



# 46th Annual UTA Education Conference & Trade Show

NOVEMBER 7-9, 2021

RENO, NV

---





## **NATIONWIDE SERVICE**

**Operating since 2013**

### **POSTING**

*We are a full-service posting company in Utah, Idaho, Washington, Nevada, Arizona, Oregon, and California. We provide short turn around times. You can access or upload documents, and place orders online via our client portal.*

### **PUBLISHING**

*We have special relationships with many newspapers which allows us to shop for best pricing and dependability. These relationships also allow us to take care of any urgent or late publication requests.*

### **TRUSTEE SALES**

*Every state has it's own requirements for sales. We are able to keep up with changes as they occur and ensure our auctioneers abide by all laws. We audit all of our files to be sure your order makes it to sale.*

**Our world revolves around you, the client. We make sure all of your assignments are handled with care and speed.**

**We have account coordinators to assist you with notice postings, publications, and all other parts of the foreclosure process.**

**Call us today and see why we have the highest rated support team year after year.**

**(844)477-7869  
orders@thestoxgroup.com**





**First American**  
MORTGAGE SOLUTIONS

# The Foundation You Expect. The Expertise You Need.

Solutions That Support The  
Entire Servicing Life Cycle

[firstam.us/uta2021](http://firstam.us/uta2021)

Trustee Sale Guarantee  
Foreclosure Information  
Reports  
Post-Sale Title Insurance  
Posting, Publication &  
Auction Services  
Non-Judicial Foreclosure  
Services

800.333.4510 ▼ [www.firstam.com/mortgagesolutions](http://www.firstam.com/mortgagesolutions)

©2021 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF

First American Mortgage Solutions, LLC, and its affiliates, make no express or implied warranties respecting the information presented and assume no responsibility for errors or omissions. Title insurance and settlement services are provided by First American Title Insurance Company, an affiliate of First American Mortgage Solutions, LLC. First American, the eagle logo, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

## We publish **TRUSTEE'S SALE NOTICES**

### **METROPOLITAN NEWS-ENTERPRISE**

210 S. Spring Street, Los Angeles, CA 90012  
(213) 346-0033 • FAX (213) 687-3886  
City of Los Angeles, Los Angeles Judicial District,  
County of Los Angeles

### **JURUPA VALLEY TIMES**

(909) 369-5890 • FAX: (909) 369-5891  
City of Riverside, Riverside Judicial District,  
County of Riverside

### **LOS ANGELES BULLETIN & CIVIC CENTER NEWSsource**

(213) 346-0033 • FAX: (213) 687-3886  
City of Los Angeles, Los Angeles Judicial District,  
County of Los Angeles

### **NORTH COUNTY SPECTRUM**

(760) 747-8911 • FAX: (760) 747-8912  
City of Escondido, North County Judicial District,  
County of San Diego

### **NUESTRA COMUNIDAD Y LYNWOOD JOURNAL**

(213) 346-0033 • FAX: (213) 687-3886  
City of Lynwood, Compton Judicial District,  
County of Los Angeles

### **SACRAMENTO BULLETIN**

(916) 445-6825 • FAX: (916) 443-5871  
City of Sacramento, Sacramento Judicial District,  
County of Sacramento

### **SAN BERNARDINO BULLETIN**

(909) 889-6477 • FAX (909) 889-3696  
City of San Bernardino, San Bernardino Judicial District,  
County of San Bernardino



**Metropolitan News Company**

For more information call **213.346.0033** or email: [legals@mnc.net](mailto:legals@mnc.net)



## REAL PARTNERSHIPS, REAL SUCCESS.

With over 14 years of experience, Auction.com is your disposition industry authority.

### GO BEYOND SUCCESS AT AUCTION.COM

From real time technology and tools to customized disposition programs, Auction.com is the ideal operational partner for trustees, attorneys and loan servicing professionals.

Trust Auction.com to deliver proven disposition practices:

- 32.6 million annual website visitors to Auction.com offer unmatched reach and visibility
- More than 451,000+ residential properties valued at over \$52+ billion have closed on Auction.com
- Supporting quality control practices in abidance of mortgage industry regulations
- Driving business efficiencies through innovative technology



**STAFFING CHANGES HAVE  
YOU FEELING LIKE YOU'RE  
CAUGHT WITH YOUR  
PANTS DOWN!?**



iMailTracking has your assets covered. Save time, money, and trips to the mail room.

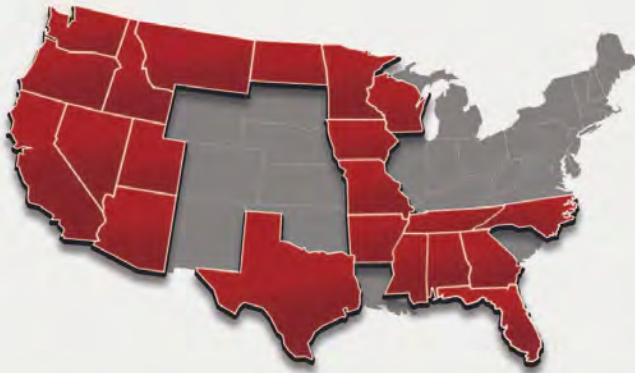
**iMAILTRACKING**  
MAIL THAT MATTERS





# 21 STATES & GROWING

...without the pains!



SERVICE  
DEDICATION  
COMMUNICATION



CONSULTANTS INC

A NATIONWIDE ATTORNEY SERVICES FIRM  
TRUSTEE SERVICES | BID AT SALE | RECORDING | PUBLICATIONS | & MORE

T: (623) 434-5560 | W: MKCONSULTANTSINC.COM

**Daily Journal**  
CORPORATION

Leading Publisher of  
**TRUSTEE'S SALE NOTICES**

(800) 564-2672

PubTech@dailyjournal.com

**Los Angeles Daily Journal**  
(213) 229-5426

**Daily Commerce**  
(213) 229-5426  
*Los Angeles*

**San Francisco Daily Journal**  
(415) 296-2400

**Orange County Reporter**  
(714) 543-2027  
*Santa Ana*

**The Daily Recorder**  
(916) 444-2355  
*Sacramento*

**San Jose Post-Record**  
(408) 287-4866

**The Inter-City Express**  
(510) 272-4747  
*Oakland*

**The Daily Transcript**  
(619) 232-3486  
*San Diego*

**Business Journal**  
(951) 784-0111  
*Riverside*

**The Record Reporter**  
(602) 417-9900  
*Arizona (Maricopa County)*







Linking over 50 years of client-focused partnerships with our proven, industry-leading technology.

ServiceLink's trustee clients are offered comprehensive foreclosure title and auction services and support, led by an unrivaled team of industry experts.



To learn how to reduce cycle times and streamline your processes, contact your ServiceLink representative. | [svclnk.com](http://svclnk.com)



# INNOVATIVE FIELD SERVICES

## IT'S ALL IN THE DETAILS.

With more than 70+ years of combined experience, our team knows how to **navigate the complex and detailed foreclosure system**. We ensure that from start to finish, the posting, publishing and trustee sales processes are all navigated expertly with a thoroughness, a high attention-to-detail and integrity.

**Big enough to fully serve, small enough to really care.**

**InnovativeFieldServices.com | (949) 860-9155**





**SUPERIOR DEFAULT SERVICES, INC.**

FORECLOSURE SALES, POSTING, PUBLISHING

LEGAL PUBLICATIONS  
TRUSTEE SALES  
PROPERTY INSPECTIONS  
BIDDING SERVICES  
AUCTIONEER SERVICES



**INDEPENDENT and UNAFFILIATED  
ATTORNEY OPERATED, FORECLOSURE  
FIELD SERVICE COMPANY** *serving*  
**CA, NV, WA, AZ, ID, TN and MO**

[superiordefault.com](http://superiordefault.com) • 714.986.9342 • [sales@superiordefault.com](mailto:sales@superiordefault.com)

## How Does the United Trustees Association Help Me?



**With the UTA Edge on Nonjudicial Default Servicing.**

- Industry's best educational workshops, conference and trade show (MCLE Accredited)
- Relevant case law updates
- Essential legislative advocacy
- Networking with trustee and default servicing professionals
- Trustee Certification Program

**The 46th Annual Conference is at the Peppermill Resort Spa Casino in Reno, Nevada, November 7-9, 2021**

Contact UTA at 714.716.4030 or visit our website at [www.unitedtrustees.com](http://www.unitedtrustees.com)





thank  
you

THANKS TO OUR  
PLATINUM SPONSOR!

---

*UTA IS PLEASED TO ACKNOWLEDGE AND  
THANK OUR PLATINUM SPONSOR.*

**STOX**



# THANKS TO OUR SPONSORS!

## Platinum Sponsor



## Gold Sponsors



*First American*  
MORTGAGE SOLUTIONS

**MAILTRACKING**  
MAIL THAT MATTERS

**MNC**  
Metropolitan News Company

 **ServiceLink**

## Silver Sponsors

  
**AUCTION.COM**

**Daily Journal**  
CORPORATION

  
**INNOVATIVE**  
FIELD SERVICES

 **MK**  
CONSULTANTS INC

**SDS**  
SUPERIOR DEFAULT SERVICES, INC  
RECLOSURE SALES, POSTING, PUBLISHING



## **TABLE OF CONTENTS**

(clickable session titles)

**\* GENERAL INFORMATION**

**\* ATTENDEE LIST**

**\* DEFAULT SERVICING ECONOMIC FORECAST**

**\* NEW RULES & MORATORIUMS! WAIT ... MORE CHANGES!**

**\* ORDER IN THE COURT!**

**\* CASE LAW UPDATES**

- Arizona  
- Oregon - Texas - Utah  
- Nevada - Washington - Idaho  
California

**\* POST-PANDEMIC CONCERNS**

**\* LEGISLATIVE UPDATES**

- Arizona  
- California  
- Nevada  
- Washington  
- Utah

**\* LARGE TRUSTEES ROUNDTABLE**

**\* SMALL TRUSTEES ROUNDTABLE**



ONE HUNDRED ONE NORTH CARSON STREET  
CARSON CITY, NEVADA 89701  
OFFICE: (775) 684-5670  
FAX NO.: (775) 684-5683



555 EAST WASHINGTON AVENUE, SUITE 5100  
LAS VEGAS, NEVADA 89101  
OFFICE: (702) 486-2500  
FAX NO.: (702) 486-2505

## Office of the Governor

# GREETINGS FROM THE GOVERNOR

November 7-9, 2021

As Governor of the State of Nevada, it is my pleasure to welcome you to the 46<sup>th</sup> Annual United Trustees Association Education Conference and Trade Show. Thank you to the Peppermill Resort for hosting this year's conference and the tireless efforts of the organizers who have made this event possible.

The 46<sup>th</sup> Annual Conference welcomes back in person sessions. It is a three-day event that includes mortgage industry updates in an everchanging climate, A course in foreclosure certification, new rules and moratoriums, awards, and lots of fun.

In addition to the scheduled sessions and speakers the Trade Show will provide networking opportunities for all attendees. Attendees will also have time to enjoy some of Reno's amenities such as the River Walk, Escape Room and Country-Western Party hosted by The Edge Nightclub at the Peppermill Resort.

Please enjoy your time here in the Biggest Little City in the World.



Sincerely,

A handwritten signature in blue ink, appearing to be "HSL".

Governor Steve Sisolak  
State of Nevada



## MESSAGE FROM THE CONFERENCE CHAIR

Welcome to the United Trustees Association's **46th Annual Education Conference**. It's been way too long - two years - since we've seen each other

We kick things off with an opening presentation from **Rick Sharga, Executive Vice President of Marketing at RealtyTrac**, the country's leading provider of foreclosure information for investors, consumers, and real estate professionals. Rick will offer an Economic Forecast for Default Servicing.

Our second session is 'can't miss': Representatives from **Fannie Mae, Freddie Mac, and Community Loan Servicing, LLC**, who will **address new rules, moratoriums, and post-moratorium servicing and default management issues**.

As always, our conference features exceptional educational programs. This year's **CLE sessions will include a session with four judges; Case Law Updates; Legislative Updates; Post-Pandemic Concerns**; and our **Large and Small Trustees Roundtables**.

You won't want to miss our **Monday evening party**. We'll enjoy roving dining and networking along with country-western music with line-dancing instructors; a 'mock-up bull for photos; a cowboy rope demonstration; cornhole; and our silent auction – and don't forget about the opportunity for one of our attendees to sink three (difficult) putts for \$75,000 in cash! (Later in the evening, the music turns to 80s and today). Dress in your best country-western attire!

Our **exhibit floor** will feature eight exhibitors, social networking, and delicious beverages.

**Elections for our Board of Directors** were offered electronically this year but for those who haven't voted, you can do so in person at our annual meeting, held on Monday, November 8th.

We are proud of the effort our Conference Committee invests in this event each year and we hope you enjoy every session.

Have a wonderful conference!

Sincerely,

*Randy Newman*

Randy Newman  
Conference Chair





## MESSAGE FROM THE CONFERENCE CHAIR

Welcome to the 46th Annual Education Conference which we are all glad to be back in person!

I would like to acknowledge and thank the Education and Vendor Relations Committees for all of their hard work in preparation for the conference. The members are UTA President Randy Newman of Total Lender Solutions; Mark Blackman of Barrett Daffin Frappier Treder & Weiss; Joyce Copeland-Clark of Wright, Finlay & Zak; Robert Cullen of Redwood Trust Deed Services; David Dutcher of iMailTracking; Susan Pettem of Novare National Settlement Service; Mike Reed of Lawyers Title; Katie TerBush of MK Consultants (Chair of Vendor Relations); and Gary Wisham of Allied Trustee Services.

Our Session Evaluation Forms and Conference Evaluation Forms will be available online and will be emailed to attendees right at the conclusion of each session. Please complete these as we read every one of them in order to assist us in providing you with quality programs.

As I am sure you are aware, we would not be able to conduct our conference without the support of our generous sponsors at each level of sponsorship. As such, I would like to acknowledge our:

Platinum Conference Sponsor:

- **STOX**

Gold Conference Sponsors:

- **First American Mortgage Solutions**
- **iMailTracking**
- **Metropolitan News Company**
- **ServiceLink**

and our Silver Conference Sponsors:

- **Auction.com**
- **Daily Journal**
- **Innovative Field Services**
- **Superior Default Services**
- **MK Consultants**

Again, thank you for participating in the 2021 Conference and for your continued support of the United Trustees Association.

Sincerely,

Cathe Cole-Sherburn  
Membership Chair



## 2021 UTA ADVOCATES



Advocate, Partner, and Supporter companies are those who support the UTA and its mission with at least 3, 4, or 5 members represented in the United Trustees Association from their company. We thank them for their support of the association.

### **Advocate (5 or more members)**

First American Mortgage Solutions  
ServiceLink  
Total Lender Solutions  
Wright, Finlay & Zak

### **Partner (4 members)**

BDF Law Group  
Lawyers Title  
Pacific Coast Title  
Trustee Corps

### **Supporter (3 members)**

Allied Trustee Services  
Carrington Foreclosure Services  
Kirby & McGuinn, APC  
PLM Loan Management Services  
WFG National Title





**THANK YOU**  
**FOR YOUR SUPPORT!**

---



**PLATINUM SPONSORS (\$5,000)**

STOX

**GOLD SPONSORS (\$2,500)**

FIRST AMERICAN MORTGAGE SOLUTIONS

IMAILTRACKING

METROPOLITAN NEWS COMPANY

SERVICELINK

**SILVER SPONSORS (\$1,000)**

AUCTION.COM

DAILY JOURNAL CORPORATION

INNOVATIVE FIELD SERVICES

MK CONSULTANTS

SUPERIOR DEFAULT SERVICES



# UNITED TRUSTEES ASSOCIATION 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE AT-A-GLANCE

**Sunday**

**10:00 AM - 1:30 PM**

**CALIFORNIA BASIC FORECLOSURE  
CERTIFICATION COURSE (LEVEL 1)**

.....

**2:30 PM - 4:30 PM**

**ESCAPE ROOM ADVENTURE**

*Meet in Hotel Lobby*



**2:00 PM - 4:00 PM**

**RENO RIVER WALK**

*Meet in Hotel Lobby*



**6:30 PM - 8:00 PM**

**WELCOME RECEPTION**



First American  
MORTGAGE SOLUTIONS

**iMAILTRACKING**  
MAIL THAT MATTERS

**MTC**  
Metropolitan News Company

**ServiceLink**



**Daily Journal**  
CORPORATION

**INNOVATIVE**  
FIELD SERVICES



**SDS**  
OR DEFAULT SERVICE  
SURE SALES, POSTING, FUI





UNITED TRUSTEES ASSOCIATION  
2021 ANNUAL EDUCATION CONFERENCE  
SCHEDULE AT-A-GLANCE

**Monday**

**6:30 AM - 8:00 AM**

**SPARKLE YOGA WITH JENNIFER WALLIS**



**8:00 AM - 9:00 AM**

**CONTINENTAL BREAKFAST**



**08:30 AM - 9:00 AM**

**SPEED NETWORKING**



**9:00 AM - 9:45 AM**

**DEFAULT SERVICING ECONOMIC FORECAST**



**9:45 AM - 10:15 AM**

**EXHIBIT BREAK**



**10:15 AM - 11:30 AM**

**NEW RULES AND MORATORIUMS! WAIT ...  
MORE CHANGES!**





# UNITED TRUSTEES ASSOCIATION 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE AT-A-GLANCE

**11:30 AM - 12:30 AM**

**LUNCH AND ANNUAL MEETING**



**12:30 PM - 2:00 PM**

**ORDER IN THE COURT!**

**Daily Journal**  
CORPORATION

**2:00 PM - 2:30 PM**

**EXHIBIT BREAK**



**2:30 PM - 4:00 PM**

**CASE LAW UPDATES**



**6:00 PM - 10:00 PM**

**AN EVENING OF DINNER, NETWORKING,  
COUNTRY DANCING, AND FRIENDSHIP**



**First American**  
MORTGAGE SOLUTIONS



**Daily Journal**  
CORPORATION







# UNITED TRUSTEES ASSOCIATION 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE AT-A-GLANCE

**Tuesday**

**8:00 AM - 9:00 AM**

**CONTINENTAL BREAKFAST**



**9:00 AM - 10:00 AM**

**POST-PANDEMIC CONCERNS**



**10:00 AM - 10:30 AM**

**EXHIBIT BREAK**



**10:30 AM - 11:30 AM**

**LEGISLATIVE UPDATE**



**11:30 AM - 12:30 PM**

**LUNCH AND EXHIBITOR RAFFLE**





# UNITED TRUSTEES ASSOCIATION 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE AT-A-GLANCE

**12:45 PM - 2:15 PM**

**SMALL TRUSTEES ROUNDTABLE**



**12:45 PM - 2:15 PM**

**LARGE TRUSTEES ROUNDTABLE**



**2:15 PM - 2:30 PM**

**ICE CREAM BREAK**



**END OF CONFERENCE**





# 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE OF EVENTS

## Sunday



*Sunday, November 6, 10:00 AM – 1:30 PM*

### **CALIFORNIA BASIC FORECLOSURE CERTIFICATION COURSE (LEVEL 1)**

This two-and-a-half-hour course syllabus followed by a one-hour open-book online exam covers state foreclosure procedures; monetary and non-monetary defaults; judicial vs. nonjudicial foreclosures; what a lender provides to the Trustee what a trustee does; notice of default; notice of sale; review of Trustee's Sale Guarantees; reinstatement; presale redemption; sale; Trustee's Deed; Proceeds of Sale; and Bankruptcy.

