business and, additionally, run a sales business, out of the same store location and with the same customers.

And so, while the Consumer Leasing Act may appear beguiling to rental dealers chafing under state rental-purchase regulations, to dealers without a law, or to dealers concerned over tax issues, it is a very different business from the traditional rental-purchase business. The challenges are not insurmountable, as vehicle and furniture lessors have been demonstrating for years. But it's a different business from the one most RTO dealers are used to.

**PR**

*Ed Winn is APRO's legal counsel and a veteran writer on industry issues.*

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reminded to wear the belts.”

Minnery believes rental-purchase dealers “are more progressive when it comes to covering their employees with this type of thing. We designed this whole program to come up with items that dealers really don’t have the time to look into. We try to do it all for them and then pass that information through both advertising, seminars and trade shows.”

Progressive is a good word to describe the appliance industry overall. During a two-hour roundtable held during last September’s Indianapolis Appliance Manufacturers Conference and Exposition, one panelist helped define the appliance industry’s latest buzz-phrase—fuzzy logic.

“Fuzzy logic has been emerging in the field of appliances due to its fit to the type of processes that are not easily modeled, like improving efficiency requirements in dishwashers or clothes washers,” says Tim Erickson, senior design engineer,

## Who’s who in appliances

For almost every rental-purchase dealer, appliances account for a major part of the product lineup—and they represent a reliable part of the revenue stream. All RTO appliance suppliers listed here are either **APRO Associate Members (\*)**, **advertisers (+)** in **APRO** publications or **APRO convention exhibitors (Y)**.

**\*Y Amana Refrigeration, Inc.**  
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Amana/Speed Queen appliances

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Dublin, OH 43017  
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**\*+Y Whirlpool Corp.**  
2000 M63  
Benton Harbor, MI 49022  
(616)923-2417  
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**\*Y+ GE Appliances**  
Appliance Park, AP4-241  
Louisville, KY 40225-0001

**Y\* Jenn-Air**  
3035 Shadeland  
Indianapolis, IN 46226  
(317)545-2271  
Appliances

**Y\* The Appliance Connection**  
P.O. Box 344  
Goshen, KY 40026  
(502)228-6527  
Appliances

**\*Y Sears Contract Sales**  
9701 Metcalf Ave.  
Overland Park, KS

Microswitch, a division of Honeywell, Freeport, Ill. Erickson is quoted in *Appliance Manufacturers Magazine*, saying: “Fuzzy logic uses linguistic variables to identify the conditions in the system and reduce that to a rule

base that gives varying responses to varying multiple inputs.”

Chris Okey, senior research engineer, Honeywell Technology Center, Minneapolis, also participates in the debate on fuzzy logic:

“One of the classic examples of applying fuzzy logic control versus conventional control is an inverted pendulum. Think of balancing a broomstick on the tip of your finger. It’s something everybody can do. Programming a traditional controller for such a function requires a complicated second-order, partial-differential equation.

“The programming would need to be done by someone with an engineering degree or an electrical engineer with a physics background. But someone without an engineering degree who knows how to balance a broomstick could write fuzzy-logic rules relatively simply for that application. That’s one of the strong points of fuzzy logic. It’s relatively easy to apply.”

Easy or not, the concept brings to mind a 21st century world not unlike that of our cartoon counterparts, the Jetsons. It seems natural for the appliance world to culminate its efforts into one simple process ... fuzzy logic. **PR**

*Elizabeth French is an Oklahoma-based freelance writer. Her last article for Progressive Rentals, “The Midwest Floods of ’93,” appeared in the August/September 1993 issue.*

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# *Excitement*

NINETEEN-NINETY-FOUR WAS A GOOD YEAR BY ANYONE'S CALCULATION WHO IS IN THE RENTAL-PURCHASE INDUSTRY. FIELD REPORTS FROM AROUND THE COUNTRY INDICATE MOST MEMBERS FIND THEIR BUSINESS UP OVER LAST YEAR AT THIS TIME AND THE ANNUAL RTO SURVEY, RELEASED THIS PAST SUMMER, CONFIRMED THESE EARLIER RUMORS. FOR AN OL' POLITICAL WAR HORSE LIKE ME, IT'S BEEN A GREAT YEAR!

