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PLEASE REPLY TO: CAMPBELL

July 25, 2011

Robert Field, Asst. County Executive Officer  
Economic Development Agency  
3403 10<sup>th</sup> Street, Suite 300  
Riverside, CA 92501

**VIA EMAIL: [management@rivcoeda.org](mailto:management@rivcoeda.org)**

Re: *Ordinance No: 906 Prohibiting Solicitation on County Property*  
Our File: 208226  
Our Clients: United Trustee's Association ("UTA")  
California Mortgage Association ("CMA")

Dear Mr. Field:

We represent both the United Trustee's Association ("UTA") and the California Mortgage Association ("CMA") with respect to Riverside County Ordinance No. 906 (as amended). I appeared at the June 7, 2011 meeting along with Richard Meyers (UTA's Executive Director) and Pam Sosa (CMA's President and a mortgage broker) located several blocks from the Riverside historical courthouse ("Historical Courthouse"). UTA represents trustees, foreclosure agents and relating default services companies who process nonjudicial foreclosures pursuant to the comprehensive state Legislative scheme. CMA represents private lenders who make loans through licensed mortgage brokers or who are California Finance Lenders. CMA's broker/lender members provide important financing, often not provided by institutional lenders that will be necessary to fix and re-sell or rent distressed properties in Riverside County.

It was my understanding from the discussion among the Supervisors present at the Board meeting and from the amendment made to Ordinance No. 906, Section 6(e), that the authority to issue exemptions from the non-solicitation ordinance was delegated to the Economic Development Agency ("EDA") with a goal of creating a temporary exemption for nonjudicial foreclosure sales currently held in front of the of Historic

Courthouse (so that expensive re-noticing of sales does not have to be done) and to find a permanent solution by making another public square location available for nonjudicial foreclosure sales.

While we represent the impacted industries and not a particular applicant for an exemption, we do need to advise our members on how the exemption process will work and on what proposals or thoughts the EDA has with respect to finding a temporary location (until existing notices of sale expire) at the Historic Courthouse and a permanent location for future use. We would like to know: what the process is for applying for an exemption to conduct trustee's sales pursuant to Ordinance No. 906, Section 6(e).

### **The Problem:**

We understand that foreclosures are unpopular, particularly at the level California has experienced in recent years. In addition, we also recognize that due to increased nonjudicial foreclosure sales ("trustee's sales") some regulation may be required at certain sales locations or there may need for a phased-in transition to a new "public square" sale site.

Unless an exemption is issued for a temporary location (so that trustees do not have to re-notice sales) and for a new public square location for newly noticed sales, when Ordinance No. 906 takes effect, it will ban trustee's sales on any county property (i.e., all public square, alternate properties). The Ordinance includes the Historic Courthouse where trustee's sales have been conducted for decades, and where costly notices of sale have already been given. This will have a substantial negative impact on the public; including borrowers and lenders. We believe any problems that exist can best be addressed in a less drastic, less costly and less hurried fashion, particularly if the EDA provides a temporary location near the court steps (i.e., close enough so new notices need not be given) and identifies a more permanent, public square location for new notices of sale.

In addressing the temporary and permanent location exemptions to the non-solicitation ordinance, we point out the following for your consideration. The state Legislature has carefully crafted a comprehensive legislative scheme regulating nonjudicial foreclosures.<sup>1</sup> 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.<sup>2</sup> Imagine the cost to the County and to Riverside County residents if all foreclosures were processed through judicial foreclosures.<sup>3</sup> Judicial foreclosures

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<sup>1</sup> *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.

<sup>2</sup> *I.E. Associates v. Safeco Title Insurance Company* (1985) 39 Cal.3d 281, 288.

<sup>3</sup> Cal. Code of Civ. Proc. §§ 725a.

would not only tie up valuable and limited court 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.<sup>4</sup> If an ordinance similar to Riverside Ordinance No. 906 were adopted by most major Counties and Cities in California affecting trustee's sales on public property, judicial foreclosures will become a real possibility.

Changing a location where trustee's sales are currently noticed, especially where that location has been used for years, has serious negative consequences. This is particularly true when the phase-out period is only 90 days after the effective date of the ordinance. 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. The Notice of Sale must be recorded, posted on the property, posted in a *public place* and published in a newspaper of general circulation.<sup>5</sup> The trustee's sale must be a "public auction sale".<sup>6</sup> While the law is not totally clear on specifically what is a "public auction sale", historically most trustee's 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 court properties for sales conducted in accordance with Civil Code §§ 2920 et seq. Conducting trustee's sales in the open and in well known government property locations (e.g., at the 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.

