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DECEMBER 2005–JANUARY 2006

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Could using a professional management profile test when hiring or promoting put your business at legal risk? Generally, employee testing is not unlawful, but when a test can reveal mental disorders it may violate federal or state disability law. Rental dealers could learn some lessons from a recent court decision on employee testing.

BY DARREN A. FEIDER

30 | CLASS ACTION LAWSUITS AND LEGISLATIVE ATTACKS

What started out as a normal business day for one rental dealer turned into a nightmare when he received notice of a class action lawsuit. John Raines takes you through two days in the life of a rental dealer and discusses what you can do to avoid having an experience like it.

34 | THEFT IS SUCH AN UGLY WORD

One would think that everyone would be of the same mind about theft and thieving, but this is not the case in the rental-purchase industry or the criminal justice system. This article explores recent developments that highlight the acute and often fervently held differences of opinion.

BY ED WINN III

38 | STAYING POWER: AN APROFILE OF BOB MCGREGOR

When it comes to the rental-purchase industry, Bob McGregor has seen it all. The business that his father started by selling furniture out of a covered wagon has been through both the booms and the busts of the industry. According to the 86-year-old owner of McGregor Rents, hard work and perseverance have helped him—and his business—keep on keepin' on.

BY KRISTEN CARD

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news

BREAK

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RICHARD MAY

APRO Convention dates changed to September

Due to scheduling conflicts with the increasing number of events in the summer of 2006, the dates for the 2006 APRO Convention and Buying Show have been changed to September 20–23. Originally scheduled for August 3–6, the APRO board of directors elected to move APRO's event to September to avoid holding the show in the same time frame as several other events affecting the RTO industry, including the Las Vegas Market and the Tupelo Furniture Market.

The major furniture markets have been adjusting their dates because of the entry of the Las Vegas World Market Center into the mix in 2005. The Las Vegas Market has moved its dates several times, causing other markets, as well as APRO, to adjust their dates to avoid conflict with this major furniture industry event. APRO has been working hard to come up with the best dates for its dealers and vendors and feel that the September dates will

avoid future conflict with other furniture markets.

The APRO board feels confident that moving the APRO Convention and Buying Show to September will offer vendors a better opportunity to reach the rent-to-own market and give dealers a chance to attend these events without being constantly on the road during the month of August. APRO realizes that these new dates conflict with a major holiday, but organizers were unable to secure any other dates in September under the contract with

the Gaylord Palms without considerable financial consequences. The board is looking at adjusting the convention schedule within the new contracted dates to avoid as much conflict as possible with Rosh Hashanah on September 23. APRO apologizes for this conflict and hopes to find a schedule that will work for all of its members within these dates.

The 2006 Convention and Buying Show will be held in Orlando at the Gaylord Palms Resort. Visit the APRO Web site, www.aprovision.org, for the updated schedule and details as plans progress. Feel free to contact APRO Education Director Shelley Martinek at 800/204-2776, ext. 109, with any questions or comments concerning the new dates.

Ring in the new year as an APRO member—at a discounted price

As you are making out your list of New Year's resolutions, be sure to add joining the only national trade association devoted to the rent-to-own industry. For a limited time, APRO is offering rental dealers half off of their first year's membership dues.

Why join APRO? APRO members say it best. Here's how Gloria



NEWS BREAK

Homeier-Schwieen of A Full House in Russell, Kansas, feels about APRO:

"Without APRO, I would be standing alone, wondering how to get

that competitive edge, how to market my products, how to find vendors and how to generate revenues. With APRO, I found wisdom from others in the business. I

learned financial and marketing alternatives that have helped me realize my dreams. With APRO, I gained knowledge of current legislative and legal issues that



keep compliant with regulations, but also prepare me for any

future challenges that I may encounter. I count on APRO's e-mails and magazine to keep me abreast of current issues. Whether you are a newcomer or an individual seasoned in RTO who truly wants to make it in this business—APRO is a must!"

The value of APRO membership is its members. APRO members account for 2,500 of the estimated 8,300 stores across the United States. To APRO members, a minimum of 2,500 rent-to-own experts are only a phone call away. An industry is only as strong as its association and an association is only as

APRO membership application

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DBA _____

Owner's name _____

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Telephone [_____] _____ Fax [_____] _____

E-mail address _____ Web site address _____

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APRO Mid-Year Conference heads to Tucson in March

Rental dealers and vendors are invited to experience a desert oasis at the annual APRO Mid-Year Conference on March 20-22 at the Hilton El Conquistador Golf and Tennis Resort in Tucson, Arizona. This year's conference highlights include Ed Winn's 2006 RTO legal update, a cocktail reception with tabletop exhibits, an in-depth discussion with Sidney Burton about why 94 percent of your customer base does not rent and a golf tournament benefiting the APRO Scholarship Foundation.

Full conference registration for APRO members is \$200 and includes all events and a complimentary spouse registration. The registration fee for non-members is \$400. Look for more information in your mailbox and on the APRO Web site in January 2006.

Under the policy, Blue Ribbon Rentals will install the anti-tipping device on every rented range at no cost to the customer. When that phase has been completed, the stores will then contact the paid-out customers to install anti-tipping devices on their stoves, as well.

"It's simply the right

thing to do," says Wendell. "When we deliver a stove, we have a moral obligation to not only protect the children that will have this stove in their home, but also the small children who may visit that home."

Wendell is asking for 100 percent compliance from his stores. He rewarded all stores that

Anti-tipping article sparks company policy

Blue Ribbon Rentals has implemented a company policy to be sure that all range rentals are equipped with a tip-proof safety device. After reading Ed Winn's article, "The Tipping Point" (*Progressive Rentals*, July-August 2005), Bill Wendell, president of Ohio's Blue Ribbon Rentals, realized the importance of anti-tipping devices and decided to put what he read into company policy.

Blue Ribbon Rentals is contacting all customers with stoves on rent to make sure that the anti-tipping device was installed at delivery. "It is our company's policy to protect our customers and their children from injuries due to the use or misuse of the products they rent or buy from us," says Wendell.

CALENDAR OF EVENTS

2006

JANUARY 2006

5-8
Consumer Electronics Show,
Las Vegas, Nevada
703/907-7600, www.cesweb.org

18
Florida Rental Dealers
Association Board of Directors
planning meeting,
Tampa, Florida, 813/241-0601,
www.frda-rto.com

20-24
ColorTyme 2006 Winter
Operations meeting,
Dallas, Texas, 972/403-4945,
www.colortyme.com

23-26
Premier Rental-Purchase
dealers convention
Mayan Riviera, Mexico,
757/258-8947,
www.premierrents.net

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Las Vegas, Nevada,
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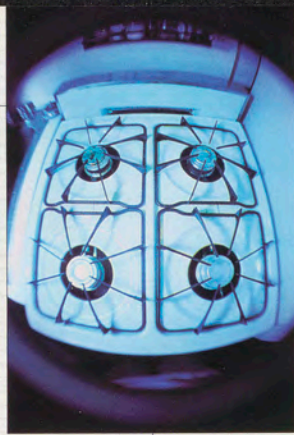
2-5
San Francisco Furniture Mart,
San Francisco, California,
415/552-2311, www.sfmart.com

9
Missouri Rental Dealers
Association annual general
meeting, Columbia, Missouri,
913/371-2400,
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22-25
Tupelo Furniture Mart,
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NEWS BREAK



completed installations on their stove rentals by November 20 with \$100. The first store to reach 100 percent compliance received \$250.

"I have four children and I could not imagine the pain that would have come to Barbara and me

if one of our children had been scalded by boiling liquid because a stove tipped over on them," says Wendell.

Rent-to-own remains a small-business enterprise

The rent-to-own industry was spurred into the U.S. marketplace through the entrepreneurial spirit of small business. Throughout the decades, though, the rent-to-own industry has evolved from a group of independent small-business owners to an almost even split between corporate rent-to-own and small-business rent-to-own. Today, the ratio is 51 percent corporate rent-to-own reflecting three public companies—Aaron's, RentWay and Rent-A-Center—and 49 percent independent small-business rent-to-own reflecting 2,300 independent companies.

The current corporate growth of the industry is an 8 percent rise from 1999, when the public company corporate rent-to-own industry was split 43 percent corporate and 57 percent independent. In the five years following 1999, Rent-A-Center engaged in an aggressive acquisition campaign that ended when it purchased Rainbow Rentals in May 2004. However, with the recent consolidation of the corporate rent-to-own industry, a new phase of small-business owners and store openings into the rent-to-own industry has emerged.

"The introduction of rent-to-own companies on Wall Street does add a new aggressive acquisition component to the growth and look of our industry," says APRO Executive Director Bill Keese. "But according to recent statistics, heavy acquisitions lead to an influx of new, independent small-business operators coming into the industry. And it is the independent, small-business spirit that still drives this industry to continually improve, evolve and innovate the rent-to-own industry to better serve their customers."

SMALL RTO BUSINESSES VS. THE CORPORATES: PERCENTAGE OF THE RTO MARKET

Small business are closing the percentage gap



Dates set for "Heartland of America" regional trade show

The "Heartland of America" regional trade show dates have been set for June 19–21, 2006. According to Missouri Rental Dealers Association President Chuck Kuluva, Kansas, Illinois, Arkansas and Iowa have been invited to participate in next year's show at the Lodge of the Four Seasons in Osage Beach, Missouri. "Our goal is to have attendance from the four neighboring states this year and to build from there each year," says Kuluva. More details will follow after MRDA's annual meeting in February.

Vail becomes sole owner of Furniture and Appliances Now

Corporate ownership of Pearson-Vail changed in October when Geron Vail, the company's president, purchased the interest of longtime friend and partner Fred Pearson. No changes in the operation of the company are foreseen and the two men will continue to work together in other ventures.

Pearson-Vail operates as Furniture and Appliances Now Sales and



Leasing, a chain of 18 stores headquartered in Jonesboro, Arkansas. Over the past 18 months, Pearson-Vail has acquired additional locations in Little Rock, Paragould, Conway and Russellville. Many of its stores are being renovated and remodeled on an ongoing basis.

According to industry reports, Furniture and Appliances Now is the largest independently owned sales and leasing firm in Arkansas and has

grown into one of the largest privately owned chains in the country.

Under Vail's leadership, Furniture and Appliances Now has undergone a transformation from traditional rent-to-own transactions into sales and leasing. According to Vail, the transition was designed to expand the company's customer base by appealing to new, non-traditional customers who are looking for competitive cash purchases, while allowing Furniture and Appliances Now to continue to service cus-

tomers where credit is not an option.

RTO definition would add jobs, opportunities and commerce to economy

With the recent destruction caused by a historic hurricane season, Congress has turned its focus on economic stimulation and appropriations packages to balance the economic losses and funding of hurricane relief efforts.

With increased congressional focus on the economy, APRO and APRO members continue to educate legislators on the importance of federal rent-to-own definition language and its impact to the nation's economy.

