

PHILLIP M. ADLESON
RANDY M. HESS
PATRIC J. KELLY
EDWARD C. McDONALD, JR.
PAMELA A. BOWER
JEFFREY A. BARUH
JOANNE M. WENDELL
LISA J. PARRELLA (ALSO ADMITTED IN
NEVADA & NEW YORK)
CLAY A. COELHO
VIRGINIA T. HESS
NICOLE S. HESS



MAIN OFFICE- CAMPBELL
577 SALMAR AVENUE
SECOND FLOOR
CAMPBELL, CALIFORNIA 95008
TELEPHONE: (408) 341-0234
FACSIMILE: (408) 341-0250

A PROFESSIONAL CORPORATION
WWW.AHK-LAW.COM
WWW.INSURANCECOVERAGELAW.COM

SANTA ANA OFFICE
4000 W. METROPOLITAN DR, #400
ORANGE, CALIFORNIA 92868
TELEPHONE: (714) 795-2360

PLEASE REPLY TO: CAMPBELL

January 24, 2014

To the Honorable Presiding Judge Barry Goode
Superior Court, Contra Costa County,
725 Court Street
P.O. Box 431
Martinez, CA 94553-0091

Re: Order Dated November 13, 2013 Prohibiting Nonjudicial Foreclosure Sales
On the Courthouse Grounds in Contra Costa County

Dear Judge Goode:

Our office is corporate counsel for the United Trustees Association (“UTA”) which is a trade association whose members consist of trustees, substitute trustees, foreclosure agents, posting and publishing companies and others in the defaulted loan servicing industry. Our members have great concern regarding the impact of the court’s November 13, 2013 Order prohibiting nonjudicial foreclosure sales on courthouse grounds in Contra Costa County after February 15, 2014 (“Court’s Order”). While no one likes foreclosures, the California Legislature has created a comprehensive statutory scheme regulating the conduct of nonjudicial foreclosures. This system carefully balances the rights of all the parties involved in the foreclosure process, that is, the borrower, the lender and the foreclosure trustee. As part of this legislative scheme, notices of sale must be mailed, published, posted in a public place and posted on the property being sold. The trustee’s sale must take place in a public location. This can be a costly process which is paid for either: (1) by the borrower; or, (2) by the lender, depending upon whether the borrower cures the defaults or whether the lender completes the foreclosure. While we recognize that a “public location” does not have to be the court house, there are compelling reasons why trustee’s sales should be conducted at the courthouse or at another centralized public location. UTA is concerned that an absolute cut-off date (February 15, 2014) for conducting trustee’s sales at the court house will be unduly costly to borrowers attempting to save their homes from foreclosure as well as to lenders serving borrowers in Contra Costa County.

One of the unintended consequence of the Court's Order will be that trustee's sales will be spread out to sites throughout the County which may limit the ability of many third party bidders to attend all sales resulting in lower bids for property being foreclosed. Historically, most sales are conducted on the courthouse steps. This location is known by borrowers and bidders alike, making the processing of sales convenient for all concerned. Borrowers know where they need to go to cure sales at the last minute; bidders know where they need to go to bid on properties. With all bidders at one site, (as opposed to being spread out around the county) bids will be increased due to competition.

The State, the County, lenders, and borrowers have an interest in having a centralized public location where most trustees conduct their nonjudicial foreclosure sales. No doubt, third party bidders can create some congestion or interference at certain courthouses, but this problem can be addressed through other measures. The more bidders there are at any particular sales location, the more competitive bidding there is. Naturally, this results in higher sales prices at trustee's auctions which is good not only for the foreclosing lender, but also for junior lienholders and borrowers. Higher trustee's sales prices will prevent, retard, or help to reverse, depressed real estate values in the Contra Costa County real estate market. Higher real estate values result in higher property taxes, not just from the properties being sold but also from properties that are affected by the "comparable" valuations that are the results of trustees sales. Further, as the market rises, higher bids result in surplus proceeds – bids that exceed the amount owed to the foreclosing lender – which become the property of junior lien holders or of the homeowner, who are likely to be persons or businesses located in Contra Costa County. But, for all of this to occur, there must be competitive bidding at one centralized location: that, currently, is the Courthouse.