*Registration fee of \$100 not included with conference registration.*

**•Randy Newman, Esq., Total Lender Solutions**



*Sunday, November 6, 2:30 PM – 4:30 PM*

### **ESCAPE ROOM ADVENTURE** (Sponsored by STOX)

You have one hour to find your way through different levels of hints and attempt an escape! You'll be part of a team of six that works together for one hour to solve a series of puzzles, riddles, clues, and games.

You'll choose among two scenarios: Lost Cabin, where you'll search to find your lost uncle, and The Asylum where you'll have to uncover the mysteries to escape the insanity.

A shuttle van will take us to and from the Escape Room.

*Registration fee of \$50 not included with conference registration*



# 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE OF EVENTS



*Sunday, November 6, 2:00 PM – 4:00 PM*

## **RENO RIVER WALK**

*(Sponsored by ServiceLink)*

Take a stroll along the Riverwalk and savor Reno's exciting urban renaissance. You'll find shopping, restaurants, bars and taverns, entertainment, lodging, even a whitewater park – all in a safe, fun, friendly area that celebrates Reno's arts, culture, and history.

A shuttle van will take us to and from the Riverwalk.

*Registration fee of \$25 not included with conference registration.*



*Sunday, November 6, 6:30 PM – 8:00 PM*

## **WELCOME RECEPTION**

*(Sponsored by STOX, First American Mortgage Solutions, iMailTracking, Metropolitan News Company, ServiceLink, Auction.com, Daily Journal, MK Consultants, Innovative Field Services and Superior Default Services)*

After a hard afternoon of escaping or strolling, relax and catch up with friends and colleagues at UTA's Welcome Reception.

## **Monday**



*Monday, November 7, 6:30 AM – 8:00 AM*

## **SPARKLE YOGA WITH JENNIFER WALLIS**

*(Sponsored by Metropolitan News Company)*

Yoga is not only about getting a stronger, leaner body or releasing stress and anxiety, it is about getting familiar with yourself. It is about creating space where you were once stuck. It is about peeling away the layers of protection that you have built around you, it is about opening your heart, and appreciating your body, and becoming aware of the noise that the mind creates.

*There is no additional cost for this class, but you must register. Mats will be provided.*

- **Jennifer Wallis, Owner, Sparkle Yoga**



# 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE OF EVENTS



*Monday, November 7, 8:00 AM – 9:00 AM*

## **CONTINENTAL BREAKFAST**

*(Sponsored by Innovative Field Services)*



*Monday, November 7, 8:30 AM – 9:00 AM*

## **SPEED NETWORKING**

*(Sponsored by ServiceLink)*



*Monday, November 7, 9:00 AM – 9:45 AM*

## **DEFAULT SERVICING ECONOMIC FORECAST**

*(Sponsored by American Mortgage Solution)*

Rick Sharga returns to forecast trends for the default servicing industry. Rick's presentation will provide information and analysis that forecasts the economic environment, housing activity, mortgage analysis, and foreclosure analysis.

One of the country's most frequently-quoted sources on real estate, mortgage, and foreclosure trends, Rick has appeared regularly over the past 15 years on CNBC, the CBS Evening News, NBC Nightly News, CNN, ABC World News, FOX, Bloomberg, and NPR.



*Monday, November 7, 9:45 AM – 10:15 AM*

## **EXHIBIT BREAK**

*(Sponsored by iMailTracking)*

Enjoy coffee or tea while mingling with exhibitors and colleagues.





# 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE OF EVENTS



*Monday, November 7, 10:15 AM – 11:30 AM*

## **NEW RULES AND MORATORIUMS! WAIT ... MORE CHANGES! ARE YOU READY?**

*(Sponsored by STOX)*

Representatives from CFPB, Fannie Mae, Freddie Mac, and Community Loan Servicing will address post-moratorium servicing and default management issues, including CFPB's 2021 Mortgage Servicing COVID-19 Rule effective 08-31-21.

- **Edward Treder, Esq., Barrett Daffin Frappier Treder & Weiss (moderator)**
- **Todd Barton, Esq., VP and Deputy General Counsel, Fannie Mae**
- **Sasha Cohen, Esq., First VP and Corporate Counsel, Default Administration Community Loan Servicing**
- **Dean Meyer, Director, Non-performing Loan Management, Freddie Mac**



*Monday, November 7, 11:30 AM – 12:30 PM*

## **LUNCH AND ANNUAL MEETING**

*(Sponsored by STOX)*

During lunch, we will hold our annual meeting and board election and present the 2021 Phil Adleson Award, and the 2021 Dorothy Schick Veteran Member of the Year Award.

- **Randy Newman, Esq., President Total Lender Solutions, and UTA President**



*Monday, November 7, 12:30 PM – 2:00 PM*

## **ORDER IN THE COURT!**

*(Sponsored by Daily Journal)*

Our session featuring Bankruptcy Judges will address Court decisions and recent legislation that affects UTA members in their day-to-day business of servicing, collection, and foreclosure.

- **Benjamin R. Levinson, Esq., Law Offices of Benjamin R. Levinson (moderator)**
- **Hon. Scott C. Clarkson, Central District of California**
- **Hon. Christopher G. Jaime, Eastern District of California**
- **Hon. August B. Landis, District of Nevada**
- **Hon. Charles Novack, Northern District of California**



# 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE OF EVENTS



*Monday, November 7, 2:00 PM – 2:30 PM*

## **EXHIBIT BREAK**

*(Sponsored by Metropolitan News Company)*

Enjoy a 'sweet' break with our exhibitors while snacking on your choice of cookies and sodas.



*Monday, November 7, 2:30 PM – 4:00 PM*

## **CASE LAW UPDATES**

*(Sponsored by iMailTracking)*

Our case law panel will address 2021 cases that impact foreclosure in California and all Western states. This session covers all of the key relevant court cases from the past year in a rapid-fire, yet detailed format that provides informative and practical information.

- **Andrew Boylan, Esq., McCarthy Holthus**
- **Christopher McNichol, Esq., Gust Rosenfeld**
- **Stephen T. Hicklin, Esq., The Hicklin Firm**
- **Martin T. McGuinn, Esq., Kirby & McGuinn**



*Monday, November 7, 6:00 PM – 10:00 PM*

## **AN EVENING OF DINNER, NETWORKING, COUNTRY DANCING AND FRIENDSHIP**

*(Sponsored by STOX, First American Mortgage Solutions, iMailTracking, Metropolitan News Company, ServiceLink, Auction.com, Daily Journal, MK Consultants, Innovative Field Services and Superior Default Services)*

Saddle Up Cowboys and Cowgirls! We'll enjoy a night of roving dining and networking as we catch up with friends and colleagues in the Edge Nightclub. A cowboy rope demonstration; tin-can shooting; mechanical bull; cornhole and line-dancing instruction with a live country & western band are all on the program. UTA's Silent Auction will be held as well. Dress in your best country/western attire!



# 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE OF EVENTS

## Tuesday



*Tuesday, November 8, 8:00 AM – 9:00 AM*

### CONTINENTAL BREAKFAST

*(Sponsored by American Mortgage Solutions)*



*Tuesday, November 8, 9:00 AM – 10:00 AM*

### POST-PANDEMIC CONCERNS

*(Sponsored by MK Consultants)*

Now that we've heard from Fannie and Freddie, what's next? Our panel will discuss potential problems and solutions for trustees, title companies, servicers, and posting and pubs.

- **Glenn H. Wechsler** (*Moderator*)
- **Tiffany Malm**, *USRES*
- **Chet Sconyers**, *First American Mortgage Solutions*
- **Mary Wendel**, *MK Consultants*



*Tuesday, November 8, 10:00 AM – 10:30 AM*

### EXHIBIT BREAK

*(Sponsored by American Mortgage Solutions)*



*Tuesday, November 8, 10:30 AM – 11:30 AM*

### LEGISLATIVE UPDATE

*(Sponsored by Auction.com)*

Our legislative update panel will provide us with detailed summaries of the key issues and bills addressed this year in California, Washington, Oregon, Utah, Arizona, and Nevada. We'll also be discussing and soliciting our 2022 legislative 'wishlist'.

- **Michelle Mierzwa, Esq.** *Wright Finlay & Zak (moderator)*
- **Mike Belote, Esq.**, *California Advocates*
- **Holly Chisa**, *HPC Advocacy*
- **Christina V. Miller, Esq.**, *Wright Finlay & Zak*
- **Christopher McNichol, Esq.**, *Gust Rosenfeld*
- **Brigham Lundberg, Esq.**, *Lundberg & Associates, PC*





# 2021 ANNUAL EDUCATION CONFERENCE SCHEDULE OF EVENTS



*Tuesday, November 8, 11:30 AM – 12:30 AM*

## LUNCH AND EXHIBITOR RAFFLE

*(Sponsored by iMailTracking)*

Enjoy a buffet deli lunch while our gracious exhibitors announce their prize winners.

- **Cathe Cole-Sherburn, Trustee Corps, UTA Education Chair**



*Tuesday, November 8, 12:45 PM – 2:15 PM*

## SMALL TRUSTEES ROUNDTABLE

*(Sponsored by Metropolitan News)*

Trustees exchange information concerning operations and best practices within this small networking group of colleagues. Blah blah and blah will be among the topics discussed.

- **Robert Cullen, Redwood Trust Deed Services (Facilitator)**
- **Randy Newman, Esq., Total Lender Solutions (Facilitator)**



*Tuesday, November 8, 12:45 PM – 2:15 PM*

## LARGE TRUSTEES ROUNDTABLE

*(Sponsored by Superior Default Services)*

Trustees exchange information concerning operations and best practices within this small networking group of colleagues. Blah blah and blah will also be among the topics discussed.

- **Cathe Cole-Sherburn, Trustees Corps (Facilitator)**



*Tuesday, November 8, 2:15 PM – 2:30 PM*

## ICE CREAM BREAK

*(Sponsored by ServiceLink)*

Time to say your goodbyes to your friends and colleagues – and enjoy an ice cream bar of your choice.



## **THE ROLE OF THE TRUSTEE**

The real property trustee performs a little understood but crucial role in the real estate industry. In order to understand this role, a distinction must be drawn between the historic use of mortgages in real estate lending and the more modern use of deeds of trust. Many states now secure real estate loans almost exclusively with deeds of trust, to the exclusion of mortgages.

Whereas a mortgage consists of a two-party arrangement between the lender and the borrower, the deed of trust involves three parties. The borrower, or the “trustor”, conveys a technical form of title to the “trustee” for the benefit of the lender, also known as the “beneficiary”. In simple terms, the obligation of the trustee is to re-convey title to the borrower when the loan is paid off, or to commence foreclosure on behalf of the lender in the event of default.

The trustee thus helps clear title to real property in the event of lien satisfaction, and helps lenders protect their security in the unfortunate circumstances of nonpayment. While the law in all states permits lenders to seek foreclosure in court, many states allow trustees to act under a power of sale granted in the deed of trust to foreclose non-judicially. This helps keep costs down, to the benefit of all parties.

In summary, the trustee serves two functions:

- 1) To process a non-judicial foreclosure
- 2) To re-convey the Deed of Trust



## INTRODUCTION

UTA membership is comprised of those acting as trustees under real property deeds of trust, including trustees, attorneys and loan servicing professionals from title companies, financial institutions, law firms and independent companies as well as allied and support organizations such as posting & publishing companies and computer service firms.

**Mission Statement:** To foster, improve and promote the integrity of the default services industry through a level of excellence, education, local outreach and legislative advocacy.

## UTA MEMBER BENEFITS

Members of the United Trustees Association enjoy the following benefits:

### EDUCATION

- The industry's Best Educational Conference & Trade Show: Our annual fall educational conference (CLE accredited) and trade show keeps members current on all practice issues of interest to trustees and provides a marketplace for service providers to interact with you to improve your practice.
- Trustee Certification Program: Both UTA's Basic and Advanced Foreclosure Certification Course & Exams are taught by leading experts in the foreclosure, title and legal communities and give employers confidence in the recipient's basic knowledge of the non-judicial foreclosure process.

### COMMUNICATION

- UTA Quarterly: Our acclaimed quarterly publication provides practice hints and services available to trustees along with updates for members on changes to the law. UTA Quarterly provides vital information to members with new and thought-provoking developments and trends relating to the non-judicial foreclosure process.
- UTA eNews: The UTA eNews provides essential, relevant case law updates, news and happenings.

### LEGAL UPDATES AND CASE LAW REVIEW

- Case Law Program: Supervised by practicing real estate attorneys, UTA participates as amicus curiae (friend of the court) in cases of major importance, drafting and submitting briefs in order to assist courts in rendering a just result and ensuring a level playing field for trustee practice.
- Essential Legislative Advocacy: UTA's California and Washington lobbyists ensure that we help write real estate laws in the areas of distribution of foreclosure sales proceeds and collection of defaults under deeds of trust as well as draft appropriate language for recorded notices of default, re-conveyances and others. Our efforts in other states take place on a case-by-case basis as issues arise.





## **NETWORKING & BUSINESS GROWTH**

- Regional Dinner Meetings: Networking opportunities with the most respected trustee and default servicing professionals including trustees, attorneys, loan servicing professionals and industry vendors - and introductions to new business ideas that will help your practice immeasurably.
- Advertising Opportunities: Advertising and sponsorship opportunities in all our publications including our annual Membership Directory and our events allowing member vendors to easily reach their target audience.
- Association Job Board: Allowing members to post and reply to industry positions.

The United Trustees Association is a non-profit corporation.



## **CODE OF ETHICS**

The Trustee, under a Deed of Trust, is the instrumentality through which foreclosure and re-conveyance activity is affected. The responsibilities and obligations undertaken in such actions are of the utmost importance. All United Trustees Association members (UTA Member(s)), therefore should strive to maintain and improve the standards of their calling, as well as sharing with their fellow members a common responsibility for integrity and honor.

All member classes identified in the Bylaws of the United Trustees Association pledge to observe the spirit of, and to conduct their business in accordance with, the following Code of Ethics.

### **Article I**

A UTA Member shall conduct trustee business in a professional manner, keeping himself informed as to statutes, regulations and common provisions of notes and security instruments relating to non-judicial foreclosures and to the re-conveyance process, as well as other matters relating to the trustee profession in which he participates.

### **Article II**

Protection of the public against fraud, misrepresentation and unethical practices in the trustee profession shall be uppermost in the mind of the UTA Members and the UTA Member shall report such fraud, misrepresentation or unethical practices to the appropriate government entity.

### **Article III**

Much of the information contained in a trustee's file is confidential and should not be revealed or disclosed to any person not entitled to such information, except where such information is disclosed with the consent of an entitled person or is required to be revealed by subpoena or process of law.

### **Article IV**

A UTA Member shall not be a party to the falsification of any of the facts relative to a non-judicial foreclosure or re-conveyance.

### **Article V**

A UTA Member shall not engage in activities that constitute the unauthorized practice of law and should never hesitate to recommend that parties seek independent legal counsel in connection with a non-judicial foreclosure or re-conveyance.

### **Article VI**

A UTA Member shall act in conformity with all applicable laws, regulations and terms of the security agreement and shall cooperate, without being required to waive any legal rights he may have, with all government agencies.

### **Article VII**

If a UTA Member is charged with unethical practices, he shall place all pertinent facts before the proper tribunal of the National Association to which he/she belongs for investigation or decision.



#### **Article VIII**

A UTA Member shall never knowingly provide false information with respect to a fellow UTA Member nor shall he disparage the professional practice of a competitor or volunteer an opinion of the competitor's services for the purpose of obtaining a competitive advantage.

#### **Article IX**

A UTA Member shall assist to the best of his abilities in furthering the work and goals of UTA and willingly share lessons of his study and experience with his fellow members.

#### **Article X**

A UTA Member shall maintain all monies received on behalf of others in a prudent and identifiable manner and shall disburse these funds to the persons entitled thereto or, if the persons entitled thereto cannot be reasonably determined, as provided by law.

#### **Article XI**

A UTA Member shall not discriminate on the basis of race, color, sex, religion, marital status, national origin or age in conducting trustee business.

#### **Article XII**

A UTA Member shall cooperate with the National board of directors or duly appointed committee of either board in furnishing information relating to any UTA investigation of alleged violations of the Bylaws and/or of these Code of Ethics.

#### **Article XIII**

In the best interest of the trustee profession, UTA Members, and of society, a UTA Member shall be loyal to the National Association and shall actively participate in these associations' work and conform to the Bylaws of and Code of Ethics of the National Association.





## **UTA DISCLAIMER**

This program and these materials are being presented by the United Trustees Association (UTA). UTA promotes forums of open discussion of current events, legal issues and educational issues related to Trustees. It does not endorse the views and opinions expressed by any author, contributor, speaker or advertiser. UTA does, however, recognize the First Amendment right of every author, contributor, speaker and advertiser to express his or her views.

The views of any person expressed in these materials, or in the related program, do not necessarily represent those of the UTA, its directors, officers or members nor are they to be construed, in whole or in part, as legal advice. For legal advice, please consult an attorney.

No portion of these materials or of the program may be reproduced in any fashion except with the prior written consent of the UTA, of the authors or contributors who prepared the materials, and of the speakers who presented the program.