For the past decade, APRO members have been alerting their elected officials to the importance of federal definition and, as a result, have created close and important relationships with key legislators. A coordinated legislative definition campaign is in effect and is spearheaded


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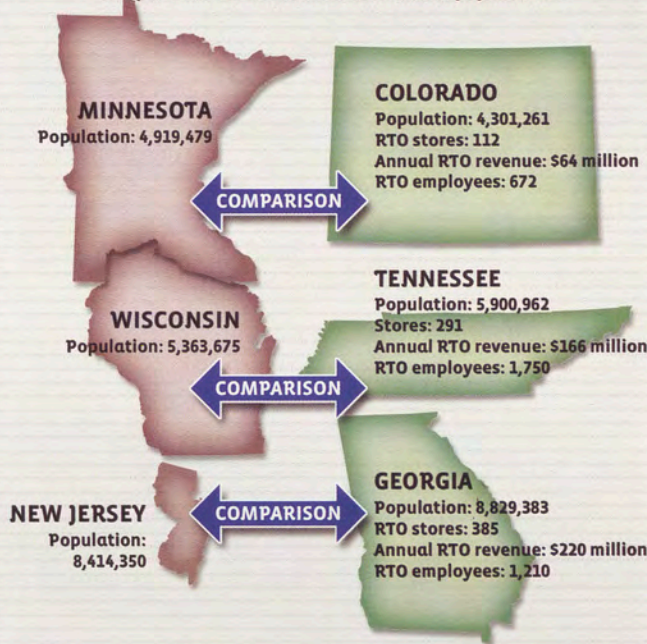
NEWS BREAK

by the APRO board of directors and the government relations committee under the leadership of committee chairman John Raines.

The APRO grassroots network is coordinating meetings with senators to educate them on the immediate economic stimulation that RTO federal definition would create for the nation's economy and to help the industry add the amendment into an appropriate moving piece of legislation. If a federal definition bill passed, the rent-to-own industry

RTO'S POSITIVE ECONOMIC IMPACT

Minnesota, Wisconsin and New Jersey lack rent-to-own legislation. Comparisons based on states with similar populations.



would experience immediate growth in New Jersey, Wisconsin and Minnesota where the current state legal environment has virtually eliminated small-business growth and RTO expansion. Comparing the populations to three similar states, it is estimated that RTO definition language would provide an additional \$500 million annually to the nation's economy, providing thousands of jobs and increasing the tax base. An RTO federal definition would also raise the value of each rent-to-own

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Congress is still in the first half of its legislative session. The House has a targeted adjournment date set for November 18 while the Senate has set a planned adjournment for Thanksgiving. Both dates may change due to the current legislative climate.

Buddy's sponsors Florida Missing Children's Week

Buddy's Home Furnishings continued its charitable outreach in October with its annual sponsorship of Florida Missing Children's Week. Jody Katz, Buddy's sales coordinator and the 2004 recipient of APRO's Employee of the Year award, helped organize activities that culminated into a walk to the governor's mansion in Tallahassee, Florida, on behalf of the Child Protection Education of America (CPEA). CPEA is a foundation dedicated to finding missing and exploited children and educating the public on child safety issues.

The week-long event began at Buddy's Home Furnishings in its hometown of Tampa, Florida, where more than 2,200 people attended fingerprinting events and child

safety demonstrations. The gathering featured members of the Tampa Bay Buccaneers, World Wrestling Entertainment and demonstrations regarding child safety and abduction prevention provided by more than 15 law enforcement agencies.

Recently, the Florida Highway Patrol officially

endorsed the campaign and plans to participate in each event Buddy's sponsors throughout Florida. Katz has also been elected CPEA president as a result of his effort.

"When we started, we couldn't get a law official to call us back. Now, they're asking for bleachers because they know so

many people show up," says Katz. "I challenge every rent-to-own company in America to create the same community-driven spirit Buddy's has created through our sponsorship."

This marks the third year Buddy's Home Furnishings has sponsored Florida Missing Children's Week.

We'll see you at the 2006 winter markets

The year may not be over yet, but it's already time to begin planning the 2006 winter markets. The 2006 market calendar is filled with events across the nation.

APRO invites all rental dealers to join us at the Consumer Electronics Show, January 5-8 in Las Vegas. BDI-Laguna will sponsor a dealer hospitality suite 6-7:30 p.m., Friday, January 6 (location to be announced). For more information, call 703/907-7600 or visit www.cesweb.org.

The Las Vegas Market at the World Market Center will be held January 30-February 3. APRO will host a reception for rental dealers on Wednesday, February 1, in the Sandberg Furniture Showroom. For information on the market, call 888/416-8600 or visit www.lasvegasmarket.com.

Another market of interest to rent-to-own dealers is the San Francisco Mart held on February 2-5. For more information on this event call 514/552-2311 or visit www.sfmart.com.

APRO will also be participating in the Tupelo Furniture Market. The dates for the spring market are set for February 22-25. The APRO booth will be in the lobby of Hall B in the Mississippi Market Complex. Rental dealer attendees are invited for complimentary hors d'oeuvres and drinks 5-7 p.m., Thursday, February 23, in the Ashley Furniture Showroom in Tupelo Building 4. More information on the market can be obtained by calling 662/844-1473 or at www.tupelomarket.com.

The High Point Furniture Market dates are April 27-May 3 in High Point, North Carolina. Although APRO will not be present at that market, you can get more information by calling 336/888-2700 or by visiting www.ihfc.com.



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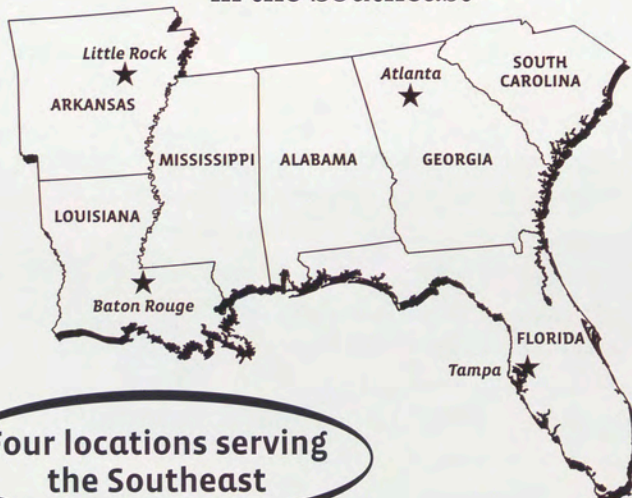


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NEWS BREAK

High Touch helps hurricane relief effort

High Touch is doing its part in helping hurricane victims from Galveston to Tallahassee. High Touch employees have doubled their contributions to the American Red Cross through the company's match program. The company has also steeply discounted replacement computer systems and waived software license fees to its clients affected by wind and water.

"We have contributed nearly \$35,000 to the relief effort for the 100-plus stores along the Gulf," says John Rogers, High Touch director of sales.

"As with all other good causes in our industry, High Touch does its part and more," says Bill Keese, APRO's executive director.

Whirlpool receives ethics award

Whirlpool Corp. received the 2005 American Business Ethics Award from the Society of Financial Service Professionals (FSP). FSP established the award in 1994 to honor companies that exemplify high standards of ethical behavior in their everyday business conduct and in response to spe-

cific crises or challenges.

"Throughout the years, Whirlpool has built a culture of doing the right thing based on living up to our commitment to stakeholders and by quietly working behind the scenes to strengthen the economic and social fabric of the communities in which we operate," says Jeff M. Fetting, Whirlpool's chairman, president and CEO.

This commitment is demonstrated by the company's effort to bring meaningful, sustainable change to its headquarters community of Ben-

ton Harbor through programs that encompass affordable housing, safety, health care and youth opportunities. Globally, Whirlpool made a five-year, \$25 million commitment in 2000 to Habitat for Humanity International and has extended that partnership globally for years to come.

As an employer, Whirlpool maintains a strong focus on diversity and was a pioneer in the establishment of a confidential ethics hotline in 1993. In addition, the company offers a com-

prehensive ethics program that incorporates a wide range of internal communication vehicles, training programs, employee surveys and leadership assessments.

In its demonstration of ethical behavior to shareholders, Whirlpool is compliant with the Sarbanes-Oxley Act and has established multiple internal control and audit groups. Whirlpool also actively participates in the Energy Star program and has been recognized repeatedly for its energy saving initiatives in both its product inno-

vations and its commitment to reduce the company's global greenhouse emissions.

The awards are presented in three categories: large companies (more than 2,500 employees), mid-size companies (250–2,500 employees) and small companies (under 250 employees). Whirlpool received the award in the large-company category; Paetec Communications received the award for the mid-size company; and Schloegel Design Remodel received the small-company award.

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I, like many of you, am passionate about three important aspects in my life: my family, my friends and my profession. My wonderful wife, our four children, our son-in-law and our beautiful granddaughter are the true blessings in my life. My friends share, encourage, tease and comfort me every day. My profession rounds out these blessings as it provides me with the resources to enjoy the comforts of my family and friends.

I demonstrate my passion for these things in various ways. I am affectionate with my family and I visit my children and grandchildren often. My wife and I spend time with our friends. And to

idea pays my dues a thousand times over—and I have gotten many, many great ideas through APRO. I

truly feel we would not be as good a company as we are today with out the affiliation of APRO.”

Dan Cole, a 15-year APRO member and president of National Rent To Own in Bridgeton, Missouri, says, “Over the years in APRO, I have made many friends, many business contacts and, most of all, learned many ideas about sales, advertising, personnel and the rent-to-own business from the great networking that my APRO membership provides. I would recommend an APRO membership to anyone in the RTO business or to anyone considering going into the business.”

William McCrae of Buzz’s Rental Purchase in San Antonio, Texas, joined within the past year and says: “For all my years in the industry, I had not joined or participated in APRO. Then, in July, my company joined to determine if membership was, indeed, a benefit. In September, Hurricane Katrina hit and half our company operated in its path of destruction. My questions—what, when, where and who—were infinite. I called APRO for help and within a day APRO established a conference call for all the dealers affected by Katrina to share information. This provided information to overcome the disaster. Then [APRO] established a fund to provide assistance to employees affected by the hurricane. APRO had the resources to make it happen. Would I recommend APRO to every rental dealer in the country? After what it demonstrated to my company in three short months, why wouldn’t I recommend APRO?”

Through thick and thin, APRO is like a family. I know of no other industry where information is shared so readily and so generously by so many. These words are just a few examples of the boundless enthusiasm our members feel for APRO and after reading them, I don’t know why every rental dealer in the country isn’t a member. It’s easy to join. Call 800/204-2776 and ask for APRO’s Director of Membership Laurie Hill.

Be passionate about your business and your industry! ■

“Passion is described as ‘boundless enthusiasm’ and that, as much as anything, describes the way I feel about APRO.”

Passionate about APRO

show my passion for my industry, I am a member of APRO.

I’ve heard passion described as “boundless enthusiasm” and that, as much as anything, describes the way I feel about APRO. In my 18 years of membership, it’s been clear to me that APRO is an essential figure in the RTO industry. Through many of the industry’s trials and tribulations, APRO has been the glue that has kept us all together. Together, we are much stronger than if we had all gone our separate paths. We all work together for the betterment of our industry, even though we may have disagreements from time to time. All of us have received far more from RTO than we have given.

