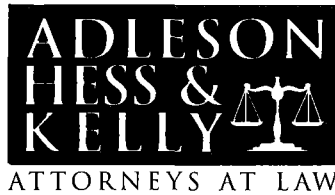


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PLEASE REPLY TO: CAMPBELL

VIA FEDERAL EXPRESS

December 1, 2011

The Hon. Lee Smalley Edmon
Presiding Judge
Los Angeles Superior Court
111 North Hill Street
Los Angeles, CA 90012

Re: Superior Court Notice dated July 1, 2011 stating new policy to cease nonjudicial foreclosures at any courthouse within the county of Los Angeles as of December 31, 2011.

Our Client: United Trustee's Association

Our File: 880284

Request for Extension for previously-noticed trustee's sales on Court property.

Dear Judge Edmon:

We represent the United Trustee's Association ("UTA") which is a trade association whose members are trustees, substitute trustees, foreclosure agents, posting and publishing companies, and others in the default services industry.¹

I am writing with respect to the Court's July 1, 2011 letter (copy attached) giving notice that the Court intends to prohibit the conduct of any nonjudicial foreclosure sale ("Trustee's Sales") after January 1, 2012 on the grounds of any courthouse within Los Angeles County pursuant to Superior Court General Order dated January 24, 2011. While we believe public square foreclosure sites are important, we understand the rationale for the Court's new policy. At the same time, we recognize that foreclosures are unpopular, particularly at the level California has experienced in recent years. Most of our client's members do not make loans but merely process them when they are in default.

I preface my comments with the fact that our members have diligently attempted to find other suitable public square Trustee's Sales sites in anticipation of the upcoming December 31, 2011 cut-off date. Finding new public sites has proven to be difficult and

¹ Our letter does not purport to represent any individual company or member.

has taken some time to arrange. As such, notices of sale referencing these new sales sites could not be processed until well after the Court's July 1, 2011 letter.

As you know, the state Legislature has carefully crafted a comprehensive legislative scheme regulating nonjudicial foreclosures.² The nonjudicial foreclosure system provides an efficient, economical alternative to the more costly judicial foreclosure system while at the same time providing protections for borrowers; including generating the highest possible bid under the circumstances.³ You can imagine the burden on the courts and the cost to Los Angeles County and its taxpayers if all foreclosures were processed through judicial foreclosures.⁴ Judicial foreclosures would not only tie up valuable and limited court time and resources, but would also require the sheriff or other levying officer to serve, post, mail and publish notices of sale, and then to conduct a public auction.⁵ Because of legislative and executive action in Nevada, lenders there have begrudgingly begun to switch to judicial foreclosures. We do not want this to happen in California.

Before a nonjudicial foreclosure sale may be conducted, a series of notices must be given. The last written notice in the nonjudicial foreclosure process is the Notice of Sale ("NOS"). The NOS must be recorded, posted on the property, posted in a *public place* and published in a newspaper of general circulation.⁶ The Trustee's Sale must be a "public auction sale".⁷ The law is not clear on specifically what is a "public auction sale." However, historically, most Trustees' Sales have been conducted at the local courthouse or at some other well known public, government building ("public square"). There are substantial legal and policy implications involved in a decision to deny access to all court properties throughout the county for sales conducted in accordance with Civil Code §§ 2920 et seq., unless other "public square" locations are available. Conducting Trustee's Sales in the open and in well known public square locations (e.g., at a courthouse) enhances the access to bidders, increases transparency of the Trustee's Sale, and encourages bidding; protecting borrowers who are already suffering from the loss of their properties. Members of the Legislature familiar with the law understand that sales are typically conducted on court properties, and the policy implications of moving sales to other locations should be evaluated with the Legislature before wholesale changes occur.

² *Banc of America Leasing & Capital, LLC. v. 3 Arch Trustee Services, Inc.* (Dec. 2009) 180 Cal.App.4th 1090; *I.E. Associates v. Safeco Title Insurance Company* (1985) 39 Cal.3d 281, at 288-289; and *Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1249-1250.