# **46TH ANNUAL EDUCATION CONFERENCE**

Attendee List as of 11/3/2021

United Trustees Association  
1405 Warner Avenue, Suite B  
Tustin, CA 92780  
PH: (714) 259-1224  
[www.unitedtrustees.com](http://www.unitedtrustees.com)

**Matthew Aguirre**

Kirby & McGuinn  
707 Broadway, Suite 1750,  
San Diego, CA 92101

(619) 685-4000  
[maquirre@kirbymac.com](mailto:maquirre@kirbymac.com)

**Tai Alailima**

Carrington Foreclosure Services  
1500 South Douglass Road, Suite 150,  
Anaheim, CA 92806

949-517-6410  
[tai.alailima@Carringtonfcl.com](mailto:tai.alailima@Carringtonfcl.com)

**Cheryl Asher**

Barrett Daffin Frappier Turner & Engel  
15000 Surveyor Blvd., Suite 500,  
Addison, TX 75001

972-341-5218  
[cheryla@bdfgroup.com](mailto:cheryla@bdfgroup.com)

**Vahn Babigian**

Metropolitan News Company  
210 S. Spring Street,  
Los Angeles, CA 90012

213-346-0033  
[vahn@mnc.net](mailto:vahn@mnc.net)

**Lori Babigian**

Metropolitan News Company  
210 S. Spring Street,  
Los Angeles, CA 90012

**David Bark**

First American Title  
4380 La Jolla Village Drive, Suite 110  
San Diego, CA 92122

858-410-2154  
[dbark@firstam.com](mailto:dbark@firstam.com)

**Michele Barney**

FIN Title  
18201 Von Karman, #330,  
Irvine, CA 92612

949-285-2005  
[michele.barney@fintitle.com](mailto:michele.barney@fintitle.com)

**Todd Barton**

Fannie Mae  
14221 Dallas Parkway #1000,  
Dallas, TX 75254

[Todd.Barton@fanniemae.com](mailto:Todd.Barton@fanniemae.com)

**Holly Baya**

Placer Foreclosure, Inc.  
12190 Herdal Drive, Suite 9  
Auburn, CA 95603

530-888-8411  
[holly.baya@imailtracking.com](mailto:holly.baya@imailtracking.com)

**Monica Beck**

4422 S. Wildflower Place,  
Chandler, AZ 85248  
214-274-4044

**Ron Beck**

Fannie Mae  
4422 S. Wildflower Place,  
Chandler, AZ 85248

214-274-4044  
[kelly\\_beck@fanniemae.com](mailto:kelly_beck@fanniemae.com)

**Kiley Beckstrom**

Superior Default Services  
650 N. Rose Drive, #147  
Placentia, CA 92870

714-986-9342  
[kiley@superiordefault.com](mailto:kiley@superiordefault.com)



**Jim Beckstrom**

Superior Default Services  
650 N. Rose Drive, #147  
Placentia, CA 92870

714-986-9342  
[jim@superiordefault.com](mailto:jim@superiordefault.com)

**Michael Belote**

California Advocates, Inc.  
1112 Eleventh Street,  
Sacramento, CA 95814

916-441-5050  
[mbelote@caladvocates.com](mailto:mbelote@caladvocates.com)

**Sara Berens**

Fidelity National Title Group  
1101 Investment Blvd., Suite 170  
EL Dorado Hills, CA 95762

916-201-3846  
[sara.bernes@fnf.com](mailto:sara.bernes@fnf.com)

**Tina Biskupiak**

Total Lender Solutions  
10505 Sorrento Valley Road, Suite 125  
San Diego, CA 92121

866-535-3736  
[tina@tlsemails.com](mailto:tina@tlsemails.com)

**Andrew Boylan**

McCarthy & Holthus, LLP  
1770 4th Ave,  
San Diego, CA 92101

619-685-4800  
[aboylan@mccarthyholthus.com](mailto:aboylan@mccarthyholthus.com)

**Julie Brosterman**

WFG National Title Insurance Company  
700 N. Brand Blvd., Suite 1100  
Glendale, CA 91203

310-880-2442  
[jbrosterman@wfgnationaltitle.com](mailto:jbrosterman@wfgnationaltitle.com)

**Alan Burton**

Trustee Corps  
17100 Gillette Avenue,  
Irvine, CA 92614

949-252-8300  
[aburton@trusteecorps.com](mailto:aburton@trusteecorps.com)

**Kevin Cameron**

Pacific Coast Title  
1111 E. Katella Avenue, #120,  
Orange, CA 92867

949-633-0350  
[kcameron@pct.com](mailto:kcameron@pct.com)

**Rosenda Cardenas**

Trustee Corps  
17100 Gillette Avenue,  
Irvine, CA 92614

949-252-8300  
[rcardenas@trusteecorps.com](mailto:rcardenas@trusteecorps.com)

**Holly Chisa**

HPC Advocacy  
P.O. Box 1414,  
Olympia, WA 98507

360-791-6647  
[HollyChisa@hpcadvocacy.com](mailto:HollyChisa@hpcadvocacy.com)

**Hon. Scott Clarkson**

Ronald Reagan Federal Building and Courthouse  
411 West Fourth Street, Suite 5130  
Santa Ana, CA 0

714-338-5460  
[scott\\_clarkson@cacb.uscourts.gov](mailto:scott_clarkson@cacb.uscourts.gov)

**Sasha Cohen**

Community Loan Servicing  
4425 Ponce de Leon Blvd, 5th Floor  
Coral Gables, FL 33146

305-921-6604  
[SashaCohen@CommunityLoanServicing.com](mailto:SashaCohen@CommunityLoanServicing.com)

**Cathe Cole-Sherburn**

Trustee Corps  
17100 Gillette Avenue,  
Irvine, CA 92614  
949-252-8300  
[ccole@trusteecorps.com](mailto:ccole@trusteecorps.com)

**Joyce Copeland-Clark**

Wright, Finlay & Zak, LLP  
4665 MacArthur Court, Suite 200  
Newport Beach, CA 92660  
949-477-5063  
[jclark@wrightlegal.net](mailto:jclark@wrightlegal.net)

**Marie Cruz**

First American Mortgage Solutions  
3 First American Way,  
Santa Ana, CA 92701  
714-250-4433  
[mcruz@firstam.com](mailto:mcruz@firstam.com)

**Robert Cullen**

Redwood Trust Deed Services, Inc.  
3550 Round Barn Blvd., #203  
Santa Rosa, CA 95403  
707-523-4388  
[robert@redwoodtrustdeed.com](mailto:robert@redwoodtrustdeed.com)

**Cindy Cullen**

Redwood Trust Deed Services, Inc.  
3550 Round Barn Blvd., #203  
Santa Rosa, CA 95403  
707-523-4388  
[cindy@redwoodtrustdeed.com](mailto:cindy@redwoodtrustdeed.com)

**Susan Dana**

Pacific Coast Title  
1111 E. Katella Avenue, #120,  
Orange, CA 92867  
714-516-6791  
[Sdana@pct.com](mailto:Sdana@pct.com)

**Matt Dayton**

Ghidotti Berger  
1920 Old Tustin Avenue,  
Santa Ana, CA 92705  
949-427-2025  
[mdayton@ghidottiberger.com](mailto:mdayton@ghidottiberger.com)

**Greg DeCastro**

Auction.com  
1 Mauchly,  
Irvine, CA 92627  
949-405-6075  
[gdecastro@auction.com](mailto:gdecastro@auction.com)

**David Dutcher**

iMailTracking  
9620 Ridgeway Court, Suite A  
San Diego, CA 92123  
858-204-6911  
[David.Dutcher@iMailTracking.com](mailto:David.Dutcher@iMailTracking.com)

**Kate Eshenko**

First American  
3 First American Way,  
Santa Ana, CA 92707  
714-287-9624  
[keshenko@firstam.com](mailto:keshenko@firstam.com)

**Dana Fazio**

Zenith Trustee Services  
PO Box 2092,  
Vista, CA 0  
760-758-7622  
[dfazio@zenithtrustee.com](mailto:dfazio@zenithtrustee.com)

**Jon Fazio**

Zenith Trustee Services  
PO Box 2092,  
Vista, CA 0  
760-758-7622

**Jay Gafner**

Innovative Field Services  
34145 Pacific Coast Hwy., #373  
Dana Point, CA 92629  
949-860-9155  
[jgafner@InnovativeFieldServices.com](mailto:jgafner@InnovativeFieldServices.com)

**Rubia Gafner**

Innovative Field Services  
34145 Pacific Coast Hwy., #373  
Dana Point, CA 92629  
949-860-9155  
[jgafner@innovativefieldservice.com](mailto:jgafner@innovativefieldservice.com)

**Ani Ghahreman**

Daily Journal Corporation  
915 E. First Street,  
Los Angeles, CA 90012  
213-229-5426  
[ani\\_ghahreman@dailyjournal.com](mailto:ani_ghahreman@dailyjournal.com)

**DeeAnn Gregory**

First American Mortgage Solutions  
4795 Regent Blvd.,  
Irving, TX 75063  
817-699-4856  
[dsgregory@firstam.com](mailto:dsgregory@firstam.com)

**Jeffrey Gregory**

MBL Services  
2191 S Manzanita Dr,  
Pahrump, NV 89048  
9516750384  
[orders@mblservicing.com](mailto:orders@mblservicing.com)

**Helen Grier**

The Stox Group  
372 E 720 S,  
Orem, UT 84058  
844-477-7869  
[helen@thestoxgroup.com](mailto:helen@thestoxgroup.com)

**Mark Hernandez**

Keller Williams Realty  
548 Gibson Drive, #200,  
Roseville, CA 95678  
916-254-4368  
[Mark@paulboudier.com](mailto:Mark@paulboudier.com)

**Kathleen Herrera**

Western Fidelity Trustees  
1222 Crenshaw Blvd., Suite B  
Torrance, CA 90501  
310-212-0700  
[WFTRUSTEES@cs.com](mailto:WFTRUSTEES@cs.com)

**Richard Herrera**

Western Fidelity Trustees  
1222 Crenshaw Blvd., Suite B  
Torrance, CA 90501  
310-212-0700  
[wftrustees@cs.com](mailto:wftrustees@cs.com)

**Stephen Hicklin**

The Hicklin Firm  
17821 East 17th Stree, Suite 295  
Tustin, CA 92780  
657-294-5060  
[Shicklin@thehicklinfirm.com](mailto:Shicklin@thehicklinfirm.com)

**Brian Hooper**

xome  
8600 Del Pino Court,  
Flower Mound, TX 75022  
469-363-5627  
[Brian.Hooper@xome.com](mailto:Brian.Hooper@xome.com)

**Jay Jacobs**

Titleology Abstract  
14800 Landmark Blvd., Suite 850,  
Dallas, TX 75254  
214-538-8454  
[jay.jacobs@titleology.com](mailto:jay.jacobs@titleology.com)



**Josh Jacoby**

Allied Trustee Services  
990 Reserve Drive,, #208  
Roseville, CA 95678

916-960-0600 x5378  
[jjacoby@alliedtrustee.com](mailto:jjacoby@alliedtrustee.com)

**Hon. Christopher Jaime**

Robert T. Matsui United States Courthouse  
501 I Street, Suite 3-200  
Sacramento, CA 95814

916-930-4421

**Monroe Jett**

Title Leader  
231 Creek Ridge Dr,  
Nicholasville, KY

800-236-6485  
[Monroe@TitleLeader.com](mailto:Monroe@TitleLeader.com)

**Rande Johnsen**

Trustee Corps  
17100 Gillette Avenue,  
Irvine, CA 92614

949-252-8300  
[rjohnsen@trusteecorps.com](mailto:rjohnsen@trusteecorps.com)

**Anthony Kilburg**

InSource Logic  
17100 Gillette Avenue,  
Irvine, CA 92614

949-225-5935 x 2169  
[AKilburg@insourcelogic.com](mailto:AKilburg@insourcelogic.com)

**Dean Kirchen**

WFG National Title Insurance Company  
700 N. Brand Blvd., Suite 1100  
Glendale, CA 91203

818-638-7505  
[dkirchen@wfgnationaltitle.com](mailto:dkirchen@wfgnationaltitle.com)

**Elizabeth Knight**

PLM Loan Management Services, Inc.  
5446 Thornwood Drive, 2nd Floor,  
San Jose, CA 95123

408-370-4030 ext. 209  
[liz@plmweb.com](mailto:liz@plmweb.com)

**Tammy Laird**

Clear Recon Corp.  
4375 Jutland Drive,  
San Diego, CA 92117

858-750-7590  
[tlaird@clearreconcorp.com](mailto:tlaird@clearreconcorp.com)

**Hon. August Landis**

C. Clifton Young Federal Building & U.S. Courthouse  
300 Booth Street,  
Reno, NV 89509

702-527-7010  
[August\\_Landis@nvb.uscourts.gov](mailto:August_Landis@nvb.uscourts.gov)

**Wendy Lee**

McCalla Raymer Leibert Pierce LLP  
320 120th Ave NE, Suite B203,  
Bellevue, WA 98005

425-241-5459  
[wendy.lee@mccalla.com](mailto:wendy.lee@mccalla.com)

**Amy Lemus**

Trustee Corps  
17100 Gillette Avenue,  
Irvine, CA 92614

949-252-8300  
[alemus@trusteecorps.com](mailto:alemus@trusteecorps.com)

**Benjamin Levinson**

Law Office of Benjamin R. Levinson, APC  
4340 Stevens Creek Blvd, Suite 199  
San Jose, CA 95129

408-866-2999  
[ben@benlevinsonlaw.com](mailto:ben@benlevinsonlaw.com)

**Matthew Logan**

ServiceLink  
3220 El Camino Real,  
Irvine, CA 92602  
714-665-3890  
[matthew.logan@svclnk.com](mailto:matthew.logan@svclnk.com)

**Brigham Lundberg**

Lundberg & Associates, PC  
3269 South Main., Suite 100  
Salt Lake City, UT 84115  
801-263-3400 x 211  
[brigham.lundberg@lundbergfirm.com](mailto:brigham.lundberg@lundbergfirm.com)

**Tiffany Malm**

USRES  
25520 Commercentre Drive, Suite 150  
Lake Forest, CA 92630  
949-598-9920 x 1097  
[Tiffany.Malm@usres.com](mailto:Tiffany.Malm@usres.com)

**Kayo Manson-Tompkins**

The Wolf Firm, A Law Corporation  
1851 East 1st Street, Suite 100  
Santa Ana, CA 92705  
949-480-1643  
[kayo.manson-tompkins@wolffirm.com](mailto:kayo.manson-tompkins@wolffirm.com)

**Chris McNichol**

Gust Rosenfeld  
1 East Washington, Suite 1600  
Phoenix, AZ 0  
602.257.7496  
[mcnichol@gustlaw.com](mailto:mcnichol@gustlaw.com)

**Dean Meyer**

Freddie Mac  
8250 Jones Branch Drive,  
McLean, VA 22102  
703-714-2972  
[dean\\_meyer@freddiemac.com](mailto:dean_meyer@freddiemac.com)

**Richard Meyers**

United Trustees Association  
1405 Warner Avenue, Suite B  
Tustin, CA 92780  
714-716-4030  
[rmeyers@unitedtrustees.com](mailto:rmeyers@unitedtrustees.com)

**Michelle Mierzwa**

Wright, Finlay & Zak, LLP  
4665 MacArthur Court, Suite 200  
Newport Beach, CA 92660  
949-477-5063  
[mmierzwa@wrightlegal.net](mailto:mmierzwa@wrightlegal.net)

**Angela Mijares**

Western Fidelity Trustees  
1222 Crenshaw Blvd., Suite B  
Torrance, CA 90501  
310-212-0700  
[angelamijares@gmail.com](mailto:angelamijares@gmail.com)

**Christina Miller**

Wright, Finlay & Zak, LLP  
4666 MacArthur Court, Suite 200  
Newport Beach, CA 92660  
949-477-5063  
[cmiller@wrightlegal.net](mailto:cmiller@wrightlegal.net)

**Katie Milnes**

Entra Default Solutions, LLC  
1355 Willow Way, Suite 115  
Concord, CA 94520  
925-272-4993  
[kmilnes@entra-ds.com](mailto:kmilnes@entra-ds.com)

**Genail Nemovi**

Nemovi Law Group  
2175 Salk Ave., Suite 250,  
Carlsbad, CA 92008  
760-918-585-7066  
[gmn@nemovilawgroup.com](mailto:gmn@nemovilawgroup.com)

**Randy Newman**

Total Lender Solutions  
10505 Sorrento Valley Road, Suite 125  
San Diego, CA 92121

866-535-3736  
[randy@tlsemails.com](mailto:randy@tlsemails.com)

**Max Newman**

Total Lender Solutions  
10505 Sorrento Valley Road, Suite 125  
San Diego, CA 92121

866-535-3736  
[max@tlsemails.com](mailto:max@tlsemails.com)

**Thylan Nguyen**

Farmers & Merchants Trust Company  
302 Pine Ave., 2nd Floor,  
Long Beach, CA 90802

562-485-3542  
[thylan.nguyen@fmb.com](mailto:thylan.nguyen@fmb.com)

**Hon. Charles Novack**

Federal Courthouse  
280 South First Street, 3rd Floor  
San Jose, CA 95113

408- 278-7500

**Madeline Orey**

Community Legal Advisors  
509 N. Coast Highway,  
Oceanside, CA 92054

760-529-5211  
[madeline@attorneyforhoa.com](mailto:madeline@attorneyforhoa.com)

**Michael Orth**

Golden West Foreclosure Service, Inc.  
611 Veterans Blvd, Suite 206  
Redwood City, CA 94063

650-369-5505  
[gwfs@earthlink.net](mailto:gwfs@earthlink.net)

**Bri Osthed**

The Stox Group  
372 E 720 S,  
Orem, UT 84058

844-477-7869  
[bri@thestoxgroup.com](mailto:bri@thestoxgroup.com)

**Miriam Paez**

ServiceLink  
3220 El Camino Real,  
Irvine, CA 92602

714-665-3890  
[Miriam.Paez@svclnk.com](mailto:Miriam.Paez@svclnk.com)

**Susan Paquette**

Witkin & Neal  
5805 Sepulveda Blvd., #670,  
Van Nuys, CA 91411

818-845-8808  
[susanp@witkinandneal.com](mailto:susanp@witkinandneal.com)

**Susan Pettem**

Novare Settlement Services  
320 Commerce Street, Suite 150  
Irvine, CA 92602

949-466-7313  
[susan.pettem@novarens.com](mailto:susan.pettem@novarens.com)

**Deanna Pond**

Coast & Country Real Estate Group Inc  
PO Box 1653,  
Soledad, CA 93960

831-915-8311  
[deannasellshouses@sbcglobal.net](mailto:deannasellshouses@sbcglobal.net)

**Chris Pummill**

America's Trustee Services  
106 N. Denton Tap Road Ste. 210 Box 235,  
Coppell, TX 75019

[cpummill@americatruster.com](mailto:cpummill@americatruster.com)

**Dalaysia Ramirez**

Trustee Corps  
17100 Gillette Avenue,  
Irvine, CA 92614  
949-252-8300  
[dramirez@trusteecorps.com](mailto:dramirez@trusteecorps.com)

**Rafael Requena**

Broker In Trust Real Estate Rafael Requena  
9440 Reseda Blvd suite 200,  
Northridge, CA 91324  
(818) 612-2887  
[rafael@brokerintrust.com](mailto:rafael@brokerintrust.com)

**Kirk Rimmer**

Law Offices of Kirk S. Rimmer  
112 J Street, Suite 300  
Sacramento, CA 95814  
916-930-9661  
[Kirk@rimmerlaw.com](mailto:Kirk@rimmerlaw.com)

**Rhonda Rorie**

Law Offices of Jason C. Tatman, APC  
5677 Oberlin Drive, Suite 210  
San Diego, CA 92121  
858-201-3590  
[rr@nationwidereconveyance.com](mailto:rr@nationwidereconveyance.com)

**Cheryl Rouse**

Law Offices of Rouse & Bahlert  
1246 18th Street,  
San Francisco, CA 94107  
415-575-9444  
[Cheryl@rousebahlert.com](mailto:Cheryl@rousebahlert.com)

**Robert Ruelas**

Trustee Corps  
17100 Gillette Avenue,  
Irvine, CA 92614  
949-252-8300  
[rruelas@trusteecorps.com](mailto:rruelas@trusteecorps.com)

**Cindy Sandoval**

Best Alliance  
16133 Ventura Blvd., Suite 700  
Encino, CA 91436  
888-785-9721  
[Cindy@BestAlliance.com](mailto:Cindy@BestAlliance.com)