Our position is not speculative. Rather, it is based on experience. Approximately 25 years ago, some trustees experimented with sales outside their offices and other private sites open to the public. The predictable result was that third party bidders could not attend all the sales at all the sites to compete against each other in bidding. Having one central location for these sales, such as the Contra Costa County Courthouse, is the most beneficial approach for homeowners, lenders and third party purchasers at trustee's sales.

The inability of trustees to conduct sales at the Courthouse will also have several negative impacts on the willingness of some lenders or mortgage servicers to extend loan modifications to borrowers. As a consequence of the Court's Order, where a foreclosure sale has been postponed (or where it will be postponed) beyond February 15, 2014 for whatever reason (bankruptcy, postponement, forbearance agreement, modification, etc.), rather than just postponing the date at the current sale location, the trustee will be required to totally redraft the notice of sale, mail it, post in on the property, post it in a public place and republish it. There is no procedure in the Civil Code to postpone to a new location without totally republishing and processing a notice of sale. This will result in a major unnecessary cost that will be imposed on the borrower

or on the lender. Respectfully, at a minimum, sales that are currently set at the Courthouse or subject to postponements should be allowed to continue at the Courthouse until a re-publication of foreclosure notices are required for some other reason besides the Court's Order, or the loan at issue is paid off or the default is cured. We are sure that the Court can appreciate that it takes some time for the parties involved (trustees, lenders, crying, posting and publishing services) to set up and get a new location approved so that it can be incorporated into new notices of sale. Changing trustee's sales sites, particularly where a site has been used for years, takes a substantial amount of time so that the new site can be located and then, once approved, new notices of sale can reference that site.

Considering that sales have been conducted at the Courthouses for many, many years, we would appreciate more lead time before a change, if any, is required. An alternative is to allow sales at the Courthouses but limiting sales to two or three days per week (i.e., to which existing sales could be continued in a phase out of the court house grounds as a sales site). We would also appreciate it if the Court and County could work with UTA and its members on finding a suitable alternative site if sales cannot be held at the Courthouses. Our members have identified a potential alternative location - Plaza Ignacio Martinez Park at 548 Henrietta Street, Martinez – which might work. A potential, but less desirable alternative (due to heavy public use and less space), is the Martinez Public Library at 740 Court Street, Martinez.

We respectfully request that the Court Order be withdrawn, amended or modified (for example, extending its effective date) for at least three more months to allow for a more smooth transition to a new location. Also, we would like to meet with representatives of the judiciary and County administration, if possible, to resolve concerns about sales sites. We are confident that, working together, we can successfully address any issue the Court has relating to the use of the Courthouses for trustee's sales. We should note that the number of sales has been dropping significantly in recent months and this trend is likely to continue. Sometimes, these situations can be remedied by something as simple as enacting rules about which side of the building or on which days of the week sales may be conducted. UTA has always attempted to work cooperatively and professionally with cities and counties to address these issues for the benefit of the public and for all other stakeholders. We recognize that the foreclosure process is not always well understood. Changes that seem salutary sometimes have unintended and negative consequences. We respectfully suggest that the Court's Order may have an unintended negative effect on the comprehensive legislative scheme enacted by the Legislature, particularly if it is similarly adopted in other counties. Among those negative effects may be adversely impacted county tax revenues; lower bidding which would otherwise accrue to the benefit of homeowners; and, adverse effects on those homeowners attempting to reinstate or pay off their loans.

Honorable Presiding Judge Barry Goode

January 24, 2014

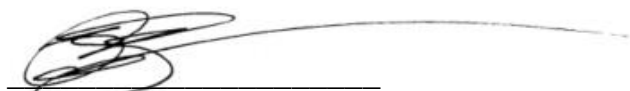
Page 4

We would respectfully request your Honor's consideration of the above.

Very truly yours,

ADLESON, HESS & KELLY, APC

By:

A handwritten signature in black ink, appearing to be "P. Adleson", written over a horizontal line.

Phillip M. Adleson

PMA:tlc

Enclosures

cc: Richard Meyers
Joyce Copeland
Patric Kelly