³ *I.E. Associates v. Safeco Title Insurance Company* (1985) 39 Cal.3d 281, 288.

⁴ Cal. Code of Civ. Proc. §§ 725a.

⁵ Code of Civil Proc. §§ 729.010(b) and 701.540.

⁶ Civil Code § 2924f (b)(1).

⁷ Cal. Civil Code §§ 2924g(b) and 2924f(b)(1).

Once the NOS has been given setting the sale date, time *and location*, any postponements of the sale must be "publically declared" (announced) **at the same location** that was originally noticed for the sale. In addition, the rescheduled sale must be conducted at "**the same place as originally fixed by the trustee for the sale.**"⁸ Therefore, while a postponement may change the date and time of a trustee's sale, **it may not change the "location"**. A notice of sale is good for 365 days before it must be reprocessed; **incurring significant additional costs.**⁹

Careful consideration should first be given to phasing in new public square Trustee's Sale locations. Currently, there are a significant number of Trustee's Sales being postponed to accommodate the negotiation and completion with borrowers of forbearance agreements, modification agreements, short sales and to comply with bankruptcy and other civil court orders and stays. It is clear that public policy encourages voluntary workout agreements and that these agreements benefit borrowers, lenders and the general public.¹⁰ Forcing trustees and lenders to relocate before the expiration of the 365 days permitted for postponements will encourage lenders to conclude pending foreclosures to avoid incurring the additional cost of re-noticing the Trustee's Sale at a new location. Posting, mailing, recording and publishing the notice of sale are the most expensive costs incurred in a nonjudicial foreclosure and must be paid by the borrower when attempting to cure or reinstate (stop) a foreclosure or by the lender or purchaser acquiring the property at a nonjudicial foreclosure sale. These costs must also be considered in determining whether a lender will enter a workout agreement or short sale with a borrower. While costs vary from location to location (particularly publication costs), each pending foreclosure sale that must be renoticed will incur additional average costs of recording, posting, publishing, mailing of approximately \$900 - \$1,200. Considering the current foreclosure levels, the additional cost caused by requiring a change in the sales site on previously processed notices of sale could run into millions of dollars. As noted above, ultimately, these additional costs *will not* be paid by the trustee, but by borrowers, lenders, and third party purchasers. For a property owner attempting to save his/her property through refinancing or through a forbearance; modification agreement or short sale, these additional costs present an unnecessary burden.

It has taken UTA members many months to find new public square sales locations at which they may notice Trustee's Sales. As such, they have only recently been able to process notices of sale referencing the new sales sites. Since the location of the Trustee's Sale cannot be changed by merely crying a postponement, the trustees will have to reprocess (prepare, record, publish and mail) notices of sale for every foreclosure previously noticed at a courthouse in Los Angeles County which has not been concluded by December 31, 2011. As noted above, this reprocessing cost will be borne by the borrower and lenders in California - not by our clients. We believe the harsh and costly side-effects of the Court's new policy banning Trustee's Sales on any

⁸ Civil Code § 2924g(d), emphasis added.

⁹ Civil Code §2924g(c)(1).

¹⁰ See, Civil Code § 2923.6(b).

courthouse grounds after December 31, 2011, can be substantially mitigated by allowing only previously noticed Trustee's Sales (i.e., those recorded prior to 12-31-11)¹¹ to be conducted at the courthouses where originally noticed. Since all new sales will be (and have been) noticed at new locations and since all existing notices of sale will expire within 365 days, this phase-in policy would be the best for all parties involved. Based upon this suggested policy, congestion at the courthouse sites will be substantially reduced and limited as time goes on. Within 12 months all sales will be moved to new sites without having a substantial economic impact on borrowers or lenders. Our recommended amended policy would avoid the costly republication and processing of notices of sale that have been delayed due to modification agreements, foreclosure agreements, bankruptcy stays and court orders, by setting an outside date for previously noticed sales (e.g., December 31, 2012 or such earlier date as the Court finds reasonable).

Your consideration of our comments and suggestions at the earliest possible time would be greatly appreciated.