**Chet Sconyers**

First American Mortgage Solutions  
4795 Regent Blvd.,  
Irving, TX 75063  
817-699-4158  
[ccsconyers@firstam.com](mailto:ccsconyers@firstam.com)

**Steve Scott**

Lawyers Title Company  
16755 Von Karman Ave., Suite 100  
Irvine, CA 92606  
714-458-9250  
[sscott@ltic.com](mailto:sscott@ltic.com)

**Rachel Seropian**

Total Lender Solutions  
10505 Sorrento Valley Road, Suite 125  
San Diego, CA 92121  
866-535-3736  
[rachel@tlsmails.com](mailto:rachel@tlsmails.com)

**Stella Shao**

Placer Foreclosure, Inc.  
12190 Herdal Drive, Suite 9  
Auburn, CA 95603  
530-888-8411  
[stella@placerforeclosure.com](mailto:stella@placerforeclosure.com)

**Rick Sharga**

RealtyTrac  
One Venture Plaza, Suite 300  
Irvine, CA 92618  
949.322.4583  
[rick.sharga@realtytrac.com](mailto:rick.sharga@realtytrac.com)



**Marc Shector**

WFG National Title Insurance Company  
700 N. Brand Blvd., Suite 1100  
Glendale, CA 91203

503-387-3636

[mschector@wfgnationaltitle.com](mailto:mschector@wfgnationaltitle.com)

**Heather Smith**

Ghidotti Berger  
1920 Old Tustin Avenue,  
Santa Ana, CA 92705  
[hsmith@ghidottiberger.com](mailto:hsmith@ghidottiberger.com)

**Michelle Stephens**

Daily Journal Corporation  
915 E. First Street,  
Los Angeles, CA 90012  
213-229-5515  
[michelle\\_stephens@dailyjournal.com](mailto:michelle_stephens@dailyjournal.com)

**Cindi Stewart**

Law Offices of Jason C. Tatman, APC  
5677 Oberlin Drive, Suite 210  
San Diego, CA 92121  
858-252-6972  
[cs@tatmanlegal.com](mailto:cs@tatmanlegal.com)

**J.C. Stock**

The Stox Group  
372 E 720 S,  
Orem, UT 84058  
844-477-7869  
[jc@thestoxgroup.com](mailto:jc@thestoxgroup.com)

**Katie TerBush**

MK Consultants, Inc.  
One West Deer Valley Road, Suite 103  
Phoenix, AZ 85027  
623-434-5560  
[katie@mkconsultantsinc.com](mailto:katie@mkconsultantsinc.com)

**Marsha Townsend**

Mortgage Lender Services, Inc.  
11707 Fair Oaks Blvd., Suite 202  
Fair Oaks, CA 95628

919-962-3453

[mtownsend@mtglenderservices.com](mailto:mtownsend@mtglenderservices.com)

**Edward Treder**

Barrett Daffin Frappier Treder & Weiss, LLP  
3990 E. Concourses Street, Suite 350  
Ontario, CA 91764  
626-371-7001  
[edwardt@bdfgroup.com](mailto:edwardt@bdfgroup.com)

**Esther Valenzuela**

Direct Default Services, LLC  
3670 N. Rancho Drive, Suite 101  
Las Vegas, NV 89130  
702-779-3754  
[evalenzuela@direct-ds.com](mailto:evalenzuela@direct-ds.com)

**Jenny Viall Taylor**

Default Resolution Network  
1101 Investment Blvd., Suite 170  
EL Dorado Hills, CA 95762  
916-636-2086  
[jenny.viall@fnf.com](mailto:jenny.viall@fnf.com)

**Glenn Wechsler**

Law Offices of Glenn H. Wechsler  
1855 Olympic Blvd, Suite 250  
Walnut Creek, CA 94596  
925-274-0200  
[glenn@glennwechsler.com](mailto:glenn@glennwechsler.com)

**Mary Wendel**

MK Consultants, Inc.  
One West Deer Valley Road, Suite 103  
Phoenix, AZ 85027  
623-434-5560  
[mk85027@yahoo.com](mailto:mk85027@yahoo.com)

**Steve Wheeler**

Master Funding Co.  
41911 Fifth St., Suite 202  
Temecula, CA 92590  
951-694-3903  
[mftds2slw@verizon.net](mailto:mftds2slw@verizon.net)

**Mitchell Willet**

S.B.S. Trust Deed Network  
31194 La Baya Drive, Suite 106  
Westlake Village, CA 91362  
818-991-4600  
[mwwillet@sbstrustdeed.com](mailto:mwwillet@sbstrustdeed.com)

**Shannon Winford**

Placer Foreclosure, Inc.  
12190 Herdal Drive, Suite 9  
Auburn, CA 95603  
530-888-8411  
[shannon@placerforeclosure.com](mailto:shannon@placerforeclosure.com)

**Gary Wisham**

Allied Trustee Services  
990 Reserve Drive,, #208  
Roseville, CA 95678  
916-960-0600 x5370  
[gwisham@alliedtrustee.com](mailto:gwisham@alliedtrustee.com)

**Ted Woloczyk**

Puntual Abstract  
3705 Day Street,  
Harvey, LA 70058  
(504) 341-7900  
[twoloszyk@punctualabstract.com](mailto:twoloszyk@punctualabstract.com)



# Default Servicing Economic Forecast

Presented by  
**Rick Sharga**  
RealtyTrac

Sponsored by



***First American***

**MORTGAGE SOLUTIONS**



## **Rick Sharga**

Rick is the Executive Vice President of RealtyTrac, a leading foreclosure search and discovery website used by real estate agents and investors. In this role, Rick is responsible for Marketing and Industry Relations, and is the company's primary spokesperson. Prior to RealtyTrac, Rick was the founder and CEO of CJ Patrick Company, a consulting firm that helped real estate, financial services, and technology companies develop a position of competitive advantage and use it to drive business strategy, marketing, and sales.

One of the country's most frequently-quoted sources on real estate, mortgage and foreclosure trends, Rick has appeared regularly over the past 15 years on CNBC, the CBS Evening News, NBC Nightly News, CNN, ABC World News, FOX, Bloomberg and NPR. Rick is a founding member of the Five Star National Mortgage Servicing Association, a member of the Board of Directors of REOMAC, and was included in the Inman News Inman 100, an annual list of the most influential leaders in real estate in both 2013 and 2014.

An accomplished executive with over 25 years of experience in consumer and B2B marketing, Rick was formerly an Executive Vice President for Carrington Mortgage Holdings, and Chief Marketing Officer of the company's Vylla business unit. Rick was previously the Chief Marketing Officer of Ten-X, the leading online real estate marketplace, where he started in July of 2013 as EVP of the company's Auction.com business unit. He can be reached at [rick.sharga@realtytrac.com](mailto:rick.sharga@realtytrac.com).





## Real Estate in the Post-Pandemic Market

United Trustees Association  
November 8, 2021

### What We'll Cover Today

Real Estate in the  
Post-Pandemic  
Market

What's happening in the U.S. economy

The U.S. Housing Market

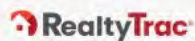
The Commercial Market

Forbearance & the Foreclosure Outlook

Closing Thoughts

# RealtyTrac® – An ATTOM Company

PROPERTY														LISTINGS			
At	Hw											Av	Al				
Assessor Tax	HOA Fees	OWNERSHIP										VALUATION			AVM	Active Listings	
Ad	Ld	On	MORTGAGE/TRANSACTIONS										A	Mv	Sl		
Addresses	Legal Description	Owner Names											Assessor Tax Values	Assessor Market Values	Sold Listings		
Zo	Pc	Ma	Rd	Tr											He	Cs	Ph
Zoning Use	Property Characteristics	Tax Mailing Address	Recorder Deeds	Transfers	FORECLOSURE										Home Equity	Comparable Sales	Photos
If	Ef	Ex	Ln	Bd	S	Df	Re	Fa	Pb	Sa	Sb	Dm	Hf				
Interior Features	Exterior Features	Exemptions	Loans	Borrower Details	Seller Details	Default Notices	Recording Dates	Foreclosure Amounts	Parcel Boundaries	School Attendance Areas	School District Boundaries	Days on Market	Home Features				
Hs	Ls	Oc	Mh	Lp	Sn	Au	Ob	Td	Nb	Rs	Cb	Oh	Ao				
House Size	Lot Size	Occupancy	Mortgage History	Loan Positions	Sales Trends	Auction Dates	Opening Bids	Trustee Details	Neighborhood Boundaries	Residential Subdivisions	Census Boundaries	Open House	Agent/Office				
Ge	Bp	Vd	iB	Sp	Ep	Fl	Sv	Ba	Po	Ca	Fz	Da	Pr				
Geocodes	Building Permits	Vesting Details	iBuyer Trends	Sales Price	Estimated Sales Price	Foreclosing Lenders	Service Details	Bank Owned (BEO)	Postal Boundaries	Canadian Boundaries	Flood Zones	Dates	Prices				
Sd	Sc	Wi	Ti	Ha	Hu	Fr	Dg	Cr	Un	Tn							
School Districts (K-12)	School Profiles (K-12)	Wind Index	Tornado Index	Hail Index	Hurricane Index	Flood Risk	Demographics	Crime	Homelessness Rate	Homeless Population							
Sr	St	Ra	Ap	Eq	Wr	DI	Tt	Pi	Cl								
School Ratings & Reviews	School Test Scores	Radon	Air Pollution	Earthquake Risk	Weather Risk	Candlestick Drug Labs	Transit Routes	Points of Interest	Climate								
SCHOOLS			HAZARD			NEIGHBORHOOD											



Copyright © 2020 RealtyTrac®. All rights reserved.

[ CONFIDENTIAL ]

3

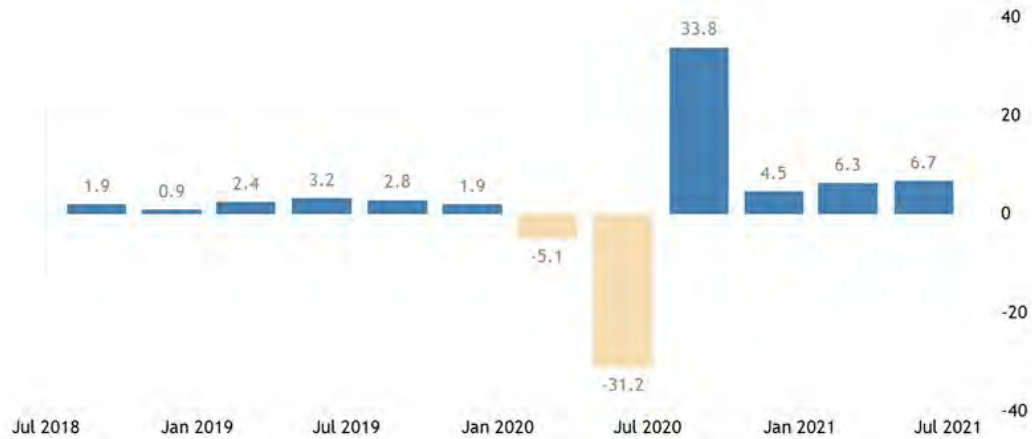


Copyright © 2021 RealtyTrac®. All rights reserved.

[ CONFIDENTIAL ]

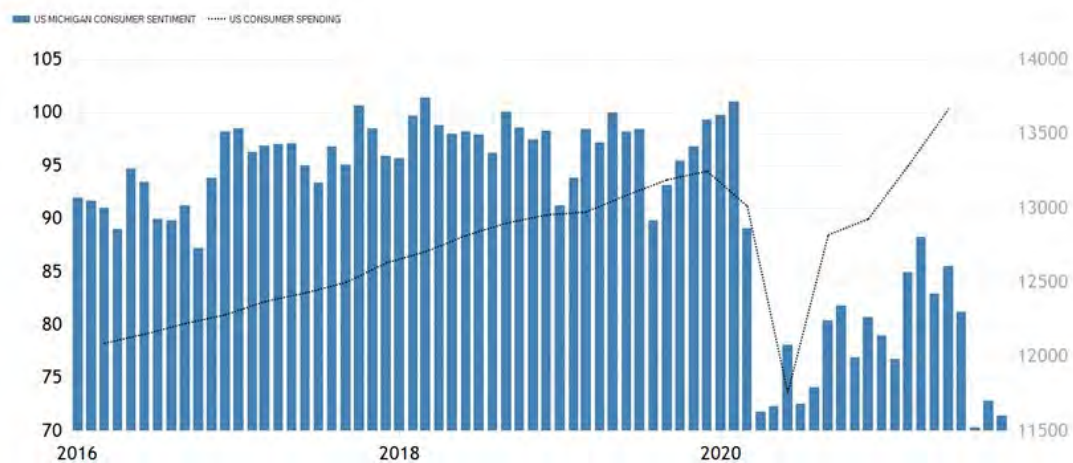
4

## GDP: Record Drop/Record Rebound



SOURCE: TRADINGECONOMICS.COM | U.S. BUREAU OF ECONOMIC ANALYSIS

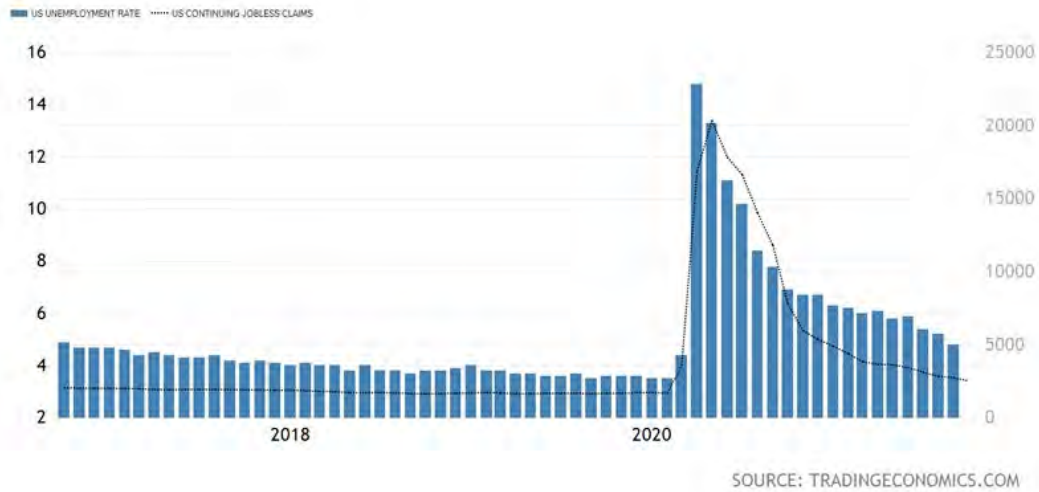
## Consumer Confidence, Spending Volatile



SOURCE: TRADINGECONOMICS.COM



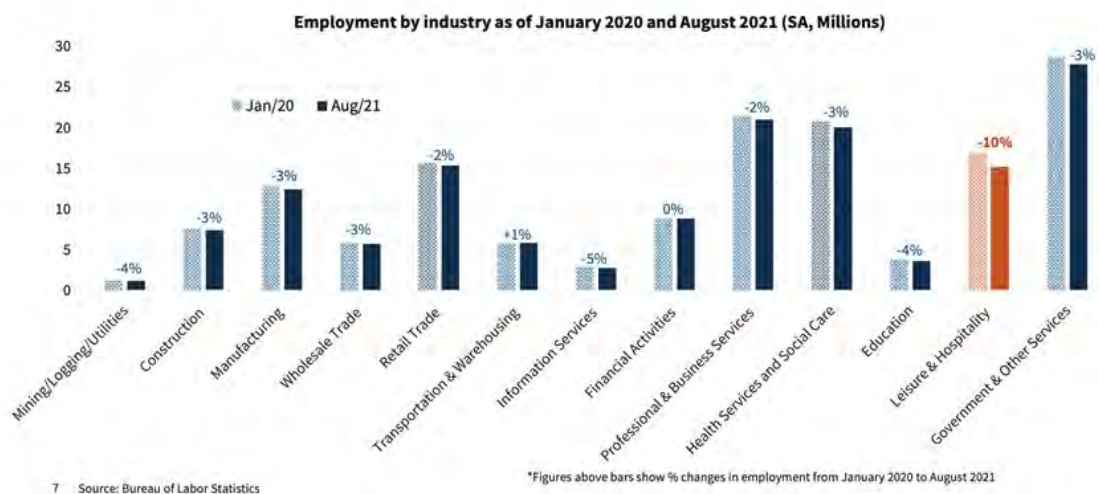
# Unemployment Soared, Then Slowed



# Service Industry Jobs Slowest to Recover

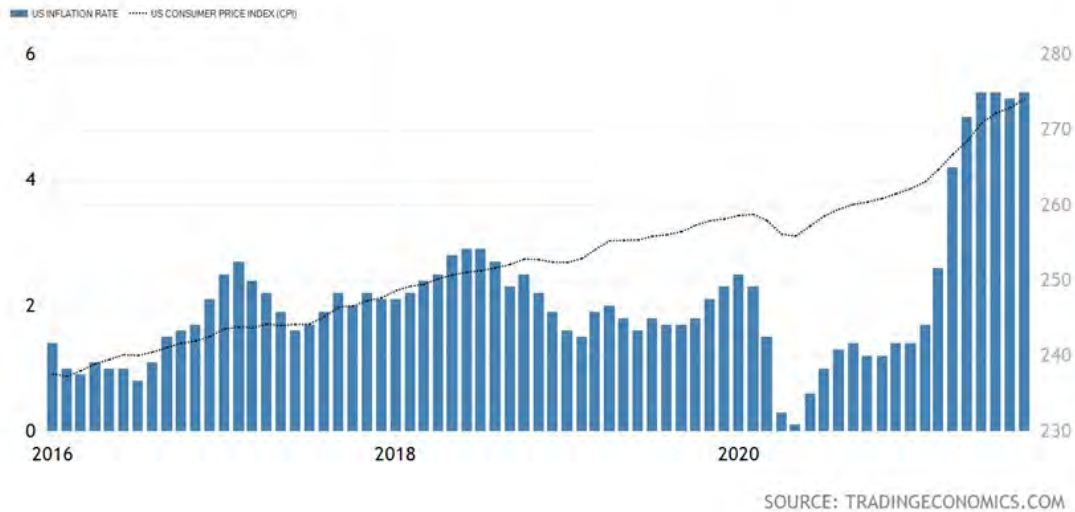
## Total employment by industry

Leisure/hospitality remains well below the levels seen prior to the pandemic





# Inflation & CPI Continue to Rise



# Driven in Part by Supply Chain Disruption

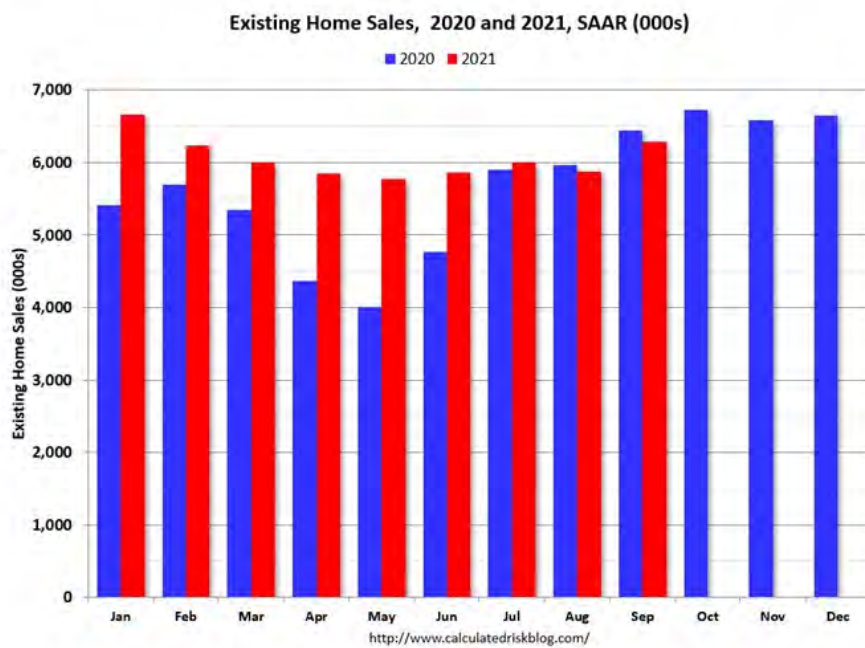
## Firms will need to restock as inventories remain low