•••••

For political junkies like me, who used to do politics for free, 1994 has been a year to remember. Many mornings I woke up and thanked God for politicians like Henry B. Gonzalez. Rep. Gonzalez is a fella important enough to be able to cause problems for industries like ours and require our focused attention, but he's not politically sophisticated enough to leverage his power and accomplish his stated goals. In politics there is a unwritten maxim that "one is known by his enemies." The stronger your opponents, the more credit you deserve for surviving or defeating them.

So, while we collectively take pride in knowing that we survived and even defeated a powerful committee chairman at his own game—just between you and me—I knew all along that our chances of success were increased from the beginning because our chief congressional opponent doesn't really work the legislative system to his maximum benefit. Under the congressional seniority system, chairman Gonzalez should have been able to prevail on an issue as low a priority with other congressmen as rental-purchase. If only he had listened, learned and followed the suggestions of Politics 101.

The first rule any committee chairman learns the hard way is not to bring up for

a vote any bill for which you don't have the votes to pass. That is the most important—and basic—power a chair has at his discretion. He or she does not have to place an issue on the agenda if the vote will not go his or her way. As chair, you only bring up a bill that you support when your informal poll indicates the result will go your way. Otherwise you wait; wait until those members against your position are preoccupied with other committees or matters and then you spring into action.

Gonzalez knew where he stood. The majority of his own committee was signed onto the LaRocco bill, so the chairman never bothered to call for a "mark up" on his own bill.

What he never learned to do or refused to do was lobby all his committee members to support his position. Oh, he asked a few members, ones he knew couldn't say no, to co-sign his legislation. But mostly Rep. Gonzalez relied on his position as chairman and his status with consumer groups to round up the majority. Unfortunately for him, his staffers mispent their energy, asking the few people one would expect to say yes. Arguably worse, they relied on manipulation of the news media to pressure the other committee members into supporting the chair's anti-RTO bill. Sometimes manipulation and intimidation work, and they sure caused us some sleepless nights, but in the end these tactics were not enough. Our counter-responses to their maneuvers were relentless. Our strategy was guided by the opposite approach to gaining a majority against his bill.

First, and very importantly, we chose the LaRocco bill to rally behind, because we knew that when dealing with members of Congress (particularly Democrats) it would not be enough to just say no to any proposed RTO legislation. We have learned from watching other industries, many bigger than ours—like the tobacco and gun lobbies. Those rich and pow-

•••••

BY

RON WATERS

eful industries have historically said "no" to Congress. Such industries continue to deny the need for any regulation, until they find themselves faced with almost certain draconian legislation. Industries can howl bloody murder all they want, but eventually such restrictive legislation can only be avoided by offering less drastic, alternative legislation.

More importantly, we engaged in a specific strategy of targeting 16 Democrats out of the 30 on the committee we believed might be open minded (we only needed six of the 16) and went after them before we focused on our natural allies, the 20 Republicans on the committee. In all we needed a majority of the 50 committee members. At the end of the 103rd Congress, we had nine committee Democrats officially co-sign the LaRocco bill and almost all of the Republicans. In short: We worked our weak side before focusing on our strength. Gonzalez should have done the same but didn't.

There were also other battles waged and won by us in Congress this past year, including one that started early in the session and kept popping up each time we batted it down, the so-called Bankruptcy Reform Act. Retiring Sen. Howard Metzenbaum used this bill to try an end run around us when it was clear we had his companion legislation to the Gonzalez bill bottled up in the Senate Banking committee.

Regardless of what negative things we might want to say about Sen. Metzenbaum, he proved to be a much more formidable opponent than his co-author in the House, Rep. Gonzalez. Sen. Metzenbaum never gave up on his attempt to re-characterize the rental-purchase transaction as a credit sale, or in this case a "secured interest" transaction for bankruptcy. At the last hour he managed to slip this language into the Senate's version of the bankruptcy bill.