Once the Notice of Sale 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.**"<sup>7</sup> 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.<sup>8</sup>

Currently, there are a significant number of trustee's sales being postponed to accommodate the negotiation and completion of forbearance or modification agreements (workout agreements) with borrowers, short sales and to comply with bankruptcy and other civil court stays. It is clear that public policy encourages these types of voluntary workout agreements and that these agreements benefit borrowers,

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<sup>4</sup> Code of Civil Proc. §§ 729.010(b) and 701.540.

<sup>5</sup> Civil Code § 2924f (b)(1).

<sup>6</sup> Cal. Civil Code §§ 2924g(b) and 2924f(b)(1).

<sup>7</sup> Civil Code § 2924g(d), emphasis added.

<sup>8</sup> Civil Code §2924g(c)(1).

lenders and the general public.<sup>9</sup> 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 sales site could run into millions of dollars. As noted above, ultimately, these additional costs *will not* be paid by the trustee, but rather by borrowers in foreclosure, lenders, and third party purchasers. For a property owner attempting to save his/her property through refinancing or through a Workout Agreement, these additional costs present an unnecessary burden. The same is true for property owners attempting to sell their property before the trustee's sale is concluded whether by regular sales or by short sales. In addition, these additional costs will discourage lenders from making loans on properties in Riverside County and will further discourage third-party purchasers from purchasing properties in Riverside County.

Although arguably non-government public locations might be used, doing so will disperse trustee's sales to multiple, less well known locations and will likely result in less transparency and reduced competitive bidding for properties in foreclosure. Well-known public square locations encourage competitive bidding which ultimately increases the sales prices at trustee's sales. Higher trustee's sale values in turn keep the real estate market in Riverside from being further depressed and will result in higher property taxes, not only from the properties being sold, but from properties that are affected by the valuations that are the result of trustee's sales. In addition, trustee's sale prices result in surplus proceeds (beyond that owed to the foreclosing lender) which become the property of the homeowner or junior lien holders who are likely also to be individuals or businesses in Riverside County.

If trustees must scramble for new sales locations throughout the county, ultimately it is likely to result in multiple sales locations. If this occurs, it becomes impossible for potential bidders to attend all of the different trustee's sales which again may have a negative impact on competitive bidding. Having one or more central, public square locations, like a courthouse, is critical to benefit homeowners, lenders and third-party purchasers at trustees' sales.

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<sup>9</sup> See, Civil Code § 2923.6(b).

After the expiration of a 90-day phase-in period,<sup>10</sup> Ordinance No. 906 will ban trustee's sales on county property unless an exemption is granted. If no better solution can be found, at least until the current Notices of Sale expire (365 days), a temporary exemption should be granted to allow trustee's sales within view of the steps of the Historic Courthouse so that costly, new notices of sale do not have to be renoticed. In addition, a new permanent public square location should be identified where exemptions can be issued on a long term basis. After such a site is identified and exemptions are issued, trustees can then notice sales at that new site.

On behalf of UTA and CMA, we respectfully request that the EDA, or other appropriate person representing the County, answer the following questions.

1. Has any new "public square" property been identified where trustee's sales can be noticed and conducted after the expiration of the phase-in period in Ordinance No. 906?
2. Has a temporary location (near the Historic Courthouse steps) been found so that existing notices of sale can be allowed to expire rather than forcing the costly re-noticing of pending sales?
3. What is the procedure for applying for exemptions?
4. To whom should requests for exemptions be directed?
5. What is the "Effective Date" of Ordinance No. 906 from which the 90-day phase-in period runs?
6. When we attended the June 7, 2011, Board of Supervisors meeting, there was an amendment made (and we thought passed), that delegated implementation of the exemption process to the EDA. However, we find no such amendment in the final version of the Ordinance passed and signed on June 14, 2011. We have not been able to obtain a copy of Ordinance No. 906, *as amended*. Is there an amended copy? If so, would you please provide use with such a copy or tell us where one can be obtained?

Your consideration of our comments and response at the earliest possible time will be greatly appreciated.

Very truly yours,

ADLESON, HESS & KELLY, APC

By:

  
Phillip M. Adleson

PMA:tlc

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<sup>10</sup> Ordinance No. 906, § 8.

Robert Field  
July 25, 2011  
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cc: Hon. Sherrill Ellsworth, Presiding Judge; 4050 Main Street, Riverside, CA 92501  
Bob Buster, First District Chairman (via email: [district1@rcbos.org](mailto:district1@rcbos.org))  
John Tavaglione, Second District (via email: [district2@rcbos.org](mailto:district2@rcbos.org))  
Jeff Stone, Third District (via email: [district3@rcbos.org](mailto:district3@rcbos.org))  
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