This month, as our association kicks off a pilot membership drive, we’ve asked some of our members to tell us why they joined APRO. We received responses from 20-year members, as well as members who joined us only a few months ago, each expressing “boundless enthusiasm” for the industry and the association. To all who are not APRO members, please read how others feel about their membership and then ask yourself, “shouldn’t

I be a member of APRO, too?”

Herb Weisblatt of Sam’s Appliance & TV Rental in Haltom City, Texas, joined APRO in 1983, only a few years after the association formed. “This is not an easy business,” says Weisblatt. “When done correctly, it can be very rewarding. A single good



By **SHANNON STRUNK**
APRO’s President

Shannon Strunk is the president of Baber’s Inc. in Pascagoula, Mississippi.

9/05 HURRICANE KATRINA

*This chapter took me
to the Gulf Coast.*



Angela Pekar
Red Cross Volunteer
Raefer, NC



When you help the Red Cross, you help America.

*Immediately after
Hurricane Katrina hit,
I joined others from
my chapter and headed
for the Gulf Coast. We delivered food and
water, provided shelter and even counseling.*



*At its core the Red Cross is a network of local
chapters supported by their communities,
prepared to respond to local, national and even
international needs. Sometimes that means
helping one victim of a house fire, other times
that means helping hundreds of thousands of
disaster victims.*

*I HOPE you will volunteer your time and donate
money to your local Red Cross chapter—so
we can be there for
another chapter.*



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From time to time, I hear a rental dealer lament that APRO is cliquish and run by a few for their own benefit and self-aggrandizement. While I understand that perceptions are real, regardless of the facts, I would like to attempt to dispel any such perceptions that might exist in the rent-to-own world.

There are organizations in our industry that are exclusive—but APRO isn't one of them. Exclusivity has its advantages for some organizations but not with APRO. APRO is not a buying

The clique myth

group and it isn't a closed club. There are two limiting criteria for membership in APRO. You must either be in the rent-to-own business or your company must market to rent-to-own businesses. Beyond these, APRO is an *inclusive*—not an exclusive—organization.

One's level of involvement in the association is up to the individual. There are those who do not desire to hold a leadership position; however, they still silently support the association through their membership. There are others who choose to be active only in their states, feeling that their involvement is best spent closer to home. And finally, there are those who, for many reasons, desire to take a leadership role in APRO.

Regardless of which level you choose, you will receive encouragement and assistance from APRO board members and staff. We strive to find ways of encouraging more rental dealers to participate. The lifeblood for any organization needs constant refreshing and the key to any successful organization is a high level of participation.



By BILL KEESE
APRO's Executive Director

If one has an interest in serving on APRO's board and to affect change that they see is necessary for the organization, it only takes an announcement to secure your place on the ballot. Elections are not a popularity contest. Over my 16 years with APRO, I have witnessed board seats going to the most innovative and dedicated, not necessarily the most popular.

“There are organizations in our industry that are exclusive—but APRO isn't one of them.”

At our annual convention, your president chooses to honor individuals who have given unselfishly to the improvement of our association and our industry. The recipients of the Lifetime Achievement Award, the President's Award of Excellence, the Rental Dealer-of-the-Year and the Heritage Awards are active, caring rental dealers who love the industry and have unselfishly taken actions that benefit everyone. Yet this year, some complained that the recipients were from the same clique that governs APRO. This sentiment ignores the very real measures taken by a few on behalf of many. This is unfortunate. I guess it is a commentary on the cynicism of our times. However, I choose to recognize these individuals and their unselfish activities for the betterment of rent-to-own as an inspiration for everyone.

This year, three hurricanes devastated parts of Texas, Louisiana, Mississippi, Alabama and Florida. One rental dealer spoke up and said that APRO should do more about the RTO employees whose lives were turned upside down. We sent out a call to the membership and 42 companies, nine employees, TRIB Group and three state associations responded with \$189,941 in disaster relief. To date, we have assisted 159 rent-to-own employees. I doubt that any of the contributors know any of the recipients of APRO's Employee Disaster Relief Fund. That doesn't matter. What matters is the unselfish desire to help people in our industry. Many other rental dealers and supporting companies volunteered their time, talents and dollars during this national tragedy. You know who you are and you did it because it was the right thing to do, not to get recognition for your good works.

The employee disaster relief effort symbolizes the true character of leadership that RTO has been blessed with for 25 years. It's not about cliques or exclusivity. If you haven't been to an APRO event—or haven't been in a while—I invite you to attend the Convention and Buying Show in September at Orlando's Gaylord Palms. Come meet APRO's leadership. Among the board, the staff and the members, I don't believe you'll find a clique, but rather a dedicated group of people who will welcome your involvement. ■

Bill Keese's e-mail address is bkeese@aprovision.org.

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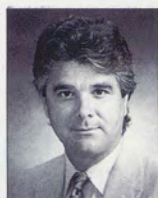
The *Wall Street Journal* recently ran an article titled “Travelers Hit with Slew of New Taxes on Rental Cars” (November 9, 2005, p. D1). The article explained how new local taxes have almost doubled the cost of renting a car in some areas.

So what, you say? What do car rental companies have to do with rent-to-own? Here’s what. According to the article, “*the flurry of taxation is partly due to the fact that the rental car industry trade association was dissolved in June, leaving it with no effective lobby. The industry is notoriously fractious, making it harder for companies to jointly combat (sic) tax increases.*”

Divided we fall

That Hertz and Avis do not get along is hardly news. However, that these two companies perpetuate their competitive antagonism at the expense of a little cooperation in the political sphere to the extent of hurting the business for themselves and everyone else—except the local taxing authorities—is notable.

And it could happen to the rent-to-own industry. A year ago, Rent-A-Center and RentWay and a few other companies decided that APRO wasn’t worth their membership dues and abruptly dropped out, slashing association revenues by a third. They did it without notice, without discussion and without time for the association to adjust expenses.



By **ED WINN III**
APRO’s General Counsel

APRO is in no imminent danger of being dissolved, but it is no secret that the defalcation of two of its largest members has hurt the association financially, and the schism has affected the industry’s political strategies and effectiveness. With the loss of \$800,000 in annual revenue, the federal lobbying effort has been substantially curtailed.

APRO is still able to monitor state legislative activity, but does not have the funds for the kind of rapid launch capability that it once had if bad news pops up somewhere.

If consumer advocates perceive any vulnerability in the RTO industry, they are not going to try

for tax increases. They will try to roll back the clock and take a few states—or the whole country, if they can—back to those halcyon days when there was no RTO. Rent-A-Center and RentWay cannot necessarily protect against legislative unpleasantness all by themselves. Rent-A-Center tried to get laws changed in Texas,

California, New Jersey and a few other states by itself without any success. By way of quick example, when Rent-A-Center went to the Texas legislature by itself to get the law concerning damage waivers changed, nothing happened. When the Texas Association of Rental Agencies and Rent-A-Center later joined forces, they got the Texas Rental Purchase Statute amended in a way beneficial to the industry. Similarly, it has been the concerted effort of all Arkansas rental dealers that has kept the industry alive and afloat in that state against fervent legislative challenges.

It is never easy to keep competitors from each other’s throats. You get to be a company with \$2 billion in revenues and you cannot help but think that you are just plain better than everybody else. I am sure that Hertz feels that way about all the other pesky car rental companies that take up space in airports.

Consumers are paying more to rent cars than they would if the car rental industry was able to maintain better internal relations and there will doubtless be fewer cars rented as a result of the higher taxes. That may be the worst of it for that industry.

RTO dealers are going to have to do without free lunches and a few other spiffs at the convention. And that may be the worst of it. But if it ever gets really ugly again—and Arkansas and Wisconsin rental dealers already think it’s pretty ugly—like it did in 1994 when Rent-A-Center got pilloried on the front page of *The Wall Street Journal*, we are all going to be jumping into the same foxhole, whether we like one another or not. ■

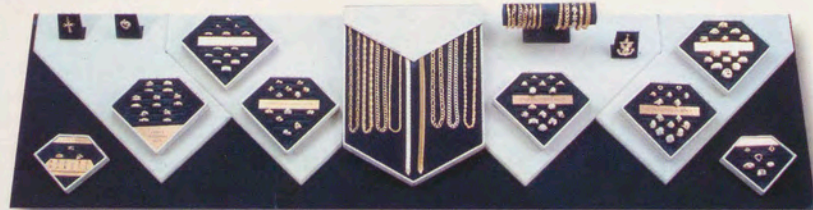
Ed Winn’s e-mail address is edwinn@e-bylaw.com.

“That Hertz and Avis perpetuate their competitive antagonism at the expense of a little cooperation in the political sphere to the extent of hurting the business for themselves and everyone else is notable.”

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Being a part of today's business world with a never-ending stream of membership dues, subscriptions, donations, charities, sponsorships and more, I find myself asking "how many more membership dues can I pay?"

We in the rent-to-own industry have state laws in place to help us when needed. We have a great relationship with the state Department of Financial Institutions who lets us know of any problems that arise. Within my company we have our own training programs and newsletters. We have hired consultants and participated in numerous work-

APRO: always there

shops, seminars and safety programs. With the Internet, we can find almost anything we are looking for that pertains to our business. So, why in the world should I belong to APRO?

Of all the organizations to which I have paid dues, APRO has been and continues to be the most rewarding. Our company has been a member of APRO for 20 years—our longest membership with any organization. Why? Because it works. Here are a few examples of how it works and what it has done for our industry:

- **Camaraderie:** APRO members are working together to make this industry one of the strongest and most credible in the nation.

- **Image:** APRO is there to tackle any negative image that has fallen on our industry by restoring our credibility and positive image. In 1993, APRO created its first public relations committee chaired by Bob Simons.

- **Training:** APRO offers online education courses and has hard copies of many topics covering this industry available upon request.

- **Legal issues:** When bills are introduced and debated at the federal level, APRO is there to fight for the rental-purchase industry. In 1983, the first federal RTO bill was introduced and the first federal public hearings were held in Washington, D.C. APRO was there to speak for our industry.

- **Collection information:** APRO keeps ethical procedures of collections available to members.

- **Tax and accounting:** In 1990, APRO appointed a tax and accounting committee headed by Wayne Chambers to tackle critical tax issues.

- **RTO Almanac:** APRO's national publication of rental dealers is the most comprehensive of its kind and a valuable resource to dealers and vendors.

- **APRO's Convention and Buying Show:** The APRO Convention and Buying Show is always informative and fun. Vendors and rental dealers from across the nation have come to these shows since the first one was held in Dallas in 1981.

- **Vendor relationships:** Vendors have a chance to see each other a few times over the year and friendships are formed through this network.

These are just some of the obvious benefits of APRO membership. APRO has also played an essential part in the history of the rent-to-own regulation.

- In 1984, Michigan became the first state to adopt a rental-purchase statute and the U.S. Senate passed a bill defining the transaction as a lease. APRO was there.