Up until the last week of the session we were required to work overtime to defeat Metzenbaum's amendment. In the end we prevailed, but I predict he will use his new position as president of the Consumer Federation of America to continue his efforts to get us next session. I'm anxious at the thought of future political battles with

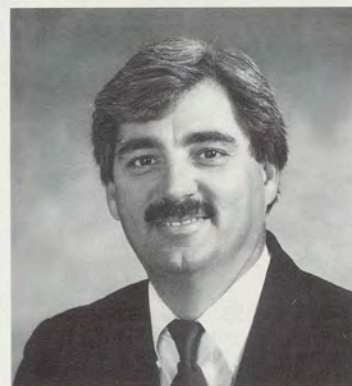
this worthy and determined opponent.

We continued this year to march through the state legislatures of the land with our version of fairness for both consumer and dealers. Laws similar to those already in 36 states were enacted in three states this past year. One of those three new states was California, land of the liberals. The law looks uniquely Californian, what with every imaginable regulation and business restriction, but it is a law we can live with.

Finally, there was good news even on the tax front of our three-front war, with a rumored potential settlement proposed by the Internal Revenue Service. The settlement might not come to pass, but the offer to settle is in an encouraging indication of the strength of our legal case.

So where do we go from here?

We now have the same opportunity before us that the new Republican majority has. We get to go on the offensive and try to pass our version of federal RTO legislation. Of the original 51 co-sponsors of the LaRocco bill, 13 were defeated or retired, all Democrats, including LaRocco. But



*Ron Waters is APRO's director of government affairs.*

we remain in excellent shape to launch a legislative effort.

We are truly sorry that Larry LaRocco was caught in the squeeze and turned out of office. However, the Congress will probably be even more pro-business and we will go to work immediately to make these folks our "new" best friends.

So, be grateful and relieved with the great year we had against great odds in 1994. Be prepared for even greater things this year. **PR**

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## Taking 'Action' to help needy families

IF THE GANG AT ACTION HAS ITS WAY, A NUMBER OF STRUGGLING TEXAS FAMILIES WILL BE SLEEPING A WHOLE LOT EASIER—LITERALLY—IN THE VERY NEAR FUTURE.

.....

Action, a Mesquite, Texas-based rental-purchase chain owned by APRO board member Bill White, is working to organize a partnership with the Medina (Texas) Children's Home, where underprivileged parents and children are helped when they fall on hard times. Medina is just north of San Antonio.

"People from the Medina Children's Home approached us a while back, and our managers have committed themselves to the project," White says. "To tell the truth, we're really anxious to get this project started. We're just waiting for the phone call to get the ball rolling. This is a good opportunity to help some people."

White says the plan is to put clothing collection boxes in all of his Action stores, so rental-purchase customers can donate clothes when they come in to shop or make rental payments. Action will also donate a great deal of used rental furniture to the charitable organization.

Says Action Vice President Dan Mathews, who is in charge of organizing the project throughout the company: "The people at the Medina Children's Home are generally folks from broken homes, usually women with young children. The people have gone through some tough times and are struggling to get back on their feet. The kids go to school while the parents get job-skill training. All the while, the families are living in small apartments provided by the Medina Children's Home. They've got the facilities for these families, but they need help with other things.

"When our managers heard about this program, they all said they wanted to help out right away," Mathews adds. "What we are going to do is donate furniture for all of these apartments—beds, tables, sofas chairs, you



*"This is a good opportunity to help some people."*

name it. And when these mothers and fathers are back on their feet and ready to go back out on their own, they just take the furniture with them. They don't have to furnish their next apartment. It's one less thing to worry about.

"When one family moves out, we'll just furnish the apartment again, keeping the apartments fresh. It's an ongoing program, which is something we've been looking to get the whole company involved in."

Mathews says the hardest part of getting involved has been waiting to get the program started. With 71 Action stores spread throughout Texas, Louisiana, New Mexico and Oklahoma, there are a whole lot of store managers itching to help out. Mathews says there have been some delays in getting the clothes collection boxes from out to the Action stores, and the furniture collections haven't been coordinated by the Medina Children's Home yet. Mathews has even offered to have the collection boxes built by Action.

"I think this will turn out to be a great program," Mathews says. "We're always telling the people at all of our stores to look out for ways they can help out in their communities. When we told our managers about this program, they were ready to get started right away. We're just waiting for the people over at Medina to get things organized on their end."