Very truly yours,

ADLESON, HESS & KELLY, APC

By:



PHILLIP M. ADLESON

PMA:tlc

cc: Robert T. Finlay, Esq., UTA President,
UTA Board of Directors
Richard Meyers, UTA Executive Director (via email)
Michael Belote, California Advocates

¹¹ Or, some date after 7-1-11 which gave the trustees a reasonable time to locate and start noticing Trustee's Sales at a new location.



The Superior Court

LOS ANGELES, CALIFORNIA 90012

CHAMBERS OF

LEE SMALLEY EDMON

PRESIDING JUDGE

TELEPHONE
(213) 974-5600

July 1, 2011

NOTICE TO ALL PERSONS CONDUCTING NON-JUDICIAL FORECLOSURE SALES ON COURTHOUSE GROUNDS IN LOS ANGELES COUNTY:

The attached General Order dated January 24, 2011 and signed by the Presiding Judge of the Superior Court prohibits certain conduct, including commercial activity, on courthouse grounds. The act of conducting non-judicial foreclosure sales within the curtilage of a courthouse violates this General Order.

This letter shall serve as notice of the Superior Court's intent, under authority of its General Order, to prohibit non-judicial foreclosure sales on the grounds of any courthouse within Los Angeles County. In order to minimize possible adverse consequences to all persons involved, the Superior Court will provide a "grace period" within which companies conducting non-judicial foreclosure sales on courthouse grounds may continue to operate as to sales currently noticed for a courthouse location.

Effective immediately, all notices related to any new non-judicial foreclosure sale should specify a location other than a courthouse. After December 31, 2011, no non-judicial foreclosure sale may be conducted on courthouse grounds, regardless of when the sale was noticed and regardless of the date and location specified in the notice. Any person engaging in such prohibited commercial activity on or after January 1, 2012 will be ordered to leave the courthouse grounds and that person shall be subject to the penalty provisions contained in the General Order, including sanctions and/or criminal prosecution.

A handwritten signature in cursive script that reads "Lee Smalley Edmon".

LEE SMALLEY EDMON

Presiding Judge

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

JAN 24 2011

GENERAL ORDER RE: EXPRESSIVE ACTIVITY

NOTICE TO ALL PERSONS ENTERING COURTHOUSES IN LOS ANGELES COUNTY

John A. Clarke, Executive Officer/Clerk
Gloria A. Pedregon, Deputy
GLORIA A. PEDREGON

It is the purpose and intent of the Court in issuing this General Order to ensure the safe and orderly use of court facilities; to minimize activities which unreasonably disrupt, interrupt, or interfere with the orderly and peaceable conduct of court business in a neutral forum free of actual or perceived partiality, bias, prejudice, or favoritism; to provide for the fair and orderly conduct of hearings and trials; to promote the free flow of pedestrian and vehicular traffic on sidewalks and streets around court facilities; and to maintain proper judicial decorum.

The Court further issues this General Order to facilitate safe, peaceful, and orderly public access to courthouses unhindered by threats, confrontation, interference, noise pollution or harassment that may be directed at court users including but not limited to those court users waiting in line outside a courthouse.

The Court intends this General Order to be enforced in a content-neutral fashion. The Order regulates only conduct occurring in and around court facilities without regard to the content of any particular message, idea or form of speech. The Court does not intend to ban all expressive activities from the environs surrounding court facilities and intends that this Order be construed so as to provide for ample alternative channels for communication of information near but not within court facilities nor on courthouse grounds. (*See Comfort v. MacLaughlin* (C.D. Cal. 2006) 473 F.Supp.2d 1026).