- In 1993, House Banking Committee Chairman Henry Gonzalez held investigative hearings on the RTO industry. The hearings created quite a stir and, because of APRO the outcome was in our favor.

- In 1995, the sale-versus-lease issue was resolved with the IRS, which saved the industry more than \$1 billion in taxes. APRO was there.

- In 1997, the Taxpayers Relief Act was passed and included a provision defining RTO as a lease for tax purposes. APRO was there.

APRO offers this and so much more and all you have to do is ask. In my company, when situations arise or information is needed, we call APRO. If one of the APRO staff members doesn't know the answer—and most of the time they do—they point my staff in the right direction. In all the years we have had our membership, I have never had a complaint or issue when dealing with the staff at APRO. Bill Keese said it right when he wrote in his recent article that APRO is not a house, it is a home.

Is there value for the money you pay? You bet. All you have to do is use it. Will I continue my membership? You bet. Look at APRO like your insurance company. You don't always like to pay it, but when you have to use it, you're glad that it's there! ■



By DAVID P. DAVID
APRO board member

David P. David is the vice president and general manager of Full-O-Pep Appliances in Bloomington, Indiana.



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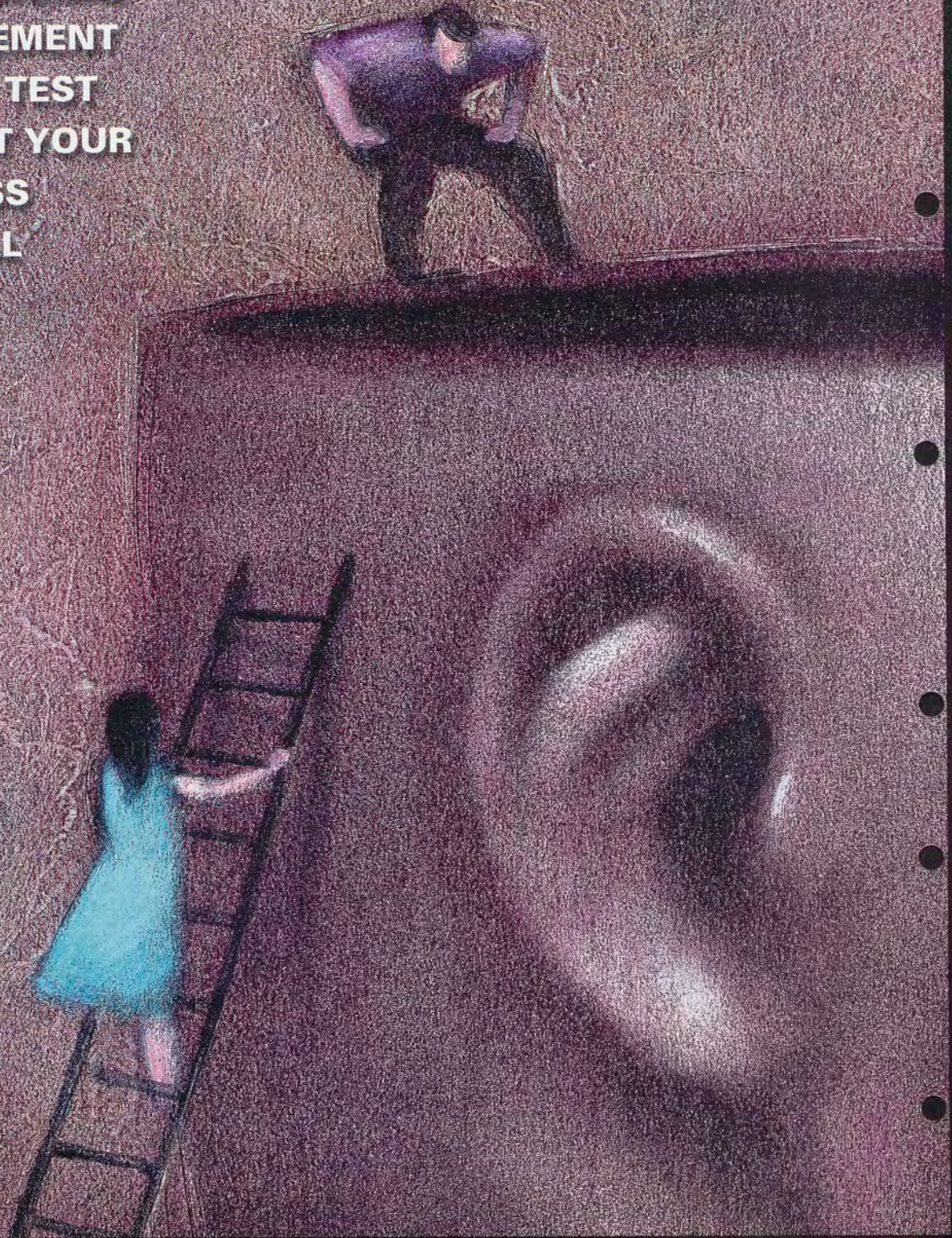
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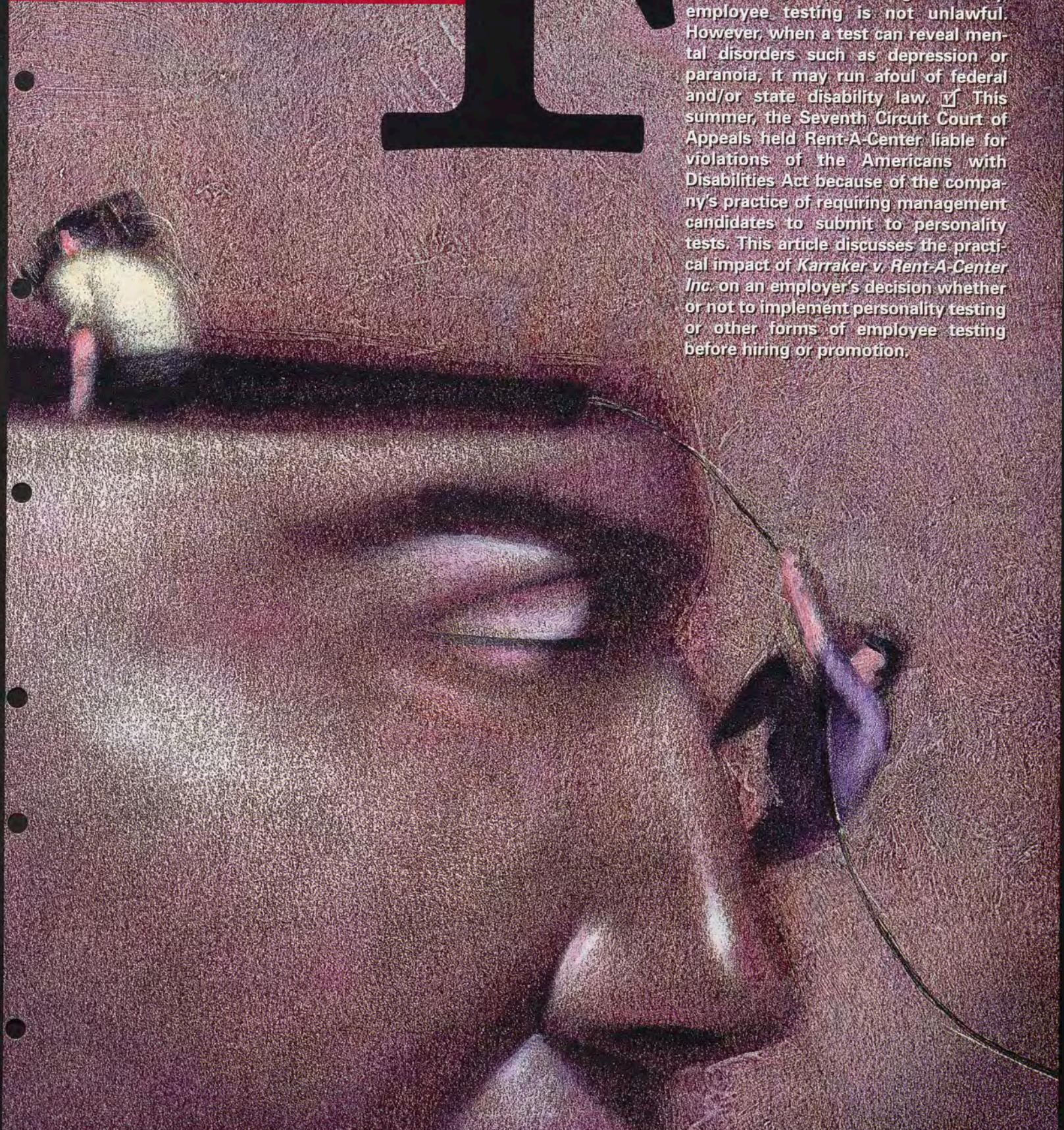
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For years, many employers have used professional management profile tests when hiring or promoting. Generally, employee testing is not unlawful. However, when a test can reveal mental disorders such as depression or paranoia, it may run afoul of federal and/or state disability law. This summer, the Seventh Circuit Court of Appeals held Rent-A-Center liable for violations of the Americans with Disabilities Act because of the company's practice of requiring management candidates to submit to personality tests. This article discusses the practical impact of *Karraker v. Rent-A-Center Inc.* on an employer's decision whether or not to implement personality testing or other forms of employee testing before hiring or promotion.



As many employers have done in the past, Rent-A-Center required potential managers to submit to an APT Management Trainee-Executive profile before it would consider the employee for promotion. Rent-A-Center used the executive profile to identify employees who had personality traits that the company found in successful managers. The profile consisted of nine tests that focused on math and vocabulary skills. The profile also included a personality test known as the Minnesota Multiphasic Personality Inventory (MMPI).

The MMPI is often used by psychologists and psychiatrists to measure cognitive skills and personality traits and to assess symptoms of social and personal maladjustment. The MMPI can be used to diagnose mental disorders and measure personality traits for depression, hypochondriasis, hysteria, paranoia and mania. The MMPI is often administered to candidates for high-risk or public safety positions, such as police officers, firefighters and individuals who work with children or the elderly. These positions often involve high levels of stress, so the MMPI is used to identify individuals that would arguably be unable to handle such work environments.

According to *Karraker v. Rent-A-Center*, the MMPI used by Rent-A-Center consisted of 502 questions, many of which were true or false questions such as: "I commonly hear voices without knowing where they are coming from," "I see things or animals or people around me that others do not see," "[m]y soul sometimes leaves my body," and "[a]t times I have fits of laughing or crying that I cannot control." Rent-A-Center described the work environment for its managers as "fast-paced, high-stress environments," so it used the MMPI to identify those who could perform well under such conditions. In essence, Rent-A-Center, like many employers, used the MMPI as a forecasting tool. However, after the *Karraker* decision, employers should rethink use of such personality tests or be exposed to class action disability lawsuits by their employees.