Supply chain constraints and backlogs continue to plague firms' restocking efforts





## 2021 Existing Home Sales Still Strong

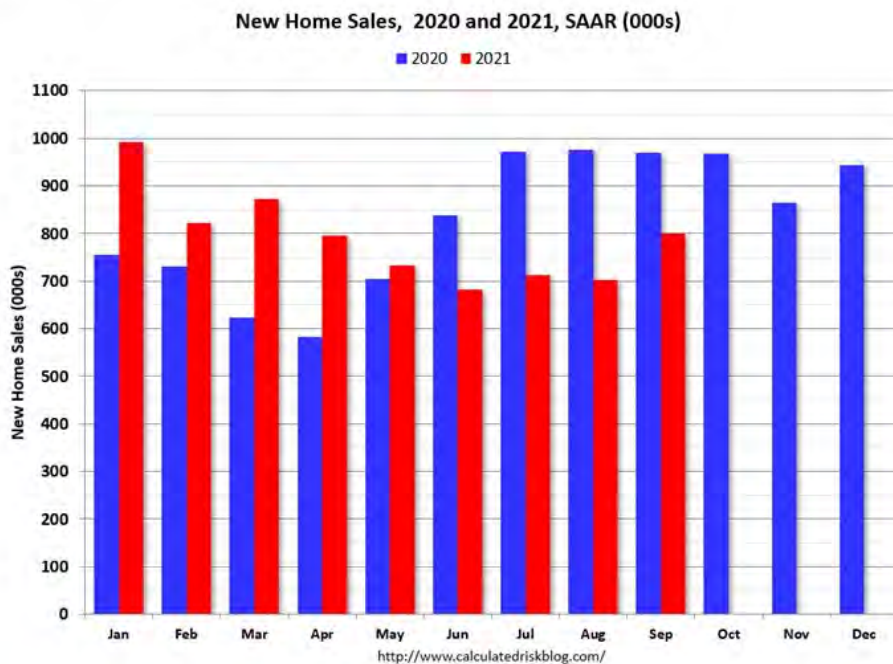




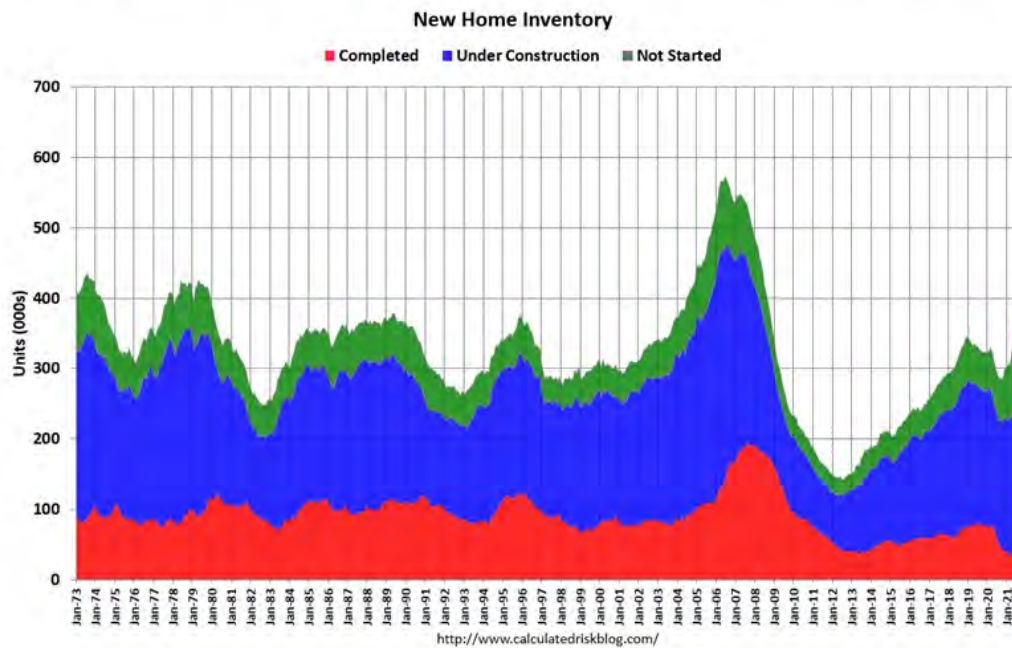
# Despite Historically Low Inventory Levels



# 2021 New Home Sales Picking Up



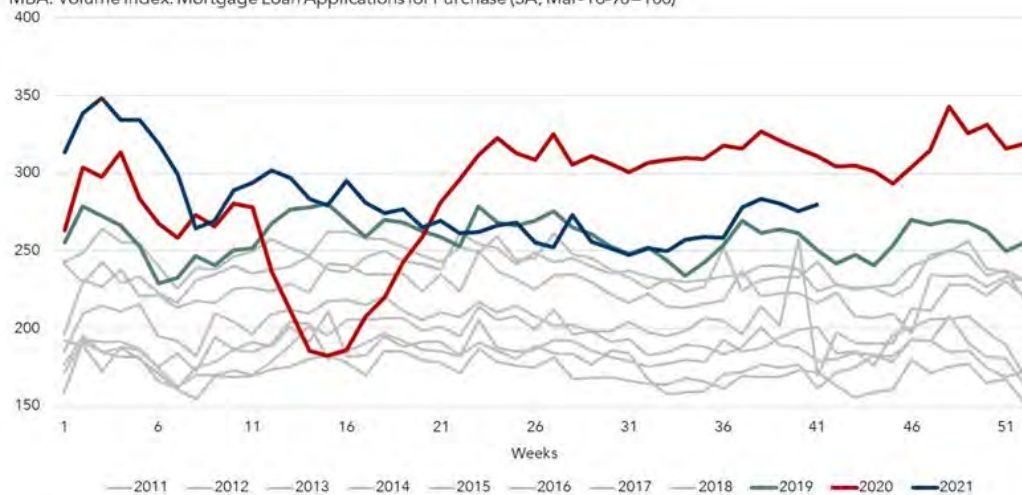
## But Slowed by Inventory, Supply Chain Issues



## Demand Continues to Be Strong...

### Purchase Applications Increase 1.5%

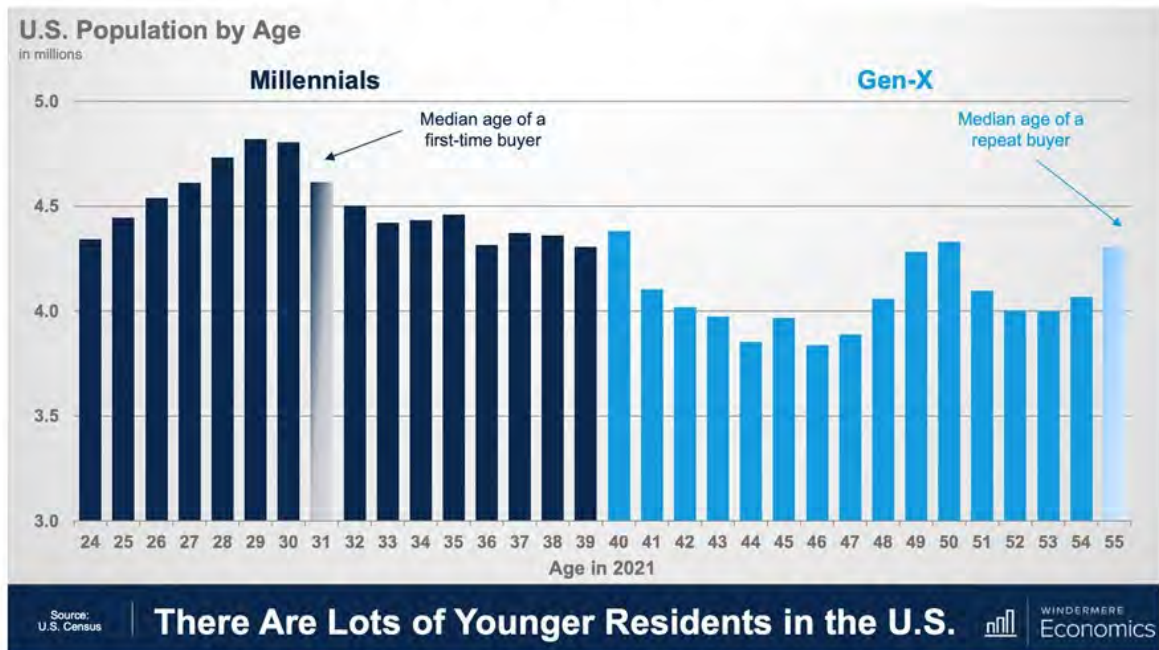
MBA: Volume Index: Mortgage Loan Applications for Purchase (SA, Mar-16-90=100)



Source: MBA, Oct. 2021

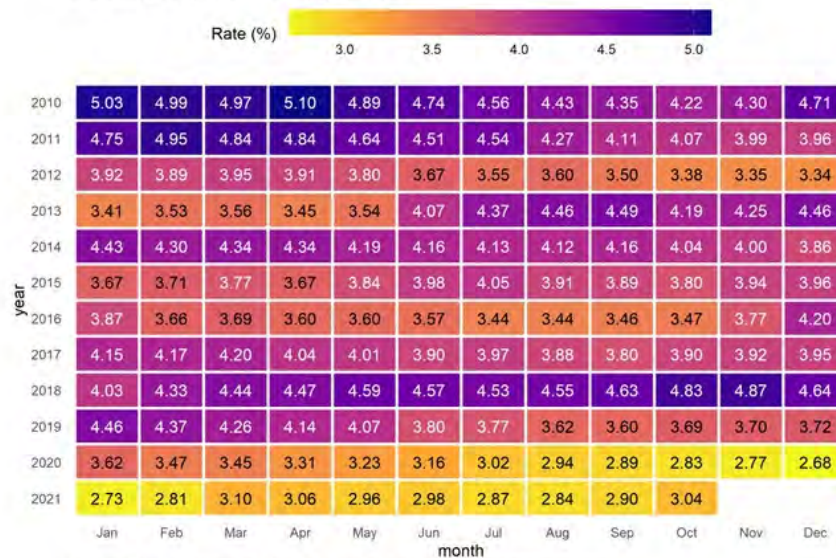


## Driven Mostly by Demographics...

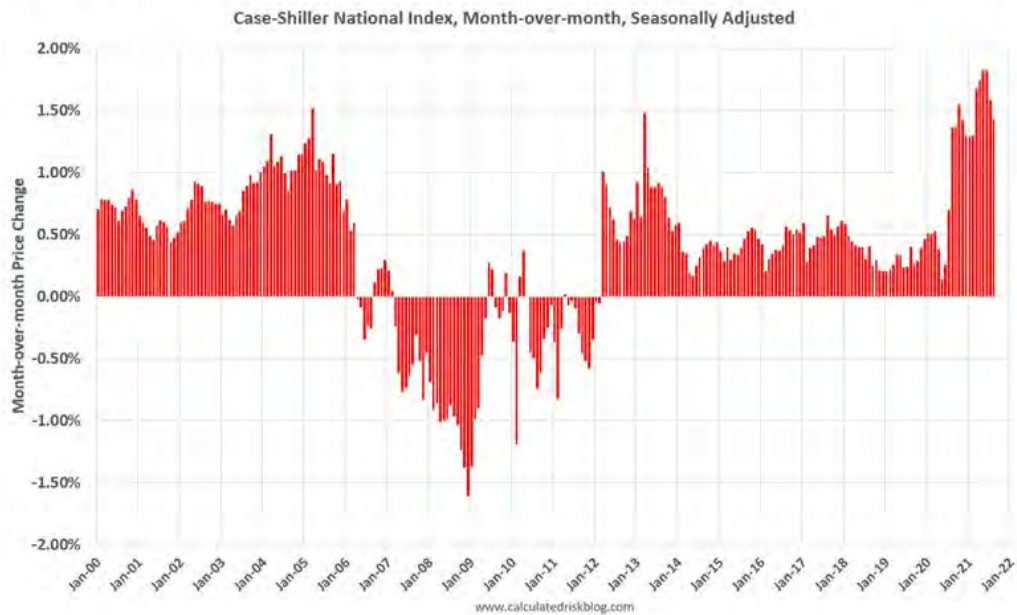


## And by Historically Low Interest Rates

**Monthly average mortgage rates by year**  
U.S. average 30-year fixed mortgage rate (%)



## Low Inventory + High Demand = Higher Prices



## Prices Also Driving Equity to All-Time Highs

U.S. homeowner equity surges to nearly \$23 trillion as the value of the housing stock tops \$33 trillion



@jenkier Source: Board of Governors of the Federal Reserve System (US)  
Financial Accounts of the United States Table B.101 Balance Sheet of Households and Nonprofit Organizations





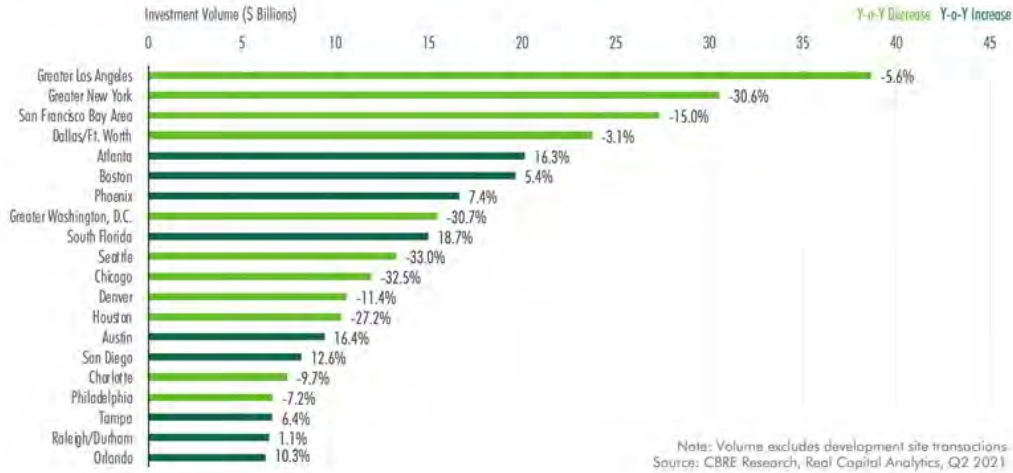
## CRE Market Rebounds Strongly in Q2

### HISTORICAL COMMERCIAL REAL ESTATE INVESTMENT VOLUME



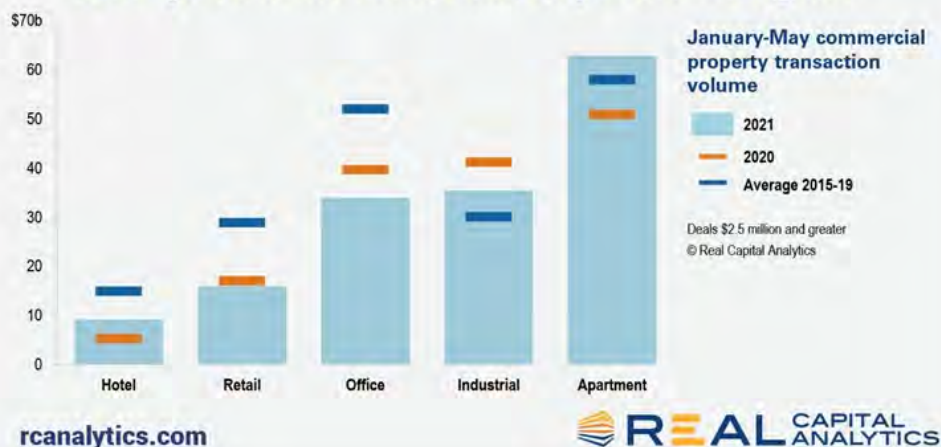
## But Major Markets Still Reeling

### TOP 20 MARKETS FOR TOTAL INVESTMENT VOLUME – YEAR ENDING Q2 2021



## Sales Recovery Varies Wildly by Sector

### US Apartment Deal Activity Drives Higher





## Price Growth Also Varies from Sector-to-Sector

### Apartment Leads US Property Price Growth

RCA Commercial  
Property Price Indices

Year-over-year change,  
June 2021 results

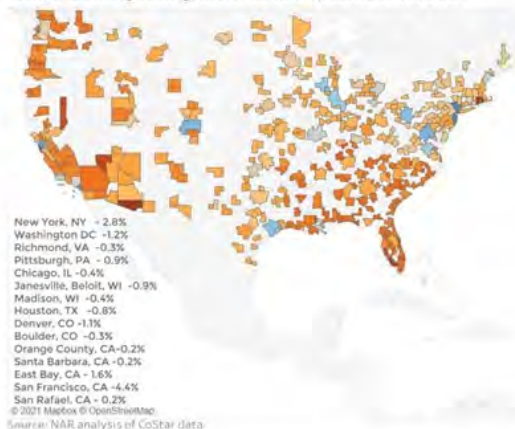


RCA CPPI™

REAL CAPITAL ANALYTICS

## Office Sector Struggling to Recover

Office asking rent growth as of September 19, 2021



12-Month Net Absorption of Office Space in  
Million Square Feet as of 2021 Q3 (September 19,  
2021)