—John Massey

Continued from page 36

Use this group of customers as a sounding board. Ask questions like: What could we do better? Are there services or products we don't offer that we should? Whenever you've had a problem, do we resolve it quickly? Give them anonymous customer problems and use the focus group to come up with solutions.

If all goes well, you could even call this group your "customer advisory board." If you plan on doing community service projects such as donations to a school or a youth program in your area, this board could advise you on what means the most to the community. Bottom line—your customers are a resource for lots of good ideas as well as referrals.

Rewarding your customers for referrals is always a good idea. As you start the new year, explore ways you can reward those customers who refer other good customers to your

*Rewarding your customers for referrals is always a good idea. As you start the new year, explore ways you can reward those.*

store. One way is through recognition. It can be something as simple as a sign that says "customer of the month," of some small monetary reward. It's amazing that most customers will gush over anything that is extra and unexpected.

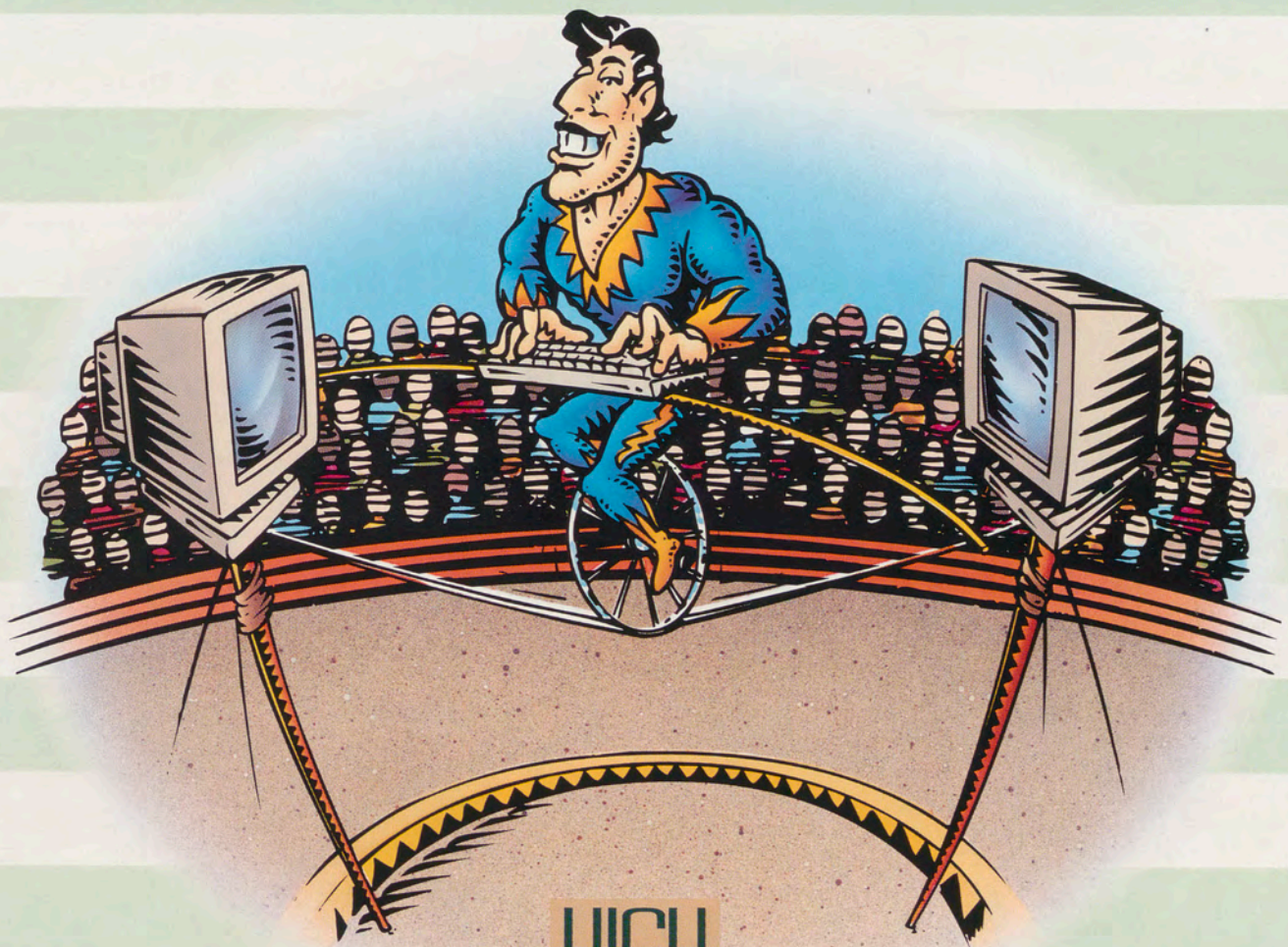
The guru of customer service, Dale Carnegie, espoused these final rules of customer service:

- Anticipate your customers' needs and take the necessary steps to delight them; and

- Don't expect a "hearts and flowers" thank you for your efforts; rather, rest assured your customers will keep you in mind when your product or service is needed again. **PR**

*Bob Simons is owner of North Charleston, S.C.-based All Star Rental. He is an APRO board member, serves on the APRO Executive Committee as first vice president and chairs the association's public relations committee.*

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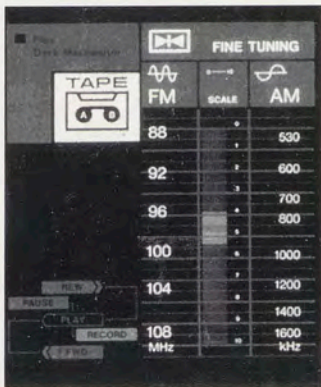


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## Aaron's franchises rated No. 2 nationally

Aaron's Rental Purchase is the second-hottest franchising operation in the nation, according to the November 1994 issue of *Success* magazine. Charles Loudermilk's Aaron's placed No. 2 behind GNC Franchising, Inc., in the *Success*/Ernst & Young Franchise Gold 100.

The competition for the Gold 100 was between 1,311 responding franchisors and franchisees. The companies were judged by these criteria: Financial performance accounted for 20 percent of the overall score; corporate growth and management was 17.5 percent; corporate stability was worth 12.5 percent; franchisor attitude and services was worth 25 percent; and franchisee relationship assessment accounted for the remaining 25 percent.

"We are tickled to death to be recognized by an independent, unbiased organization," said Aaron's Todd Evans, director of franchise management. "We consider this a great honor. In the franchising industry, there are many companies that don't bring a lot to the table, but Aaron's provides a great deal to its franchisors."

While the growing rental-purchase company No. 2 of all franchise operations, Aaron's rated as the No. 1 company in its investment size category—\$150,000-\$250,000. The No. 2 company on that list was Schlotzsky's Inc., a Texas-based fast food operation.

The third business in that investment category was Glamour Shots Licensing, Inc.

According to Evans, Aaron's has 24 franchises open, seven more in the process of opening and 26 more currently committed to opening in the near future.

## Transamerica offers furniture financing

Responding to a growing influx of furniture into the consumer durables businesses it already serves, Transamerica Commercial Finance Corp. is targeting the furniture industry for its inventory financing programs.

TCFC, a Chicago unit of Transamerica of San Francisco, said it has created a "comprehensive inventory finance program tailored to the needs of the furniture industry," including retailers, distributors and manufacturers.

The company's furniture initiative will be based in Prosper, Texas—just north of Dallas—and will be headed by Vern Bender, a veteran of consumer durables retailing.

Bender's 16-year career at Sears was followed by 16 years in posts at Maxwell Furniture, GranTree Furniture Rental, Reliable Stores and Magic Rent To Own.

He said TCFC services for furniture companies will include inventory financing for retailers and a private-label revolving charge card program for their customers, export financing for manufacturers, working-capital loans and bridge financing of imports.

"We will be working with targeted manufacturers and distributors to design financial services packages which meet their specific needs and the needs of their dealer base," Bender said. "We will then help them implement and execute the plans for their dealers."

TCFC Sales and Marketing Vice President Glen Villano said the move

into furniture "is a logical extension of our business (because) we are finding that many of our current customers are adding furniture to their product mix."

Its main business has been in appliances and consumer electronics.

—*Reprinted with permission from Furniture Today.*

## Tucson gets nod for mid-year conference

In maintaining a reputation for top-flight locations, the APRO 1995 Mid-Year Conference will be at the Tucson National Golf and Conference Resort in scenic Arizona.