Employers often associate unlawful disability discrimination with physical handicaps—e.g., wheelchair access with ramps

and toilets, elevators in small commercial buildings, telephones with Braille or TTY, etc. However, the Americans with Disabilities Act (ADA) also covers mental impairments and prohibits an employer from declining to hire or promote because a person has a mental disorder if that disorder does not prevent him or her from performing the essential functions of the job, with or without a reasonable accommodation. Many states have similar statutes or employment laws that mirror the ADA's prohibitions on disability discrimination and expose employers to similar legal remedies.

The ADA permits an employer to conduct a medical examination only after offering a position to an applicant whose offer is contingent upon the results of the medical examination. Rent-A-Center countered that what it had used was a "vocational scoring" protocol, which was focused on personality traits, not mental disorders, so it was not a "medical examination." The district court agreed, holding that the MMPI was not unlawful because Rent-A-Center had used the test to only assess personality traits and the test results were not interpreted by a psychologist. The district court dismissed the class action lawsuit.

However, the Seventh Circuit held that Rent-A-Center's use of the MMPI was an unlawful pre-employment medical examination that had the effect of screening out persons with mental disabilities regardless of whether or not they could perform the essential functions of the job with or without a reasonable accommodation. The court directed entry of judgment in favor of the *Karraker* brothers and the members of the class. In other words, Rent-A-Center lost the case without the benefit of a trial.

The court relied, in large part, on the enforcement guidelines published by the U.S. Equal Employment Opportunity Commission (EEOC) that prohibit pre-employment medical examinations. The court explained that the Rent-A-Center's test was "likely to have the effect of excluding employees with [mental] disorders from promotions" and because the test "is designed, at least in part, to reveal mental illness and has the effect of hurting the employment prospects of one with a mental disability, we think the MMPI is best categorized as a medical examination."

On appeal, Rent-A-Center initially argued that the MMPI was not an unlawful because it was not a "medical examination," as no psychologist, psychiatrist or doctor reviewed the test results. The EEOC's guidelines identify many factors to determine whether a test is actually a "medical examination" or merely test: (1) whether a health care professional administered or interpreted the test; (2) whether the test was administered in medical setting using medical equipment; (3) whether the test was invasive; and (4) whether the test is designed to reveal an impairment of physical or mental health. The court rejected Rent-A-Center's argument, finding that whether a psychologist or psychiatrist reviewed the test results in a medical setting was irrelevant because the MMPI was a

AN EMPLOYER SHOULD HAVE A CHECKLIST OF THE ESSENTIAL FUNCTIONS OF A POSITION THAT IT WANTS TO TEST AND THEN DETERMINE IF THE PROPOSED TEST ACTUALLY EVALUATES THOSE FUNCTIONS.

test specifically designed to reveal mental health issues and the effect of Rent-A-Center using the test was to exclude employees who had mental disorders from consideration for promotion.

In response, Rent-A-Center argued that the test results were only used to measure an applicant's "state of mood," not any particular mental disorder. Rent-A-Center explained that the test results helped identify those who could work in a high stress, fast-paced workplace environments. The federal appellate court was not swayed and in fact made light of Rent-A-Center's argument stating:

RAC argues in its brief that the MMPI does not test whether an applicant is clinically depressed, only "the extent to which the test subject is experiencing the kinds of feelings of 'depression' that everyone feels from time to time (e.g., when their favorite team loses the World Series). Although that particular example seems odd to us (can an Illinois chain really fill its management positions if it won't promote disgruntled Cubs fans?), the logic behind it does not seem to add up, either. (Karraker)

The court further stated: "[w]e see two possibilities: Either the MMPI was a very poor predictor of an applicant's potential as a manager...or it actually was designed to measure more than just an applicant's mood on a given day." The court thus held that Rent-A-Center violated the ADA when it administered the MMPI to employees seeking promotion to store manager.

Employers can learn several lessons from this case. First, an employer should not administer a personality test or require a medical exam until after it has made a conditional offer employment or promotion. Rent-A-Center had required employees to take the MMPI before they were considered for promotion.

Second, any personality test or other test designed to identify mental disorders is unlawful notwithstanding an employer justification or excuse. If any of the questions on a test can be deemed to elicit information about an applicant's mental illness, it is unlawful and the employer's intent is irrelevant. Although Rent-A-Center had used a special vocational scoring method designed to avoid revealing mental disorders and had submitted expert testimony from a psychologist to support its assertion, the court was not convinced because the MMPI results could have been used to discover those conditions. Thus, even if Rent-A-Center had not intended to screen out employees with mental disorders, its use of the MMPI was still likely to weed out those with disorders from promotions. That violated the ADA.

Third, an employer cannot circumvent the ADA's prohibition on pre-employment or pre-promotion medical examinations by not using a psychiatrist, psychologist or doctor. It seems that Rent-A-Center had hoped to avoid liability by not using a doctor. Many employers have received advice from counsel that a test is not an unlawful pre-employment medical examination if a physician is not involved in the process. That is not correct advice currently, whether or not it was before.

Finally, and most important, an employer should thoroughly evaluate whether it needs to test its employees. A test must be job-related and measure the applicant's ability to perform the job. Management should ask if there is a business necessity for the test. If a test is not reasonably related to the essential functions of the job, a court is more likely to hold that the test is unlawful.

The court clearly did not believe Rent-A-Center's explanation for administering the MMPI. When pressed for its explanation, Rent-A-Center stated that it had administered the test to only determine whether its employees were in a "good mood." The court noted, "why would RAC care if an applicant lost his keys the morning of the MMPI or took the test the day of another Cubs loss? Would RAC really want to exclude an employee from consideration for a promotion because he happened to feel sad on the wrong day?" The court did not believe Rent-A-Center partly because it could not articulate how the MMPI test was related to a managerial position. Thus, before using a personality test or any other test, an employer must have some specific need and that need must be related to the job at hand.

Also, an employer should consider whether the test screens out a disproportionate number of applicants or employees in a protected class—e.g., women, minorities or disabled individuals. In such a case, the employer must be able to show, at a minimum, that the test is job-related and consistent with business necessity.

Nonetheless, employers are not completely barred from using tests. If a job requires heavy lifting, an employer can test if the applicant can lift the appropriate weight. If the job requires an elevated intelligence, an employer can test for intelligence. In fact, the court did not reject Rent-A-Center's use of other parts of the executive test battery that were designed to measure honesty, preferences or habits. In the first paragraphs of the opinion, the court discusses how modern professional athletes are now being tested for their intelligence. Thus, an IQ test or similar tests that are not designed in part to discover mental disorders should be acceptable. An employer should, therefore, have a checklist of the essential functions of a position that it wants to test and then determine if the proposed test actually evaluates those functions.

The bottom line is that an employer cannot use a test for a hiring or promotion decision if the test was designed at least in part to discover or reveal mental illness. Such a test lowers the applicant's chance of hiring if he or she has a mental disability. ■

Darren A. Feider is a licensed Washington and Texas attorney. His practice involves commercial, products liability construction and general employment litigation.



A CALL TO ATTEND
APRO'S 2006 DAVE EGAN
LEGISLATIVE CONFERENCE

Class action lawsuits and legislative attacks

Imagine: you arrive at your office expecting a normal business day. Perhaps you retrieved your mail from the post office and grabbed a cup of coffee and a breakfast sandwich at a drive-thru. You plop down in your chair to read your mail while sipping your coffee. You thumb through the newspaper for a few minutes before tackling your stores' activity reports from the previous day. Soon your phone rings and your day officially begins. You address employee issues, customer issues and other matters as they come up. At some point Federal Express arrives with deliveries and an associate drops one of the envelopes on your desk. At last you have a break between calls. While responding to several e-mails, you open the Fed Ex envelope and screech, bang, boom! Your normal day comes to a screeching halt. You are staring at one of the most horrible things that any business owner can receive—a class action lawsuit. ★★ ★ You catch your breath, mutter a few choice words about trial lawyers and then call your attorney. He instructs you to fax over the lawsuit, which you do. While awaiting his return call, you read the lawsuit from cover to cover. You see claims for fraud, misrepresentation, usury, deceptive trade practices, unconscionable conduct, etc. You mutter a few more words about trial lawyers.

**Two days
in the life
of a rental
dealer**

★★★★★

**By John
Raines**

When your attorney returns the call, he recommends that you hire a law firm specializing in class action lawsuits. He suggests a firm he has contacted on your behalf. These attorneys charge \$300 to \$500 per hour and require a significant retainer.

In a few hours you remember that you have insurance. Whew! Thank goodness! The insurance company will

attorneys' fees.

Your entire day becomes consumed by the lawsuit. As you meditate, curse and stomp around the office, you think of something else—your bank. Specifically your inventory loans are up for renewal in six months. You know you will have to disclose the class action suit to your banker. Will he renew the loan? To make matters worse, you recall that you signed a lease last week on a building

missed the lawsuit. However, similar suits continue against other dealers in our state. We are optimistic about the outcomes of those cases, but we are reluctant to open new stores until the litigation is resolved. Although our state law favors the rental-purchase industry, the plaintiffs' attorneys are asking the courts to change the existing law. Federal legislation defining rental purchase transactions as leases would prevent the challenge.

★★★★★

Although our state law favors the rental purchase industry, the plaintiffs' attorneys are asking the courts to change the existing law. Federal legislation defining rental purchase transactions as leases would prevent the challenge.

Now let's talk about the second day. Imagine: a year has passed since the dreadful day you received the class action lawsuit. Although you occasionally check into the status of the cases against other dealers, you have pretty much returned to the normal routine of managing your business.

surely cover any legal bills. You call your agent and naturally he informs you of a potential coverage problem. He says that while you have paid your premium, he is not sure the policy covers this type of lawsuit. And as sure as grits are groceries, the insurance company denies the claim and refuses to pay your

for a new store. Should you open it? Can you get out of or delay the start of the lease while you sort out the lawsuit?

Yes, this happened to me and it happened in a conservative, southern state not particularly known for judicial activism. Fortunately, my company had good lawyers and a fair judge who dis-

One morning, while on the phone with one of your store managers, you receive an urgent e-mail. Then screech, bang, boom! Your day comes to a halt again. A state legislator has filed a bill to regulate prices on rental-purchase agreements. You quickly read the pro-

It's in your best interest to attend APRO's 2006 Dave Egan Legislative Conference

APRO's 2006 Dave Egan Legislative Conference will be held February 28 and March 1 in Washington, D.C. For the second year, the L'Enfant Plaza Hotel will be headquarters for this important event. Rental dealers and other industry supporters from around the country will meet in Washington to educate their elected officials on issues facing the rent-to-own industry.

"The Legislative Conference will be meeting earlier in the year in 2006 for good reason," says APRO's Executive Director Bill Keese. "This being the second year of a congressional term, we felt it important to shift dates so that we can maximize the possibility of securing a federal bill. With elections being held in the fall of 2006, many legislators will be involved in re-election strategies by late spring [when the Legislative Conference is usually held] and we don't want to be put on the back-burner during that process."

The best way to assure that the rent-to-own industry receives favorable legislation and a federal bill in 2006 is for rental dealers to work together in forming a successful grassroots campaign. The history of our industry has shown that grassroots strategies are the most successful.