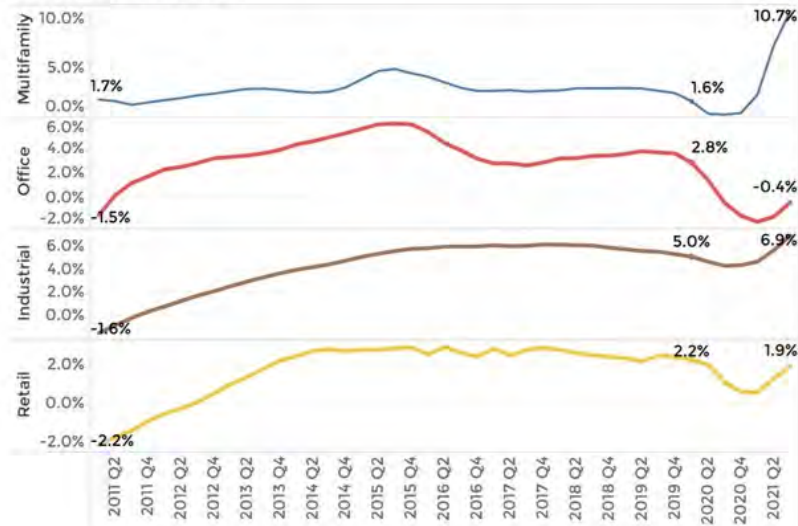


Source: NAR analysis of CoStar data



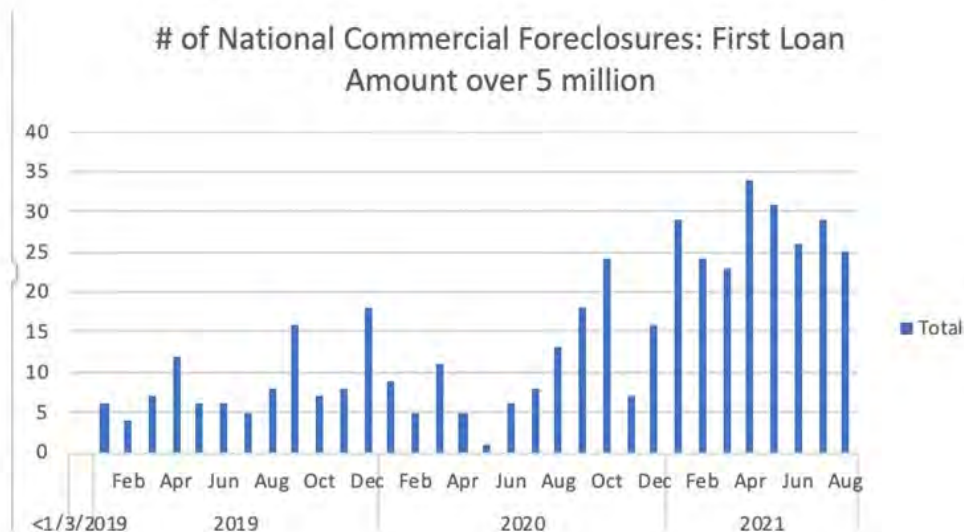
# Office Sector Lags Behind in Rent Growth

Double-digit Rent Growth for Multifamily Properties as of September 19, 2021

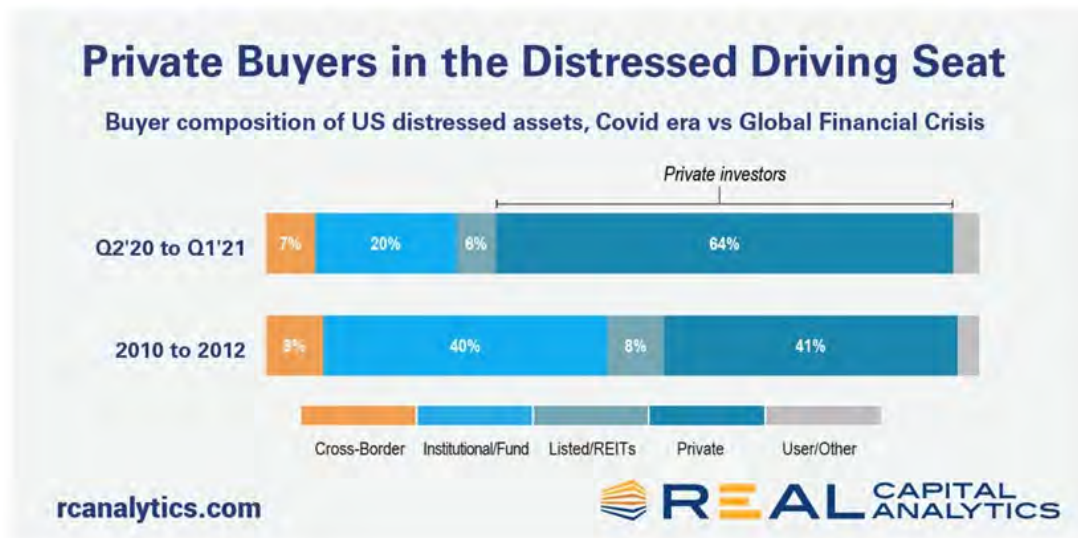


Source of data: NAR analysis of CoStar data

# Foreclosure Activity Higher Than Usual

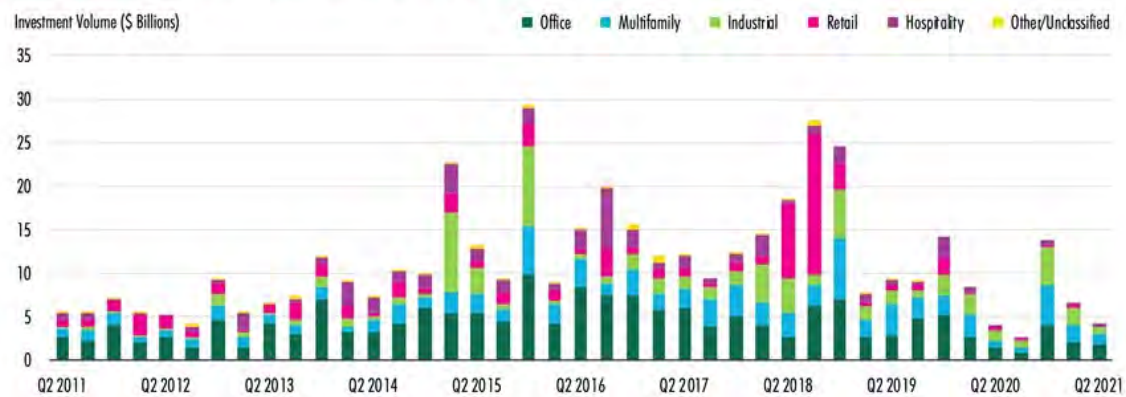


## Lots of Capital Waiting for Distressed Assets



## But Foreign Investment Still Very Weak

### CROSS-BORDER INVESTMENT BY PROPERTY TYPE



Source: CBRE Research, Real Capital Analytics, Q2 2021.



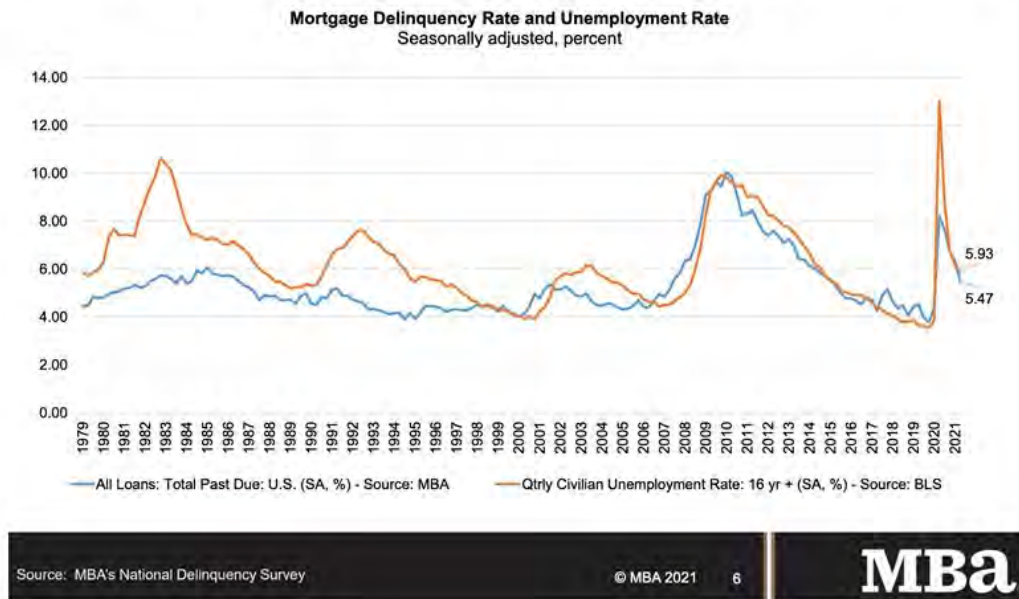
# State of the CRE Market Today

- Economic recovery has outpaced expectations –
  - Possible that all 22 million jobs lost in the recession will be recovered by 2022
  - BUT – the service industries lag behind, threatening Retail and Hotel sectors
  - Delta variant may cause economic as well as physical distress
- CRE Market appears to have almost fully recovered in terms of sales volume, occupancy, vacancy and pricing
  - Industrial & Multifamily sectors are clear post-pandemic winners
  - Retail recovery strongest in centers, possibly driven by creative re-use
  - Hotel recovery probably mostly driven by opportunistic buying
  - Office market in flux – a tale of two (different sized) cities
  - Construction overall still below pre-pandemic levels
  - High foreclosure volume unlikely, but distressed sales may pick up

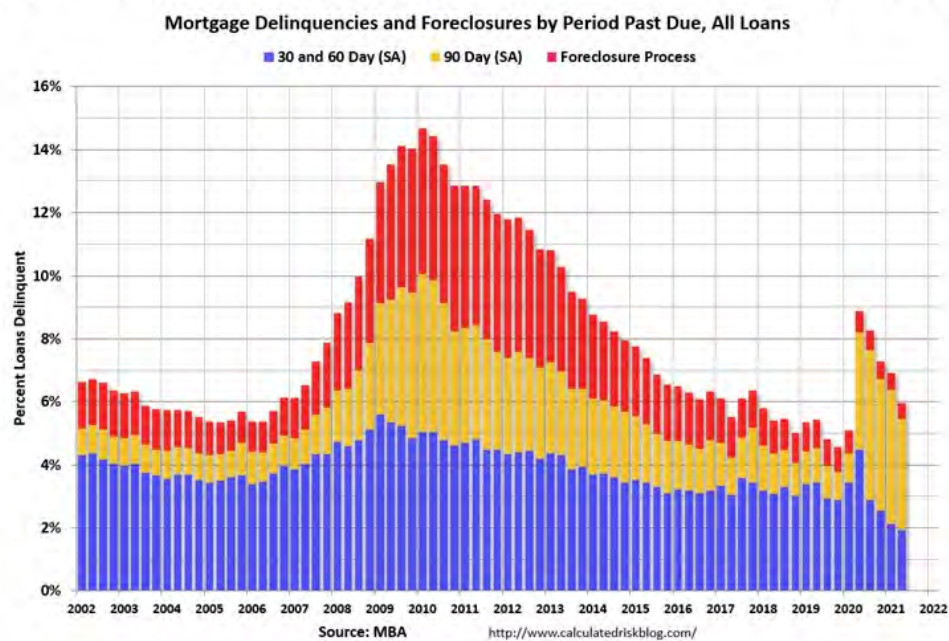


## Foreclosure Outlook

# Delinquencies Follow Unemployment Rates

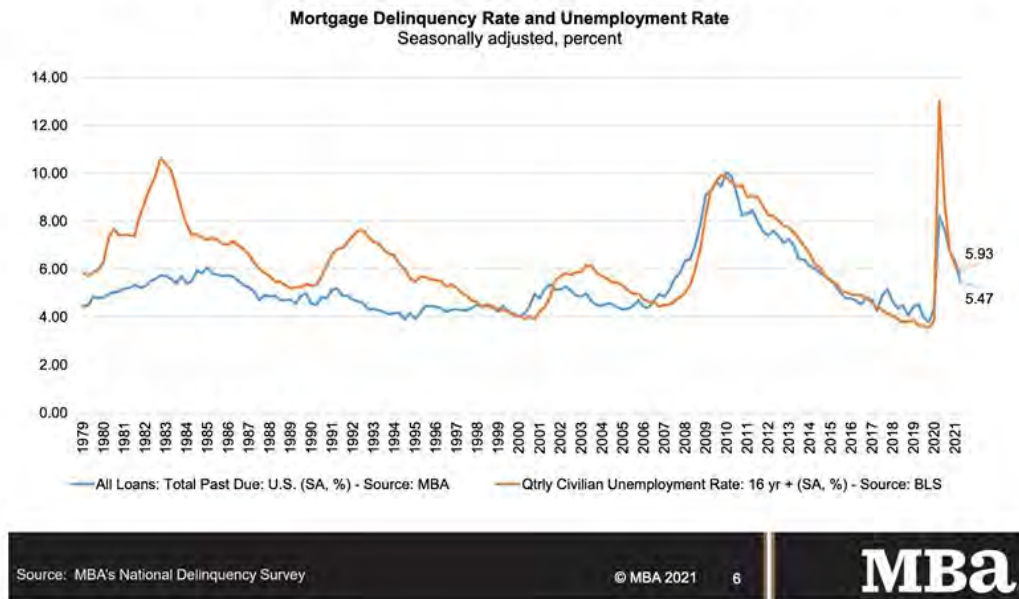


# Delinquencies Fall for 10 Consecutive Months

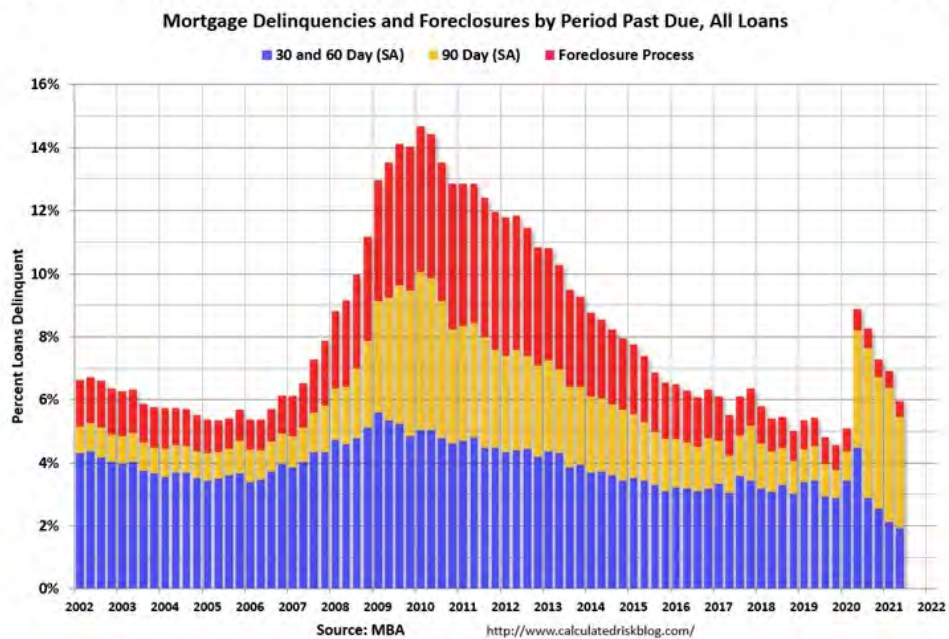




# Delinquencies Follow Unemployment Rates

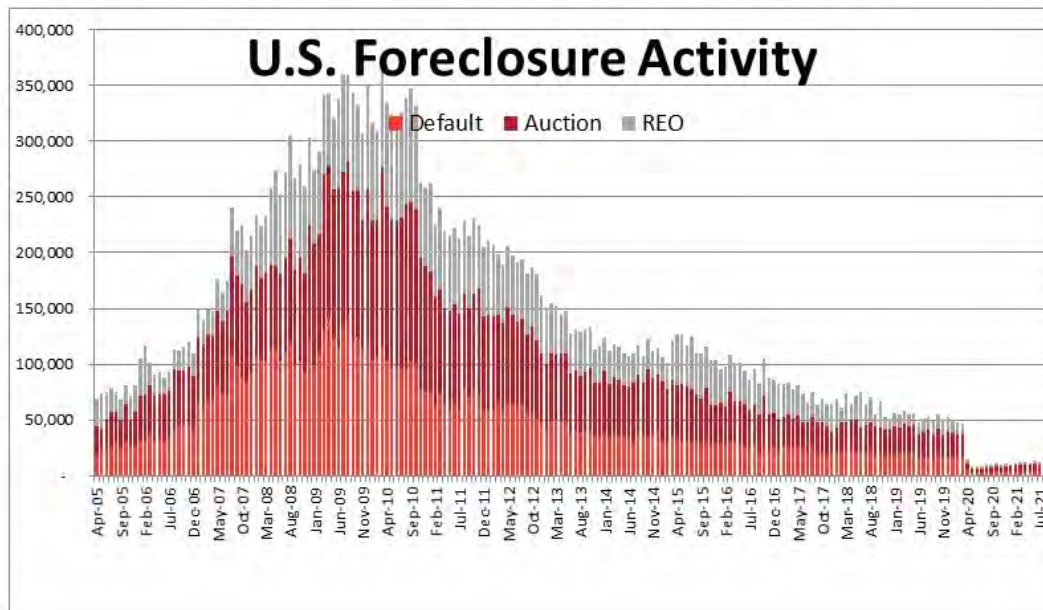


# Delinquencies Fall for 10 Consecutive Months

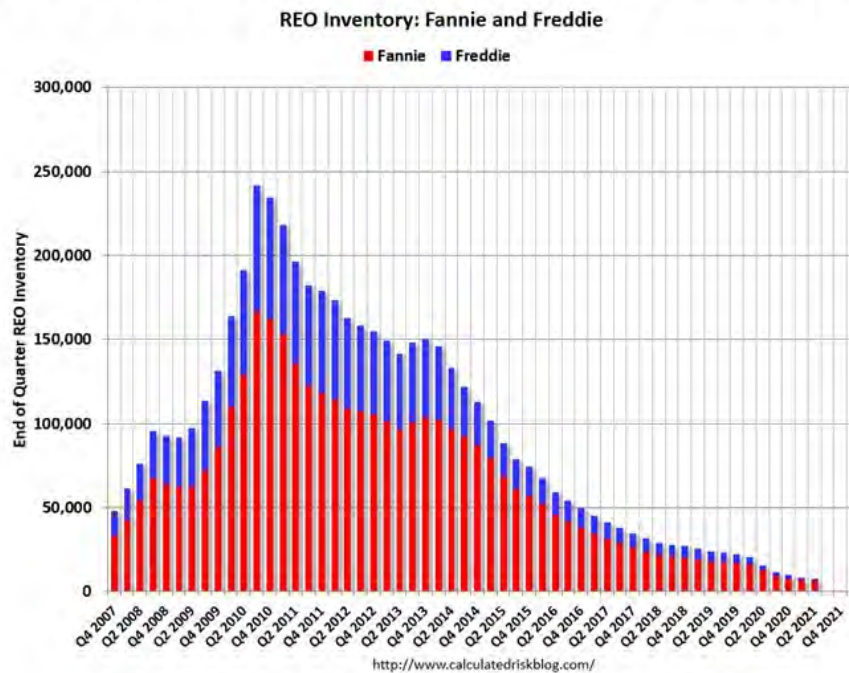




## Foreclosure Activity Historically Low

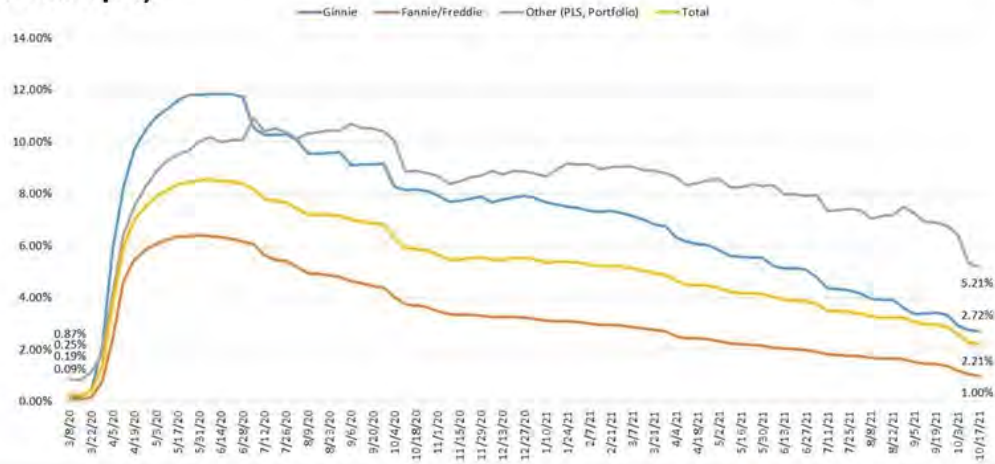


## And Foreclosure Inventory Non-Existent



# Delinquencies Inflated by Forbearance Program

% of Servicing Portfolio Volume in Forbearance by Investor Type over Time (Full Sample)