The Court hereby orders:

I. **Demonstrations, Distributions, Solicitation and Other Expressive Activity**

A. The following definitions apply to this Section.

1. "Prohibited Activity" shall mean the acts of demonstrating, picketing, parading, proselytizing or preaching, distributing literature or other materials to the general public, soliciting sales or donations, engaging in commercial activity unless otherwise authorized by this Order or the Court, or engaging in oral or demonstrative protest, education or counseling.
2. "Walkway" shall mean (a) the area of any corridor or sidewalk, or other path of pedestrian movement, directly from the edge of the public sidewalk nearest an entrance to any building containing a courtroom to that entrance; (b) the area of any corridor or sidewalk leading directly from any parking lot within a curtilage to an entrance to any building containing a courtroom; or (c) a corridor or passageway within a multi-purpose, commercial, or private building that leads directly to the part of the building containing a courtroom.
3. "Curtilage" shall mean the area between any building containing a courtroom and the nearest edge of the public sidewalk surrounding the building. It shall not include the area adjacent to that portion of a multi-purpose, commercial or private building that does not contain a courtroom.
4. "Courthouse" shall mean any building containing at least one courtroom. It shall also include that portion of a multi-purpose, commercial or private building that contains at least one courtroom.

B. **Prohibitions**

1. No person shall engage in any prohibited activity within a courthouse.
2. No person shall engage in any prohibited activity within the curtilage of a courthouse.
3. No person shall engage in any prohibited activity within 25 feet from either side of, or in front of, the intersection of a walkway and the public sidewalk; or within 25 feet from either side of, or in front of, a doorway to a courthouse.
4. No person shall obstruct, harass, impede or interfere with persons entering or leaving a courthouse, or with persons waiting in line to enter a courthouse.

5. No person shall approach another person waiting in line to enter a courthouse, within 8 feet of such person, unless such other person consents, for the purpose of engaging in any prohibited activity.
6. No person shall engage in any prohibited activity in or near a courthouse with the intent to interfere with, obstruct, or impede the administration of justice or with the intent to influence any judge, juror, witness, or officer of the court in the discharge of his or her duty.
7. No person shall use amplification equipment to engage in prohibited activity in a manner that harasses or interferes with persons entering or leaving a courthouse, or with persons waiting in line to enter a courthouse.

C. Exclusions

1. This Order shall not apply to authorized court personnel or law enforcement officers in the performance of their official duties.
2. Sections I(B)(1), (2), and (3) shall not apply to individuals engaged in the stationary solicitation of sales as part of any commercial, primarily non-expressive activity (including but not limited to the sale of newspapers, reading materials, sundries or food stuffs) that is expressly authorized by a written space permit, license, agreement, or lease from the County or the Court or the Administrative Office of the Courts or other owner of a building containing a courtroom authorizing that activity in a specific space not dedicated to court functions.

D. Severability Clause

If any provision of this Order or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Order and the application of such provision to other persons and circumstances shall not be affected thereby.

E. Delegation

To the extent the terms of this Order do not accomplish its stated purpose at a courthouse, on delegation by the Presiding Judge, the Supervising Judge responsible for that courthouse is hereby authorized to issue an order to accomplish the stated purpose of this Order.

- II. **Compliance with Law Enforcement.** While on or in the premises of any courthouse, all persons are ordered to comply with the lawful requests, directions and orders of any law enforcement officers and their agents in the performance of their duties.
- III. **Posting and Service of Order.** This Order shall be posted at each public entrance to a courthouse; and at such other places that will reasonably provide notice of this Order to persons entering such courthouse. The Sheriff of Los Angeles County and his or her deputies and their agents are directed to serve a copy of this Order personally on any person who appears to be in violation thereof, to advise such person of the apparent violation, and, if the apparent violation continues after such notice, to immediately notify the Court's Director of Security, Court Counsel, or Site Judge responsible for that courthouse, as may be available in that order, so that the Court can determine whether proceedings should be initiated to ensure compliance with this Order. This Order shall not preclude any law enforcement officer from taking appropriate steps to ensure the orderly and peaceable conduct of court business at a courthouse.
- IV. **Penalties.** Violation of this Order may result in the imposition of sanctions in amounts of up to \$1,500 per violation pursuant to Code of Civil Procedure section 177.5 and/or prosecution for criminal violations.

IT IS SO ORDERED, on January 24, 2011.


LEE SMALLEY EDMON, Presiding Judge