To register for the conference or for more information, contact Jeannie Hutchison, 800/204-2776, ext. 108, jhutchison@aprovision.org. You may also register online at www.aprovision.org. For accommodations in Washington, D.C., contact the hotel directly: L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW, Washington, D.C. 20024, 800/635-5065; 202/484-1000, www.lenfantplazahotel.com. The APRO room rate is \$199. You must reserve your room by January 20.



posed legislation and realize that it will shut down the rental-purchase industry in your state. Moreover, the bill is scheduled for a committee hearing and vote the next day. What do you do?

Since you are a member of APRO and your state's trade association, you call both. You, the APRO staff and other dealers formulate a quick response. Your state trade association hires a lobbyist and off you go to your state capitol to fight this terrible legislation.

Yes, this happened to me, also. These legal and legislative challenges taught me two important lessons. First, rental dealers need APRO! Please support our industry's trade association. If you are not a member, shame on you. Join today. If you *are* a member, thank you. Consider contributing to the Team APRO fund. Resources such as these fuel our efforts in Washington.

Second lesson: rental dealers need APRO! The APRO staff monitors legislation in all 50 states. APRO's professional staff provides immeasurable insight and assistance when legislative issues arise. Who else is looking out for us? No one. So again, please support APRO.

★★★★★

We also need your help this spring on Capitol Hill. Our annual legislative conference is scheduled for February 28 and March 1, 2006. Mark those dates on your calendar and plan on attending [see sidebar on facing page]. We significantly increased our legislative contacts in 2005, but we can do better. We must continue to expand our influence in Congress. Money alone will not work. We need dealers meeting with their senators and representatives. Don't worry if you have not previously attended. As dealers, all of us are in the "people" business. If you are capable of speaking with a customer, then you are capable of speaking with your elected officials. ■

John Raines, an Aaron's franchisee, owns and operates eight stores in Arkansas. Raines serves on the APRO board of directors, and currently chairs APRO's Government Relations Committee.

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THEFT

**IS SUCH AN UGLY WORD
THE YIN AND YANG OF STATE
THEFT STATUTES AND RTO
BY ED WINN III**

THEFT IS AN UGLY WORD, probably because it stands for such an ugly act. One might suppose that everybody, except maybe the thieves themselves, would be of one mind about theft and thieving. But this is not the case, at least insofar as the RTO industry is concerned. Rental dealers disagree about theft. The police disagree. Prosecuting attorneys and district attorneys disagree. Judges and juries disagree. This article makes no effort to synthesize these disagreements. There is no reconciliation of these divergent views on the horizon. This piece chronicles recent developments that highlight these acute and often fervently held differences of opinion.





Theft is one of the family of crimes against property. In legal parlance, theft is the fraudulent taking of personal property belonging to another without consent and with the intent of depriving the owner of the value of the property. Theft includes larceny, swindling, embezzlement and also includes the circumstance of obtaining possession of property by lawful means and thereafter appropriating the property to the taker's own use.

- ▶ Larceny is often synonymous with theft, but is often subcategorized as single or compound, grand or petit, depending on the value of the property stolen and other variants. Larceny may involve an element of trickery or subterfuge.
- ▶ Robbery is the taking of personal property in the possession of another, from his person or immediate presence, and against the person's will by means of force or fear. Robbery is larceny with the use of force, actual or constructive.
- ▶ Embezzlement is the fraudulent taking of the property of another when that property has been entrusted to the taker by the owner. Embezzlement is a particular kind of theft.
- ▶ Burglary is the breaking and entering into the dwelling of another at night with the intent of committing a felony (a serious crime). Burglary carries the death penalty in some states.

Rental dealers view the theft of their rental property in decidedly different ways. Some dealers never have—and never would—file criminal charges against a rental customer for running off with a television. They view such losses as part of the cost of doing business and they do not want their employees spending their time playing cops and robbers when they could be renting more televisions (especially when playing cops and robbers is so much more fun than running a rental store, albeit far less profitable). These dealers are concerned about the image of the industry they are in and they understand that putting too many customers in jail can add to the negative impression of the business held by many.

Other rental dealers have less sanguine attitudes toward rental thieves. They want their proverbial pound of flesh from customers who steal. These dealers regularly file criminal charges against customers and are unrepentant about hounding such customers with any and all means at their disposal. One dealer stood up at an association meeting years ago to announce loudly and proudly that if a customer stole one of his televisions, the dealer wanted to see that customer "breaking rocks in the hot sun." These dealers want justice against rental thieves and they want to make sure that everybody knows what happens to people who try to steal rental merchandise from their stores.

It is not only the rental dealer community that is of two minds about criminalizing the failure to return rental property—so is the criminal justice system. There are district attorneys, prosecuting attorneys, magistrates, judges and police officers who will gladly participate in the pur-

suit of a rental thief and will work to throw customers in jail for stealing televisions. In other jurisdictions, those charged with administering the criminal law do not think that failing to return a TV obtained under an RTO plan is a crime at all. They view it more akin to not paying a bill. There is no debtor's prison in the U.S. and it is not a crime to not pay bills in this country.

There are civil remedies, to be sure, but being a debtor, under most circumstances, has not been criminalized. Some prosecutors and some judges who would take a car rental theft case or a back-hoe digger or a party tent rental theft case and pursue it, will not take RTO cases because they understand the hybrid nature of the transaction and focus more on the ownership aspect of RTO than the rental aspect. This view is in keeping with how the industry markets itself to the public.

From these diametrically opposed views of RTO and theft statutes, there is recent good news and bad news, depending upon your point of view on the issue.

In October 2005 an Ohio court of appeals affirmed the conviction of an RTO customer for theft in a case, *State v. Marshall*, 2005 Ohio 5585 (Montgomery Cnty, Ct. of App. 2005). The customer had rented a dryer and a stereo, paid less than two months and then quit paying. The store had periodic contacts with the customer thereafter. The customer did not move, did not pawn the merchandise, did not do anything, in fact. He continued using the dryer and stereo at this house without paying. Finally, a year later, the rental company filed a civil suit and also filed criminal charges. Testimony at the criminal trial was that the rental company had lost \$1500 in rental income and that the value of the purloined merchandise was \$400 for the dryer and \$1200 for the stereo. The customer did return the merchandise to the rental company a year later, but in a trial before the judge, the customer was found guilty of theft and sentenced to five years of community control sanctions.

On appeal, the defendant made several arguments, including "it is not a criminal matter," ineffective counsel at trial and others, all of which were rejected by the court of appeals.

In Ohio there is now a reported court of appeals decision affirming the applicability of the Ohio theft statute to RTO transactions. This decision should assist other Ohio rental dealers who want to pursue criminal sanctions against rental thieves in their state.

A Florida court of appeals was less friendly toward an RTO company in a case decided in July 2005, *State v. Sanders*, 905 So.2d 241 (Fla. 2d Dist. Ct. of App. 2005). To begin with, Florida has had a troublesome history with its theft of leased property statute. In 1997, the legislature amended the theft statute specifically to exclude RTO transactions. The genesis of this amendment remains

shrouded in mystery. Florida rental dealers worked with the legislature for several years before finally getting language back into the statute to cover RTO transactions. The new statute requires that rental companies put written notice of the criminal statute in rental agreements if they intend to pursue criminal remedies against customers who refuse to return rented property.

Sanders rented a sofa, a chair and a spider lamp from the rental company under an RTO agreement with a total RTO price of \$1,500. Sanders quit making payments at some point during the agreement and the rental company sent her a certified letter demanding return of the merchandise. The letter was returned undelivered because Sanders had moved away without leaving a forwarding address. The rental company swore out a criminal complaint against her.

The specific issue in the Sanders case involved a con-

assume criminal intent.

If, on the other hand, the presumption is merely permissive—i.e., the jury can reach that conclusion from the facts, but is not required to do so and, depending upon the evidence, can reach a contrary conclusion if supported by the evidence—then the statute satisfies due process and can be enforced. The Florida court of appeals in a pair of failure-to-return cases examined this issue in detail and held that the presumption in the Florida statute is permissive, and thus the statute is constitutional. In doing so, however, the court in the Sanders case had harsh words for the rental company and the legislature:

“Why the legislature would want to do this, essentially encouraging the state’s attorney to become [the rental company’s] repossession and debt collection agent at state expense is a mystery to me, but that appears to be the intent behind the statute...Being poor and unable to pay your debts is still not a crime in Florida...Maybe Ms. Sanders’ husband or boyfriend ran off with the furniture and she cannot return it. Maybe her house burned down



THERE ARE DISTRICT ATTORNEYS, PROSECUTING ATTORNEYS, MAGISTRATES, JUDGES AND POLICE OFFICERS WHO WILL GLADLY PARTICIPATE IN THE PURSUIT OF A RENTAL THIEF AND WILL WORK TO THROW CUSTOMERS IN JAIL FOR STEALING TELEVISIONS. IN OTHER JURISDICTIONS, THOSE CHARGED WITH ADMINISTERING THE CRIMINAL LAW DO NOT THINK THAT FAILING TO RETURN A TV OBTAINED UNDER AN RTO PLAN IS A CRIME AT ALL.

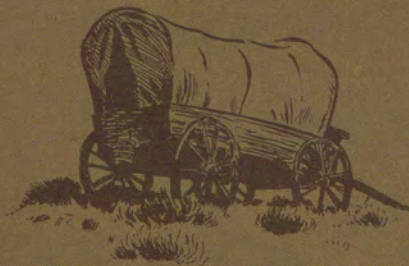
stitutional question of due process. The Florida theft of leased property statute has a presumption in it, like many theft statutes around the country. If a customer does not return property within five days of a written demand from the rental company, the law presumes that the customer intended to steal it. If this presumption is a mandatory one (i.e., if a jury must reach that conclusion regardless of any other evidence adduced at trial), the presumption violates due process, which requires that the prosecution in a criminal case prove every element of a crime beyond a reasonable doubt. The statute would be unconstitutional, because instead of having to prove intent—that the customer intended to steal the merchandise—the law attempts to allow a set of circumstantial facts—demand letter and no return of property—to

and the furniture was destroyed. Maybe the landlord evicted her and kept the furniture. Maybe the furniture was destroyed in a hurricane.”

This case was sent back to the trial court for further proceedings and it is not yet known what will happen to Sanders.


And so the debate about RTO and the criminal law continues throughout the land. When dealers and the public officials involved with the criminal justice system are in agreement about how to interpret theft of rental property statutes, there is peace in those valleys. In those cities and towns where there is disagreement, and those places are legion, the process is frustrating for all involved. For frustrated readers, remember that the decision makers on this issue are all elected officials. If it is important enough to the business, the local or state political process offers a solution—work to have prosecuting attorneys, district attorneys and judges elected who agree with your view of the law. ■




Ed Winn III is APRO’s general counsel. His e-mail address is edwinn@e-bylaw.com.