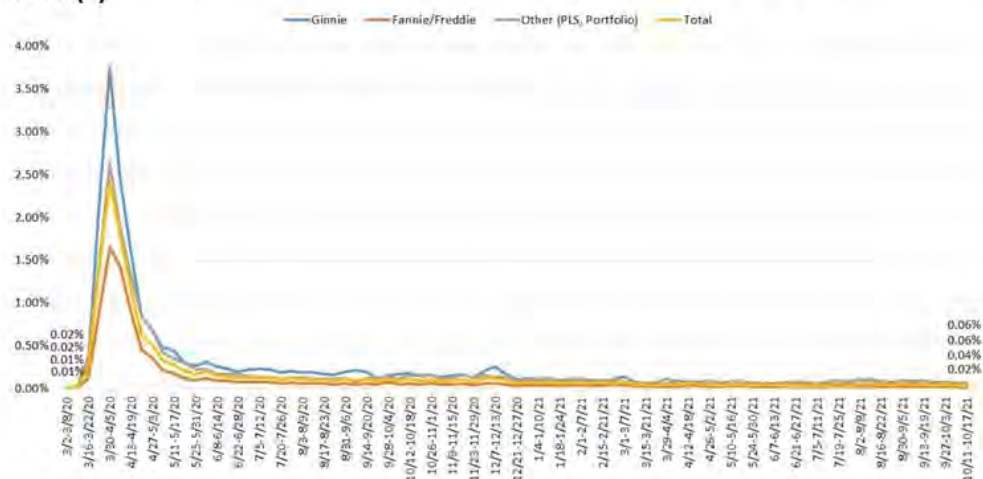
Source: MBA's Weekly Forbearance and Call Volume Survey, as of 10/17/21  
© 2021 Mortgage Bankers Association (MBA). All Rights Reserved.

11

**MBA**

# Forbearance Requests Continue to Decline

Weekly Borrower Forbearance Requests and Re-Entries as % of Servicing Volume (#)



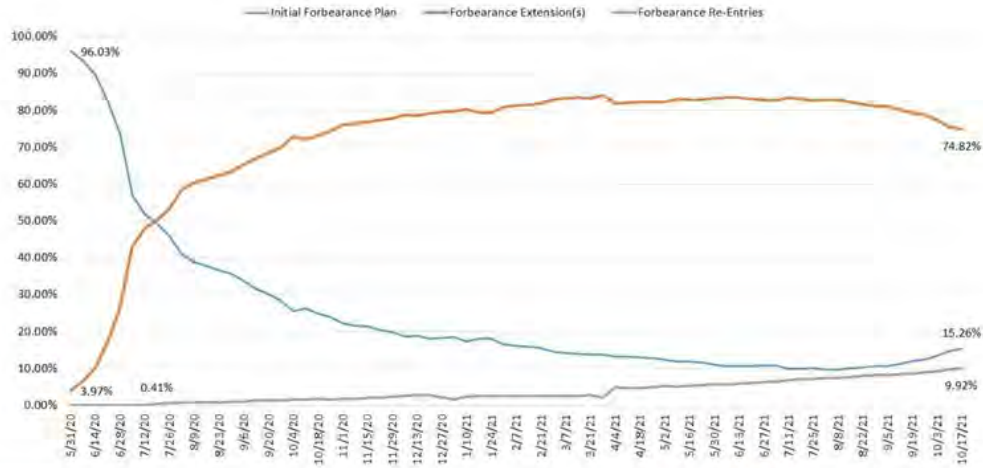
Source: MBA's Weekly Forbearance and Call Volume Survey, as of 10/17/21  
© 2021 Mortgage Bankers Association (MBA). All Rights Reserved.

19

**MBA**

# Most Borrowers on Extension & Re-Entry

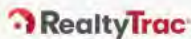
% Loans in Forbearance by Stage



Source: MBA's Weekly Forbearance and Call Volume Survey, as of 10/17/21  
© 2021 Mortgage Bankers Association (MBA). All Rights Reserved.

21

**MBA**



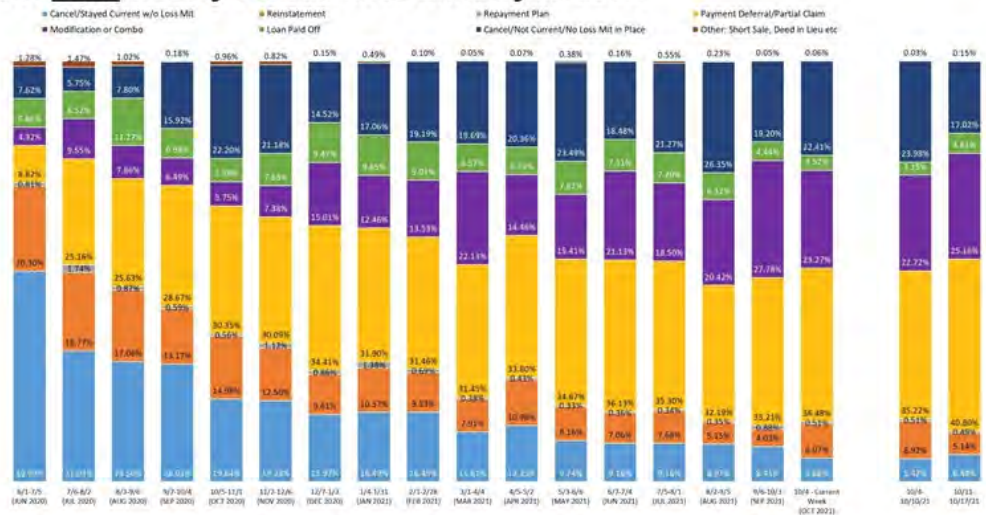
Copyright © 2021 RealtyTrac®. All rights reserved.

[ CONFIDENTIAL ]

39

# Borrowers Exit in a Variety of Ways

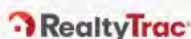
% of Total Weekly Forbearance Exits by Reason



Source: MBA's Weekly Forbearance and Call Volume Survey, as of 10/17/21  
© 2021 Mortgage Bankers Association (MBA). All Rights Reserved.

26

**MBA**



Copyright © 2021 RealtyTrac®. All rights reserved.

[ CONFIDENTIAL ]

40



# But 84% of Exits Have Been Successful

% of Cumulative Forbearance Exits by Reason, at Time of Forbearance Exit



Source: MBA's Weekly Forbearance and Call Volume Survey, as of 10/17/21  
© 2021 Mortgage Bankers Association (MBA). All Rights Reserved.

31

**MBA**

## Potential Problem Area: The FHA Portfolio

10 Most Threatened Metros Based on FHA Delinquency Rates through 7.31.21					
MSA	Active Portfolio	Total Delinquent Loans	% Total Delinquent Loans	% Seriously Delinquent Loans	FHA Share of metro lending in 2019 (counts)
Total US	7,562,506	1,038,675	13.7%	9.6%	14.7%
10 Most Threatened Metros	1,316,602	213,875	16.2%	11.8%	17.6%
Atlanta-Sandy Springs-Alpharetta, GA	239,031	38,549	16.1%	11.6%	21.0%
Houston-The Woodlands-Sugar Land, TX	213,139	36,927	17.3%	12.5%	19.3%
Chicago-Naperville-Evanston, IL	172,488	30,402	17.6%	13.2%	14.2%
Washington-Arlington-Alexandria, DC-VA-MD-WV	123,503	21,100	17.1%	13.0%	13.7%
Dallas-Plano-Irving, TX	139,914	20,387	14.6%	10.1%	14.8%
Baltimore-Columbia-Towson, MD	101,915	16,587	16.3%	11.8%	19.4%
Riverside-San Bernardino-Ontario, CA	120,376	15,957	13.3%	9.5%	20.6%
Philadelphia, PA	70,667	11,727	16.6%	11.2%	17.6%
Orlando-Kissimmee-Sanford, FL	82,054	11,232	13.7%	10.2%	21.6%
Nassau County-Suffolk County, NY	53,515	11,007	20.6%	16.3%	15.4%
Note: Seriously delinquent (SD) loans are reported as 90 days or more delinquent					
Ranking methodology: (1) % total delq. >16%, or SD >10%, and Share >12.5% (counts) OR (2) Share >20% (counts) and total delq. >12%					
Sources: Portfolio and delinquency data from FHA Neighborhood Watch <a href="https://entp.hud.gov/sfnw/public/">https://entp.hud.gov/sfnw/public/</a> and 2019 FHA mortgage share data from HMDA 2019.					

# Foreclosure Levels Will *Not* Rise Exponentially

1. Loan quality was excellent heading into the pandemic
2. Economic recovery is outpacing expectations
3. Government & industry intervention is providing borrowers with a lot of time, and achievable reinstatement options
  - Lenders are proactively working on short sales today
4. Record homeowner equity gives distressed homeowners a cushion
  - Majority of distressed properties will likely be sold during the early stages of the foreclosure process
5. Drastic supply/demand imbalance provides viable non-foreclosure alternative for distressed homeowners and lenders
  - Highly unlikely that we'll see REO levels balloon this cycle

## How Many Foreclosures?

- 250,000 loans were in foreclosure prior to the pandemic – most of them were still outstanding on 7/31
- 1.2 million loans in forbearance, with an 84% success rate at exit, meaning that about 192,000 are most vulnerable
- Rate entering the pandemic was .6% of loans in foreclosure: 300,000
- If **ALL** of those loans defaulted, there would be roughly 742,000 loans in foreclosure, or < 1.5% of total
  - Great Recession foreclosure rates peaked at 4%





## Closing Thoughts

- Housing market should continue to be strong throughout 2022, driven by demographics, low mortgage rates, and pandemic-accelerated trends
- Home prices will continue to rise until builders ramp up and existing homeowners are comfortable listing their properties
- Default activity will increase, but is unlikely to reach the levels seen during the last cycle; commercial markets could see higher than usual default activity
- FHA loan portfolio most vulnerable to potential default, which could have an impact on local markets with high concentration of FHA loans
- Segments of the commercial market are vulnerable due to the focused nature of the recession
- Markets with high concentration of single-family rental properties could still be at risk due to government eviction bans



**Thank You!**

**Rick Sharga**  
**Executive Vice President**  
**[rick.sharga@realtytrac.com](mailto:rick.sharga@realtytrac.com)**  
**949-322-4583**  
** @ricksharga**



# New Rules and Moratoriums! Wait ... More Changes! Are You Ready?

Presented by

Edward Treder, Esq.

Barrett Daffin Frappier Treder & Weiss (moderator)

Todd Barton Esq.

Dep. Gen Counsel, Fannie Mae

Sasha Cohen, Esq.

First VP and Corporate Counsel, Default Administration Community Loan Servicing

Dean Meyer

Director, Non-performing Loan Management, Freddie Mac

Sponsored by





**Edward Treder, Esq.**

Edward A. Treder is the managing partner of BARRETT DAFFIN FRAPPIER TREDER & WEISS, LLP located in Diamond Bar, California and was formerly a Senior Attorney at the Law Offices of ROBERT E. WEISS INCORPORATED located in Covina, California. His law firm is affiliated with BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP with offices in Addison, Texas, with BARRETT DAFFIN FRAPPIER LEVINE & BLOCK, LLP in Atlanta, Georgia and with NDeX WEST, LLC in Addison, Texas.

Mr. Treder earned a Bachelor of Science degree in Business Administration, cum laude, with a major in Business Management from California State Polytechnic University, Pomona in June 1981 and a Juris Doctor degree from Pepperdine University School of Law in May 1984.

He has been admitted to the California State Bar since December 1984 and is also admitted to the United States District and Bankruptcy Courts for the Central, Southern, Northern and Eastern Districts of California, the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court. He practices law at the trial and appellate court levels in every state and federal court throughout California.

His statewide practice is devoted exclusively to representing mortgage lenders, loan servicers and foreclosure trustees in bankruptcy matters, post-foreclosure evictions, mortgage and foreclosure-related civil litigation defense, title curative actions, asset-forfeiture proceedings, judicial foreclosure and receivership cases, legislative and administrative proceedings, surplus funds distribution and recovery and other legal matters involving mortgage banking and default servicing. His affiliated firms handle non-judicial foreclosures in Texas, California, Nevada, Arizona and Georgia.

He has lectured on topics relevant to his practice areas before industry organizations and bar associations and is a member of the Real Property Law Section of the State Bar of California, the Los Angeles County Bar Association, the United Trustees Association, the California Mortgage Bankers Association, the American Legal & Financial Network, the American Bankruptcy Institute and the Inland Empire Bankruptcy Forum. His firm is a member of the Legal League 100, and his Texas affiliate is a founding member of the USFN. His firm and his Texas affiliate are also Members of the Fannie Mae Retained Attorney Network.





### **Todd Barton**

Todd Barton is Fannie Mae's Vice President and Deputy General Counsel. Barton is responsible for overseeing legal support for counterparty issues, foreclosures, bankruptcies, real estate owned, and Fannie Mae's mortgage default counsel program. He also provides support on Texas Home Equity Loans. Before joining Fannie Mae in 2003, Barton was a Partner with the Dallas law firm of Carrington, Coleman, Sloman, and Blumenthal, LLP. His 14-year practice with the firm included complex commercial litigation and bankruptcy matters.



### **Sasha Cohen, Esq.**

Sasha Cohen joined Community in 2010 as a Corporate Counsel in the litigation team. Sasha Cohen possess over 17 years of legal experience in Real Estate and Corporate Law and received her Juris Doctorate from the University Of Miami School Of Law. She began her career representing developers and specialized in condo conversions. She then joined a large firm and was in the practice group representing creditors and servicers. In 2009, she was named a Rising Star by Super Lawyers. She joined Community in 2010 initially as part of the Corporate Counsel team managing litigation. In 2012 she transitioned to the Default Administration team to develop the attorney oversight network, witness/mediation team, and other related support teams and ultimately her responsibilities grew to managing the full servicing foreclosure team along with all the support staff. In 2018, she was chosen as a Top 25 women in Law Honoree by DS News. Currently, she manages the Default Administration Department. She has become a frequent speaker at industry conferences and has spoken at 5 Star, Legal League, ALFN and USFN conferences.

**Dean Meyer**

Dean Meyer is responsible for business management of Freddie Mac's Non-routine litigation. This includes representing the company in litigated matters where Freddie Mac is a named party. He is also responsible for oversight of Freddie Mac's foreclosure/bankruptcy loan inventory and the servicers managing these loans. This includes foreclosure timeline management and compensatory fees management for nonperforming loans.

Prior to joining the Nonperforming Loan Management team, Dean served as the Director of Servicing Operations Policy and was responsible for developing and publishing of all servicing policies for Freddie Mac's Single Family Seller/Servicer Guide.

Dean has been employed with Freddie Mac for over 18 years and has over 29 years of experience in the mortgage business. Prior to Freddie Mac, he worked in various management positions in nonperforming loan management for several large and small mortgage companies. Dean has also worked on contracts with FHA managing servicing operations audits and claim reviews.



## New Rules and Moratoriums! Wait...More Changes! Are You Ready?

Post-Moratorium Servicing and Default Management Issues,  
including CFPB's 2021 Mortgage Servicing Rule

46<sup>th</sup> Annual UTA Education Conference & Trade Show | Reno, Nevada  
November 8, 2021 10:15-11:30 A.M.