Nineteen-ninety-five dates for the annual conference are April 20-22.

To uphold its tradition of educational substance, the association's mid-year conference has this tentative seminar schedule:

### Thursday, April 20

- Noon—Luncheon, sponsored by FORESIGHT.

- 1-5 p.m.—Know Your Customer: Results of Comprehensive Survey of Rental-Purchase Customers.

- 5-7 p.m.—Hospitality suite, sponsored by High Touch.

### Friday, April 21

- 9 a.m.-noon—Open for golf or sightseeing.

- 1-3 p.m.—APRO Annual RTO Legal Update.

- 3-5 p.m.—APRO Annual RTO Tax and Accounting Update.

### Saturday, April 22

- 9 a.m.-noon—Rental Round Table Discussion.

For reservations at the Tucson National Golf & Conference Resort, call 1-800-528-4856. The deadline is March 10. Be sure to request the APRO rate of \$130 single or double.

For additional information on the April 20-22 conference, call APRO Education Director Shelley Martinek at (512)794-0095. For a mid-year conference registration form, order document No. 4000 from the APRO Facts Line, (512)794-0258.

## Make a date with APRO at the markets

In case you missed it, here's the basic information for APRO's participation in the 1995 winter markets:

- CES: the 1995

International Winter Consumer Electronics Show is scheduled for Jan. 6-9 in Las Vegas. APRO will have booth No. T-1 in the Las Vegas Convention Center Grand Lobby. Also, visit the APRO hospitality suite at the MGM Grand on Friday, Jan. 6, from 6 to 7:30 p.m., sponsored by Home Theater Products, Inc. Call CES at (708)203-1995 for registration information. This is a fax-on-demand line. Preregistration deadline was Dec. 12.

- The Atlanta Winter Furniture Market is scheduled for Jan. 21-24. Call 1-800-ATL-MART or (404)220-2446 to register for the market. Call Destination, Inc., at 1-800-241-6405 for discounted air and hotel information. And don't forget to visit the APRO booth, No. 200A, during the market.

- The San Francisco Winter Furniture Market is scheduled for Jan. 21-25. Preregister by calling (415)552-MART. Call by Jan. 1 to take advantage of special air and hotel packages for qualified buyers. Special travel discounts are available to mart attendees through Travel Fair. Call 1-800-472-4172 for details. Visit the APRO booth located in the Mart 1 lobby.

- The Mississippi Furniture Market is scheduled for Feb. 16-19 in Tupelo, Miss. Call (601)844-1473 to register for the market. For lodging information, call 1-800-844-0841. Visit the APRO booth at the market and show up for the APRO hospitality night, Friday, Feb. 17, at the BenchCraft showroom. BenchCraft is sponsoring the event.

PR

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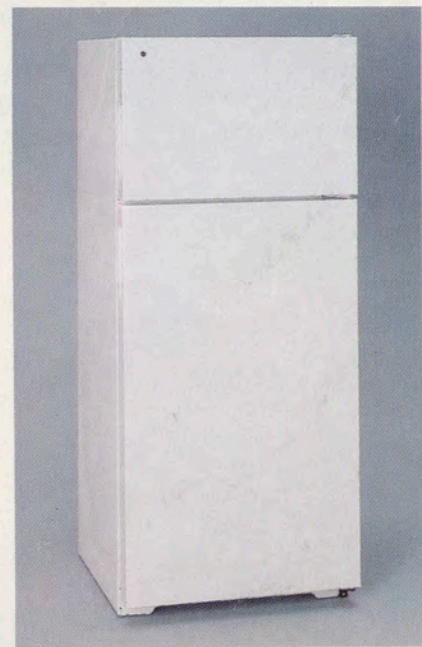
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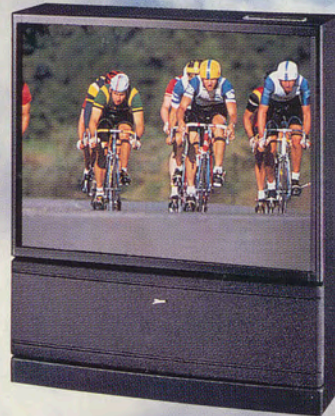
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