STAYING POWER



**FROM COVERED WAGON TO KATRINA RECOVERY,
80-YEAR-OLD BOB MCGREGOR JUST KEEPS GOING AND
GOING AND GOING**  **BY KRISTEN CARD**

ON AUGUST 29, 2005, WHILE MOST OF AMERICA WATCHED the devastation of Hurricane Katrina happen on their television screens, Bob McGregor and his family witnessed it through the windows at his daughter's home in Pascagoula, Mississippi.  "When the storm hit, everything was fine as far as the wind, for a while," McGregor remembers. "Then, part of the roof blew off and the living room started leaking. Then, we noticed the water was coming up to the downstairs floor level, and within a few minutes, it was in the house. We started scrambling and putting up valuables and the next thing you know, we were wading in knee-deep water.  "So about that time, we all went upstairs. We had all the family's cars parked out in their double driveway and from upstairs, we looked out through a big window and saw all those cars get submerged—all seven of them. A few hours later, the water started going down and it went down just as fast as it had come up—and [then] it was gone."  Saltwater covered essentially the entire town and while it didn't stay for days or weeks like the flooding in New Orleans, it left an indelibly destructive mark.



A

t my house," recalls McGregor, "it was 49 inches deep inside the house and our house is about 27 inches off the ground. The saltwater rusts everything it touches and on the bottom of it was about an inch of old, black, dirty, contaminated mud, muck. Ugly stuff. So all the sheetrock and all the carpet has had to be torn out. We lost every stick of furniture we had, and all the family pictures—hundreds and hundreds of family pictures, way back from when we were children. My son lost his house. He was right on the beach and it just wasn't there at all anymore. Instead of his house, he had about five feet of sand."

Nine inches of the ruinous waters flooded the store and warehouse of McGregor's business, McGregor Rents.

"Almost all of our inventory got wet," McGregor laments. "Everything that got wet, we treated with a mold killer solution, and it's been pretty successful. And now, we're selling everything that got wet at a 40-percent discount. About 75 percent of our bedding inventory—about 200 pieces of bedding—we've had to just throw it away. And we've counted just over 400 customers who we've just lost completely. Anything over a foot [of water] inside their house and we've just had them put it out on the street for the trucks to pick up. We just lost all that; we're guessing at about a half-million dollars there."

That's a half-mill McGregor Rents will have to eat. Everything that got wet from the Katrina storm surge is classified as flood damage and McGregor—like most Pascagoulans not located right on the water—had no coverage for flooding.

"Heck, nobody ever dreamed we'd need flood insurance at these locations," he says. "It's never flooded there before, not in history. People didn't think they needed flood insurance and even the banks didn't think they needed it. So people are really hurting down here because of that. We took a lick on it, no doubt about that. I'm right back where I started from in 1946, with just one store."

Yet for a man who's suffered a monstrous professional hit, who's seen his hometown practically decimated by a freakishly colossal natural disaster, whose beautiful harbor-side home has been stripped down to the studs while he and his wife live in a donated trailer in the back yard, 80-year-old Bob McGregor sounds, well, pretty perky.

"The trailer's got a nice canopy coming out from under it," notes the native Mississippian. "It's not home, but it sure beats living on the screened porch."

A strong streak of that mix of perseverance and opti-

mism must run genetically through the McGregor bloodline. Bob's father, also Robert, grew up on a Mississippi hog farm and went to school through only third grade. Later, he inherited the farm, and he and his wife, Maggie, were in hog heaven—with 500 head—when the herd was abruptly extinguished by a case of cholera. They left the farm and moved to Hattiesburg, where Robert taxied mostly World War I soldiers between downtown and Camp Shelby. Maggie saved up some money—"Mama was a frugal woman," observes McGregor—and they purchased a pool hall, which went broke once the war was over. So Robert went to work for the railroad for \$65 a month and Maggie started saving once again. With that money, Robert began buying and selling used furniture. It was 1919, and the official beginning of the family furniture business.

"He had a covered wagon and a mule for delivery," McGregor says. "He went house to house and he'd buy and sell off that covered wagon. Most of the furniture sold for 50 cents down and 50 cents a week. He was just a man who overcame his lack of education with hard work."

Then called Pioneer Furniture Company, the business gradually grew and all five of the McGregor children eventually went to work for the family company. Bob, the youngest, graduated from high school in 1942, and despite his intention to go to work with his dad, he half-jokingly claims, "When I walked off the platform with my diploma, they were waiting to hand

Below and on the facing page: Hurricane Katrina's destruction to McGregor's store included both the sign outside and the showroom floors within.



me my draft notice.”

McGregor joined the Navy and attended boot camp in San Diego, followed by radar school in Honolulu and another 16 months in Hawaii as an instructor. He tested his way into college at Tulane, where he wanted to take business management courses, but was forced by the Navy into an electrical engineering major. When World War II ended, the Navy let McGregor go and he made plans to return to Tulane and study business management. But during the break before school started up again, the family business intervened.

“My daddy was opening up his second store in Hattiesburg,” remembers McGregor. “I went down to help with the grand opening and I just kept going.”

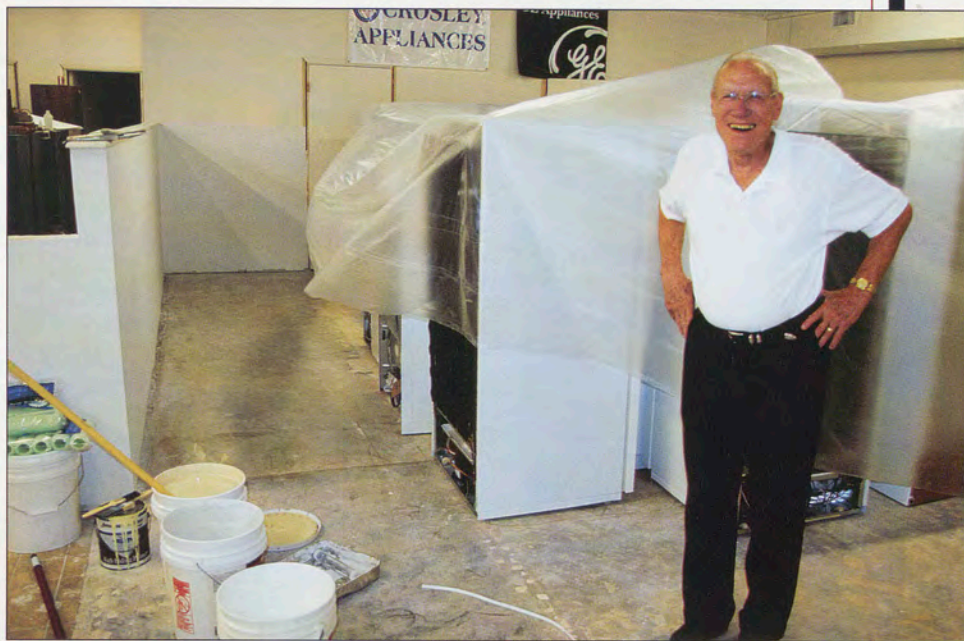
McGregor never returned to complete his college degree, but he did become the manager of that second Hattiesburg store and persuaded his dad to change the company name to McGregor’s. Bob had notions of launching a chain and, accordingly, McGregor’s opened its third retail furniture store in Pascagoula—where Bob subsequently moved with his wife and children—in 1959.

The trio of retail stores enjoyed significant success, with enough business to keep the McGregors busy. Then, in 1972, a man involved in the building industry walked into the Pascagoula store, not realizing he was about to single-handedly alter the way the 50-plus-year company conducted business, with one seemingly simple request.

“He had just completed an apartment complex and he said, ‘Bob, I want to rent some furniture,’” recalls McGregor. “I said, ‘You can’t rent furniture; let me sell you some furniture.’ And he said, ‘I need 34 apartments of furniture for my new complex,’ and I said, ‘Well, I’ve never heard of renting furniture.’ And he said, ‘Well, they do it in New Orleans, so why can’t you do it?’ and I said, ‘I don’t know—let me think about it.’”

“So I sat down with a pencil and paper and my little calculator and just figured out what I thought I ought to charge,” McGregor says. “I ordered the 34 apartments of furniture for the man and delivered it to him and that was the start of our business within the rental field.”

Word spread along the Gulf Coast about McGre-



“BEING SMART AND WORKING HARD IS HOW YOU SUCCEED, AND OF COURSE, IT PAYS TO HAVE ENTHUSIASM. AS FAR AS MY SUCCESS IS CONCERNED, IT’S MOSTLY JUST BEEN HARD WORK AND PERSEVERANCE.”

gor’s rent-to-rent business—the rent-to-own concept had yet to debut in Mississippi—and eventually, the company had 29 apartment complexes on its rental rolls. Client complexes also began referring individuals to the company and in the early 1980s, one of those individuals walked into the Pascagoula store, again with a request that sparked a further evolution for McGregor’s and its way of doing business.

“She asked me whether there was any possibility of owning the furniture she’d been renting,” recounts McGregor. “And I said, ‘Well, I don’t know. Let me look at your account.’ So I pulled out her account and she’d been paying on the furniture for four

years. I sat down and figured out how much she’d paid and I knew what my cost was on it. She’d paid us, I figured, way, way too much. I wrote that lady back a check for \$900 that day, and gave her the furniture.

“I started thinking, well, gosh, there ought to be a purchase option on this stuff,” McGregor says. “So we put one in and we started renting to more and more individuals. Eventually, we got a little warehouse for the rental part of the business and had a very, very small showroom at the front of it. We hired someone to go out and call on apartment complexes and the business just sort of kept growing, until we finally separated the retail and rental accounting. The next year, we realized we had made more money with that little old rental operation than we had at the retail store. And I said, ‘Dang. There may be something to this rental thing.’”

McGregor closed his Pascagoula retail store, his daughter Terri took over management of the Pascagoula rental store and—with the help of his nephew John McGregor—Bob opened up another rental store in Jackson. It was extremely successful, and suddenly, the McGregors' furniture business, now more than 60 years old, began to boom. McGregor's launched a string of grand openings—from Baton Rouge to Orlando—that boosted the company roster to 13 rental and two retail stores.

"We thought we were going to be billionaires," muses McGregor. He chuckles. "But it didn't quite work out that way. In 1982, the oil crisis hit. The rent roll at our Baton Rouge store went from about \$95,000-a-month income to about \$40-something-thousand within a year. Jackson wasn't far behind, then Birmingham...You don't necessarily think of those towns as oil towns, but we reached a point

where seven of our 13 rental stores were losing money."

Those losses worried the bank, where the McGregors had secured a sizable loan to support their geared-up growth. When the bank called the multi-million-dollar loan in, McGregor was forced to sell off nine stores to Aaron Rents to repay the bank note. Bob and his nephew John divided what was left of the company, with Bob holding onto only the Pascagoula and Biloxi stores. Later, the Biloxi store would move to Gulfport, only to be shut down last year following the destruction by Katrina's older brother, Hurricane Ivan.

Today, at 86 years and counting, McGregor Rents might look like it's been overly downsized, but at its core, it's still solid and focused on three types of business: rent-to-own, which makes up about 60 percent of accounts and income; cash, or 90-days-same-as-cash; and rent-to-rent, the only one of its kind along the Mississippi Gulf Coast. McGregor thinks it's these rent-to-rent roots that help distinguish the company from its competition.

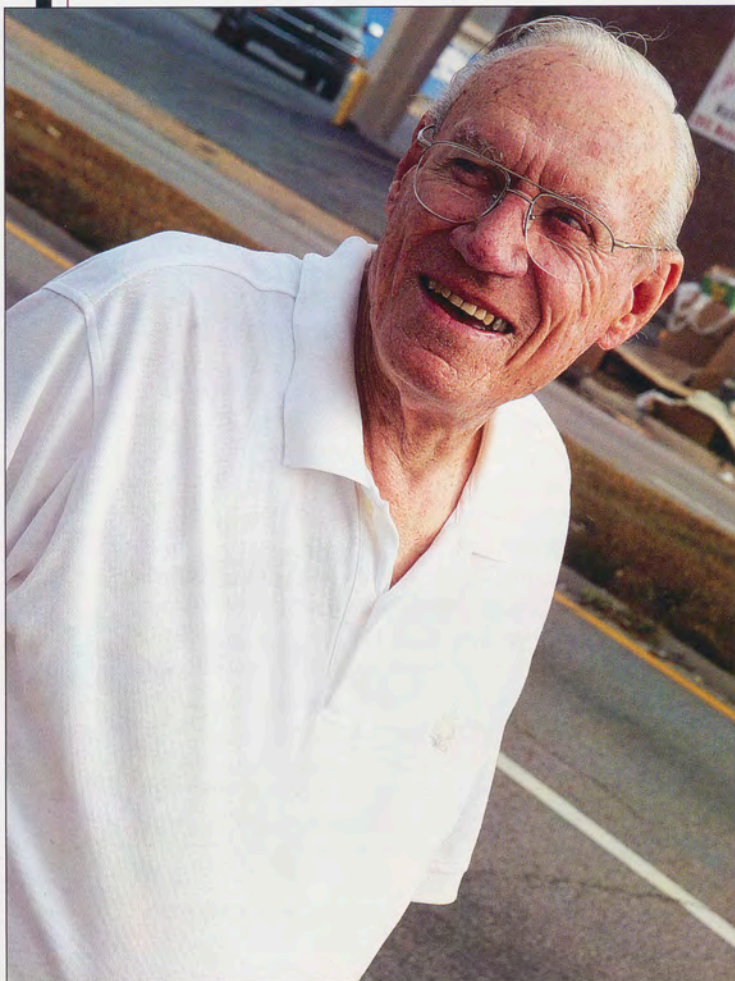
"Our rent-to-rent lifts our rental income; makes it steady," McGregor says. "We've got our niche and we have our customers, but I think I'm smart enough to know everybody's got their niche and their customers. I think the key is when you get a customer, try to hold onto [him]. You're going to lose some—some of them die and some move away and, God forbid, another store might take some of them away from you, I guess. But we try real hard to keep our customers happy and they tell me all the time they wouldn't even think of renting anything anywhere else. Most of our customers are loyal to us and we try to be loyal to them."

Once a family business, McGregor's today is really just a family namesake—Bob is the only family member still involved in the company and his octogenarian status means he works only partial days, leaving much of the administrative nuts and bolts of the business to be handled by a hired helper.

But a glimmer of hope for a family legacy remains in McGregor's personal namesake—his grandson Rob, who is currently a sophomore at Ole Miss studying exactly what his grandfather never got the chance to: business management. The older Bob and younger Rob have had many conversations about McGregor Rents and have even developed a prototype for building up a company chain again.

"Secretly, I'm hoping he'll come in and take on the business," says McGregor, though he tries not to force the issue. Still, should young Bob accept the company torch from his grandfather, McGregor offers two sim-

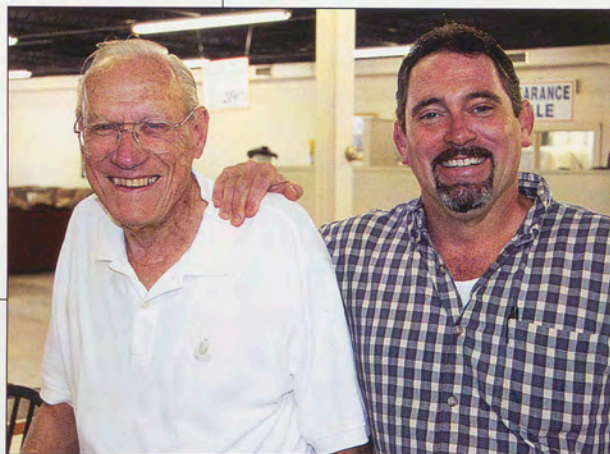
"MY DADDY HAD A COVERED WAGON AND A MULE FOR DELIVERY. HE WENT HOUSE TO HOUSE AND HE'D BUY AND SELL OFF THAT COVERED WAGON. HE WAS JUST A MAN WHO OVERCAME HIS LACK OF EDUCATION WITH HARD WORK."





"We try real hard to keep our customers happy and they tell me all the time they wouldn't even think of renting anything anywhere else."

Left: McGregor with a loyal customer and with one of his employees, Patrick Sullivan, below.



ple words of wisdom to help him succeed at it.

"Hard work. Just hard work," he counsels. "People ask me, 'Are you still working?' and I say, 'Yeah, but I work only half a day—12 hours.'" He laughs, then offers some more serious advice. "It helps to be smart. It's kind of a complicated business—figuring all the mathematics of it with all the ramifications of the rent-to-own business...trying to keep it fair and right and still make a profit and all. Being smart and working hard is how you do it and, of course, it pays to have enthusiasm. As far as my success is concerned, it's mostly just been hard work and perseverance."

And so Bob McGregor just keeps on keepin' on. For about the past 15 years, he has begun every day at 4 a.m. with a cup of coffee, a pencil, a spiral notebook and two hours of silent solitude. During this magical quiet time, he does "morning pages," a concept gleaned from creativity guru Julia Cameron's book *The Artist's Way*. In his morning pages, McGregor simply writes down whatever's on his mind—and there's plenty: he's collected 60 spirals full of notes to date. He calls them his memory. "Everything I think of, I write down," he says. "Then, when I want to remember something, I just try to remember which spiral notebook it's in."

McGregor also finds deep satisfaction through his volunteer work with the St. Vincent de Paul Society, a Catholic-based organization created to help the poor and needy. He manages the furniture room at the group's thrift store while Joy, his wife of 58 years, works as cashier.

"I tell people all the time, 'That good-looking blonde over there, that's my wife,'" quips McGregor. "She's gorgeous—she was Miss Hattiesburg High. We knew one another in high school, though we never dated then. When I came back from college, I called

her up one day and asked her for a date and after that, it was just, y'know, downhill—or uphill, I guess."

The couple's two children—a daughter who teaches second grade at a local Catholic school and a son who runs a car business—and two grandchildren all live close by in Pascagoula, so family time is frequent and fun-filled. McGregor and his son also own a trading company together, through which they trade stocks and commodities—more for play than for profit.

"It's really just a game," McGregor clarifies. "I've always said business is just a game and money is just a way to keep score. I enjoy the hell out of it.

"And I love furniture," he continues. "I love this business so much. It's all I've ever known. My daddy started me sweeping the floors in his warehouse when I was just 13 years old. So it's been 67 years I've been messing with furniture. I love going to market; I'm probably the oldest buyer who goes to the furniture market anymore. Next February, we're going up to Tupelo and it'll be my 106th market."

As a tree surgeon performs damage control in the McGregor's front yard and a Shop Vac hums in the background, it seems clear that no matter what sort of Hell or high water might come his way, throwing in the towel is simply not an option to Bob McGregor. He and his business are here to stay.

"I've never once considered getting out of this business. Oh, no, no, no, no, no," he asserts. "I love the business and I don't have any doubt whatsoever that I'll bring it back again." ■

Kristen Card is an independent business writer in Austin, Texas.

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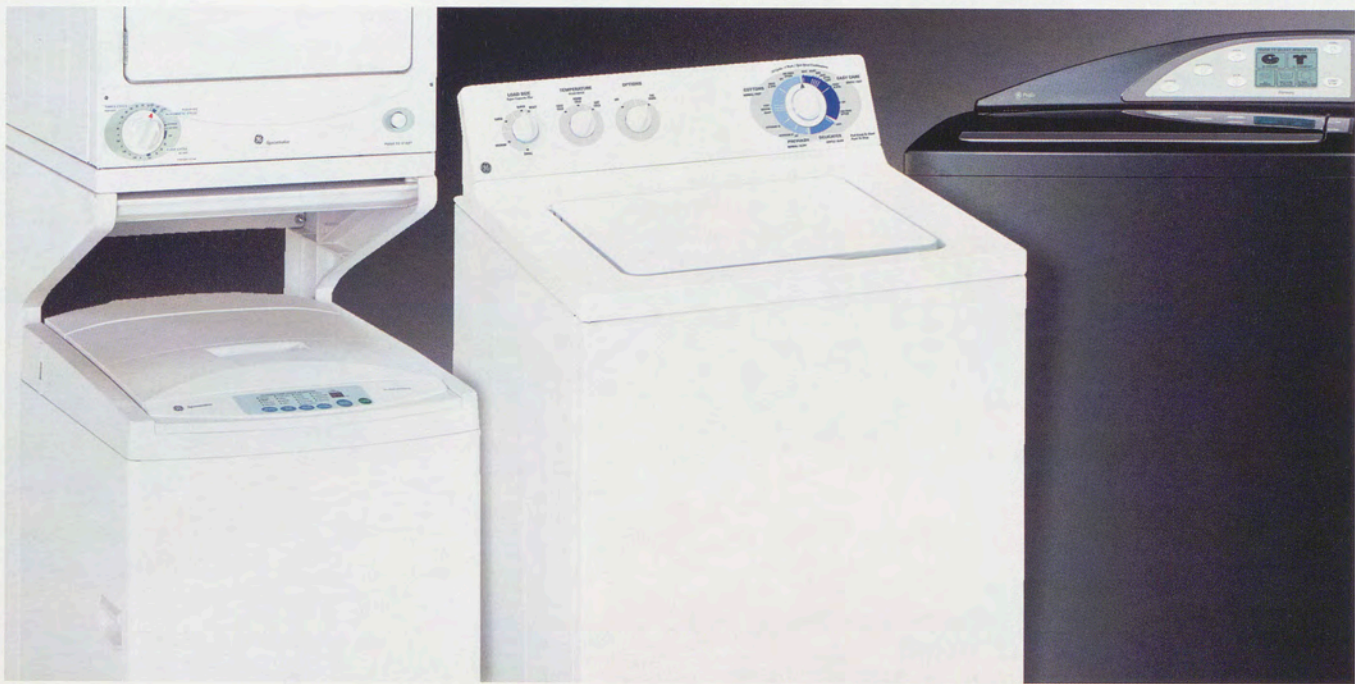
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