Post-Moratorium Servicing and Default Management Issues,  
including CFPB's 2021 Mortgage Servicing Rule

10:15-11:30 A.M. PDT | Tuesday, November 8, 2021 | Reno, Nevada



MODERATOR

**EDWARD TREDER**

Managing Partner,  
Barrett Daffin Frappier  
Treder & Weiss, LLP



PANELIST

**TODD BARTON**

Deputy General Counsel,  
Fannie Mae



PANELIST

**DEAN MEYER**

Director of Non-Performing  
Loan Management,  
Freddie Mac



PANELIST

**SASHA COHEN**

First Vice President  
Corporate Counsel  
Default Administration,  
Community Loan Servicing

## Default Servicing During the Pandemic

- ▶ National COVID-19 health emergency declared as of March 1, 2020
- ▶ Coronavirus Aid, Relief, and Economic Security (CARES) Act (March 27, 2020)
  - ▶ Foreclosure relief for all “federally-backed” home loans
    - ▶ Fannie Mae, Freddie Mac, FHA, VA, USDA
    - ▶ No foreclosure action (moratorium) until May 17, 2020 (extended to July 31, 2021)
  - ▶ Forbearances “up to” 180 days + additional 180 days
    - ▶ GSE, FHA, VA loans - up to two additional three-month extensions (18 mo. Max)
    - ▶ Self-attestation of COVID-19 hardship; no proof required
    - ▶ Payment deferral for eligible borrowers; no lump sum cure required
    - ▶ No late charges or penalties
  - ▶ Delinquencies surged while foreclosures plummeted

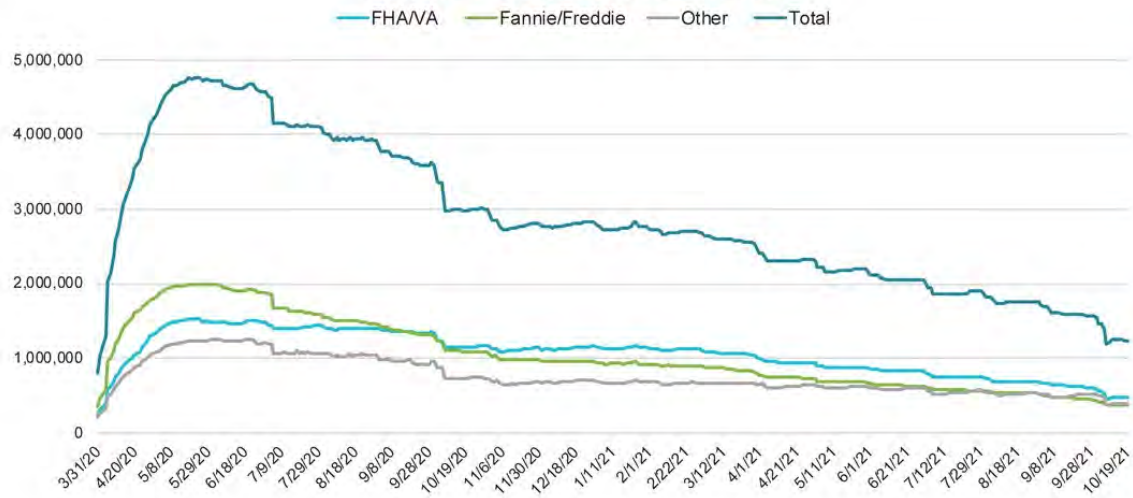


## Forbearance Activity

- ▶ 7.7 million borrowers have been in pandemic-related forbearance plans
- ▶ Total active forbearance plans peaked @ 4.75 million in May 2020
  - ▶ Fannie, Freddie peaked at 2 million active plans
  - ▶ FHA, VA peaked at 1.5 million active plans
  - ▶ Private label, others peaked at 1 million active plans
- ▶ Kept families in their homes, created short-term liquidity
- ▶ 84% have exited forbearance; most re-performing or have paid off loan



## ACTIVE FORBEARANCE PLANS

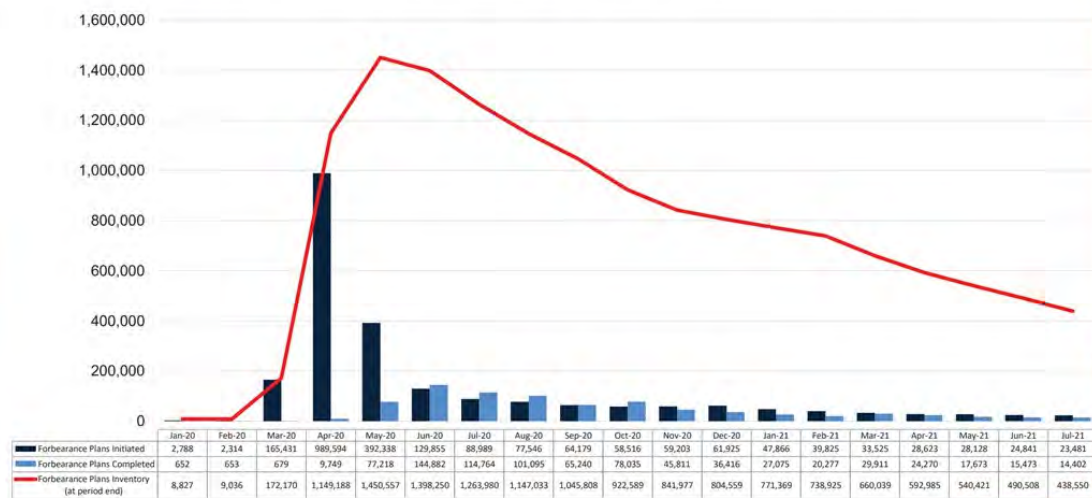


## FHFA Foreclosure Prevention and Refinance Report

July 2021

### Forbearance Plans

The total number of loans in forbearance plans continued to trend downward since its peak in May 2020 as initiated forbearance plans decreased, but remained elevated through July 2021 compared with pre-pandemic levels. As of July 31, 2021, there were 438,550 loans in forbearance, representing approximately 1.5% of the Enterprises single-family conventional book of business, down from 490,508 or 1.6% at the end of June.



## CFPB Amends RESPA Regulation X

- ▶ Existing rules prescribe early intervention, live contact, & loss mitigation procedures; prohibit first legal during “pre-foreclosure review period”
  - ▶ Loan must be > 120 days delinquent (SDQ) with limited exceptions.
- ▶ Adds: “special pre-foreclosure review period” and “temporary safeguards” that bar foreclosure referrals through 12/31/21 with limited exceptions
  - ▶ Requires additional borrower outreach, live contact, loss mit review
- ▶ Temporary safeguards do not apply when:
  - ▶ Loan was >120 days delinquent before 03/01/20 (pre-pandemic)
  - ▶ SOL will expire on or after 01/01/22 (judicial states)
  - ▶ First legal occurs after 01/01/22 (safest approach)



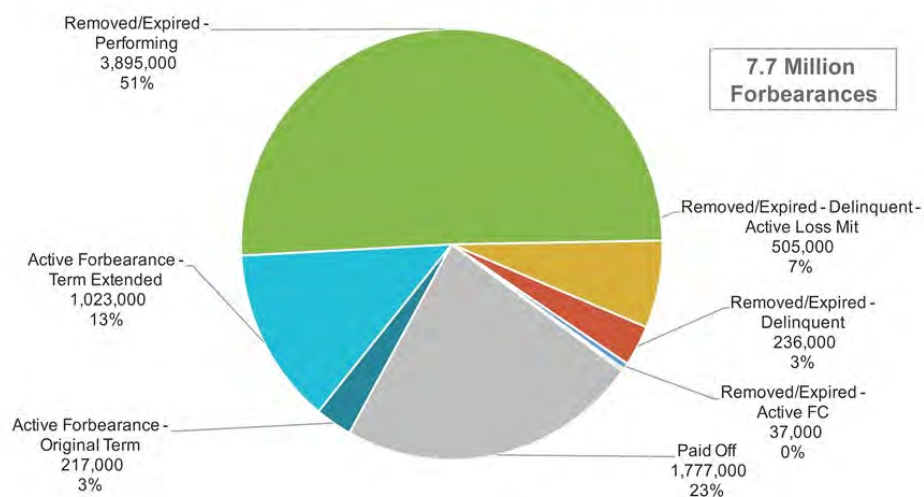
## Must meet one of these safeguards

- ▶ Complete loss mitigation application evaluated during pre-foreclosure review period, loan remained delinquent, denial notice sent, no appeal; *or* borrower rejected all loss mitigation options; *or* borrower failed to perform.
  - ▶ But, may offer streamlined mods based on incomplete application.
- ▶ Property is “abandoned” per state or local legal standards.
- ▶ Borrower unresponsive for at least 90 days before first legal, but:
  - ▶ Must have made good faith efforts to establish live contact after each payment due date during 90-day period; *and*
  - ▶ Must have sent § 1024.39(a) loss mitigation solicitation at least 10 days and no more than 45 days before first legal; *and*
  - ▶ Must have sent all required notices during 90-day period; *and*
  - ▶ Borrower’s forbearance must have ended at least 30 days before first legal.

## Risks and impediments

- ▶ CFPB, GSE scrutiny and consequences for non-compliance.
- ▶ Prospects of more CFPB, GSE intervention to delay or prevent foreclosures.
- ▶ Potential borrower litigation for Reg. X violations.
  - ▶ Private right of action under 12 U.S.C. § 2605(f)?
- ▶ Law firm, trustee, and servicer needs and impediments
  - ▶ Preparedness challenges and opportunities
  - ▶ Staffing and economic impacts over the last 22 months
  - ▶ Uncertainty about regulatory landscape
  - ▶ Restarts, hold inventory, additional fees, engaging with servicers & GSEs

### CURRENT STATUS OF COVID-19 RELATED FORBEARANCES



Source: McDash Flash  
Data as of Oct. 19, 2021



### Forbearance Status of Fannie Mae Single-Family Loans as of 9/30/21\*

<b>Total loans that received forbearance</b>	1,395,098	(100%)
<b>Still in forbearance</b>	206,293	(15%)
<b>Exited forbearance</b>	1,188,805	(85%)

### Status of Fannie Mae Single-Family Loans that Exited Forbearance as of 9/30/21\*

<b>Paid off</b>	415,578	(30%)
<b>Payment deferral</b>	359,233	(26%)
<b>Reinstated</b>	311,328	(22%)
<b>Modified</b>	41,843	(3%)
<b>Delinquent at exit (54,915) or exited via repayment plan (5,908)</b>	60,823	(4%)
<b>TOTAL</b>	1,188,805	(85%)

\*Source: Fannie Mae Form 10-Q filed October 29, 2021

### Estimated Mark to Market Loan To Value Ratio of Fannie Mae Single-Family Loans as of 9/30/21\*

<b>Estimated MTMLTV</b>	<b>% of Overall Book</b>	<b>% of SDQ</b>	<b>SDQ Rate %</b>
<b>&lt;=60%</b>	60	71	1.63
<b>60.01% to 70%</b>	19	16	1.78
<b>70.01% to 80%</b>	14	9	1.53
<b>80.01% to 90%</b>	5	3	1.08
<b>90.01% to 100%</b>	2	1	.77
<b>Greater than 100%</b>	<.5	<.5	16.04

\*Source: Fannie Mae Form 10-Q filed October 29, 2021



## Managing expectations: 2022 and beyond

- ▶ Forecasting foreclosure volumes; defaults trending lower, but higher than average; foreclosures trending higher, but still at historic lows.
- ▶ Poised to rebound, but probably not a tsunami.
- ▶ Situationally very different from 2007-2009 Great Recession

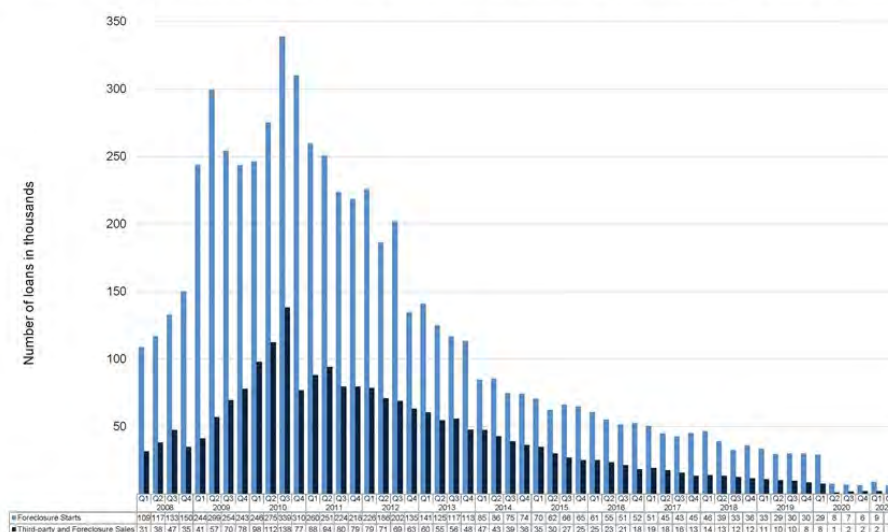


FHFA Foreclosure Prevention and Refinance Report

Second Quarter 2021

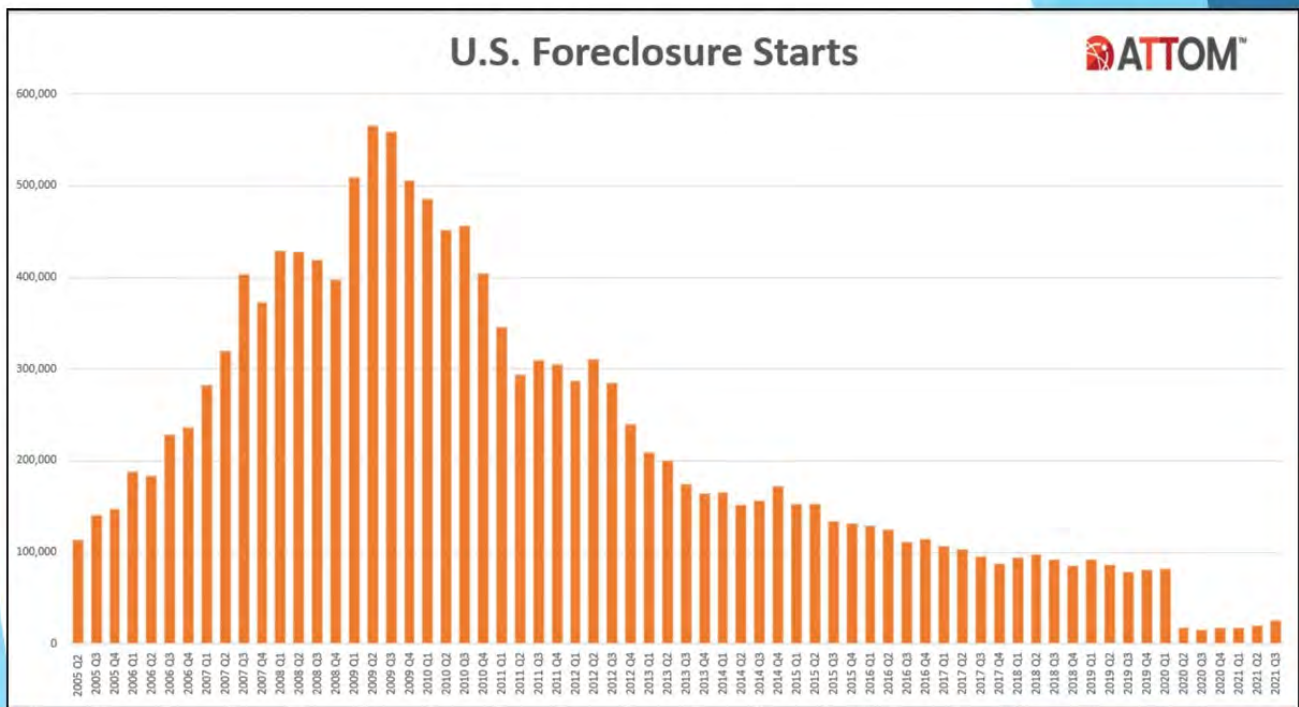
### Foreclosures

There were 2,281 completed third-party and foreclosure sales in the second quarter, up 9 percent compared with the first quarter. The number of foreclosure starts dropped 32 percent from 9,125 in the first quarter to 6,233 in the second quarter.



Source: FHFA (Fannie Mae and Freddie Mac)





Questions



Fannie Mae



You should email [default\\_attorney@fanniemae.com](mailto:default_attorney@fanniemae.com) with any loan specific or legal-related inquiries. Messages will be routed to the attorney and paralegal with responsibility for the jurisdiction where the property securing the relevant Fannie Mae loan is located.

Contact [foreclosures@freddiemac.com](mailto:foreclosures@freddiemac.com) for assistance with:

- ▶ Foreclosure timeline management
- ▶ Routine litigation
- ▶ Probate
- ▶ SCRA (military indulgence)
- ▶ Title issues
- ▶ Attorney Oversight
- ▶ Attorney transfer and termination
- ▶ ADR (Attorney Data Reporting) training
- ▶ Remedy management: pre-foreclosure sale and REO
- ▶ Document execution
- ▶ Bankruptcy
- ▶ Exception requests to resolve aged foreclosure files
- ▶ Non-routine legal issues, please contact - [nonroutine\\_litigation@freddiemac.com](mailto:nonroutine_litigation@freddiemac.com)

Thank you for attending



# Order in the Court!

Presented by

**Benjamin R. Levinson, Esq.**

Law Offices of Benjamin R. Levinson (moderator)

**Hon. Scott C. Clarkson**

Central District of California

**Hon. Christopher G. Jaime**

Eastern District of California

**Hon. August B. Landis**

District of Nevada

**Hon. Charles Novack**

Northern District of California

Sponsored by

**Daily Journal**  
CORPORATION





**Benjamin R. Levinson, Esq.**

Benjamin R. Levinson has been representing private mortgage lenders, foreclosure trustees, and receivers in State Courts and all Bankruptcy Courts in California since 1985. His practice emphasizes defending lenders, foreclosure trustees, and third party purchasers in foreclosure-related litigation; lender and receiver representation in state court receivership actions; lender representation in judicial foreclosures and post-foreclosure evictions; and representation of secured and unsecured creditors in bankruptcy.

Mr. Levinson has been a seminar speaker for the California Mortgage Association and the United Trustees Association on various foreclosure and bankruptcy topics over the last thirty-four years. Mr. Levinson is licensed to practice in all of the Superior and Appellate courts for the State of California and the Supreme Court for the State of California. He has extensive experience in litigating various real property cases in State Courts throughout the State of California.

Mr. Levinson is also licensed to practice in all Federal District Courts and Bankruptcy Courts in California and the Ninth Circuit Court of Appeals and he has extensive experience handling real estate and bankruptcy matters in those courts as well.

Mr. Levinson is a member of the State Bar of California, the Santa Clara County Bar Association, the Bar Association of San Francisco, the California Mortgage Association, the American Bankruptcy Institute, the Bay Area Bankruptcy Forum, the San Jose chapter of American Inns of Court solely dedicated to bankruptcy reorganization practice, and on the Board of Directors for the United Trustees Association.

Mr. Levinson received his Juris Doctorate from the University of Santa Clara in 1984 and his Bachelor of Arts from the University of California Santa Barbara in 1979.

Mr. Levinson can be reached at [ben@benlevinsonlaw.com](mailto:ben@benlevinsonlaw.com).



### **Hon. Scott C. Clarkson**

Hon. Scott C. Clarkson is a U.S. Bankruptcy Judge for the Central District of California in Santa Ana and Riverside, appointed on Jan. 20, 2011, and has also sat on the Ninth Circuit Bankruptcy Appellate Panel. Prior to his appointment, Judge Clarkson practiced bankruptcy law and bankruptcy litigation for more than 20 years in Los Angeles, and he served as chair of the Los Angeles County Bar Association's Commercial Law and Bankruptcy Section from 2008-09. He is a board member of the Orange County Federal Bar Association and has lectured on ethics and civility for the annual Los Angeles Federal Bar Association Ethics Program. He was a member of Virginia, the District of Columbia, and California bars. From 1977-82, Judge Clarkson was a legislative assistant to U.S. Congressman Harold L. Volkmer in Washington, D.C., and was assigned to the U.S. House of Representatives Judiciary Committee, where he was a direct observer of and participant in the creation of the 1978 Bankruptcy Code in the House. He later clerked for Hon. William L. Hungate, U.S. District Judge for the Eastern District of Missouri. Judge Clarkson has also been an established documentary photographer in the U.S., Southeast, and Central Asia, and South America for more than 20 years. He also traveled to Afghanistan, Pakistan, and Kashmir in 2008-09, and Jordan and Israel in 2014, covering recent events in these regions of the world. Judge Clarkson received his undergraduate degree from Indiana University in Bloomington in 1979 and his J.D. from George Mason University School of Law in 1982.



### **Hon. August B. Landis**

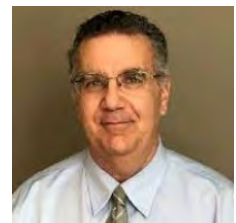
August B. Landis was appointed as a United States Bankruptcy Judge for the District of Nevada on November 27, 2013. Between 2005 and his appointment to the bench, he served as the Acting U.S. Trustee for Region 17; as the U.S. Trustee Programs first Acting Associate General Counsel for Chapter 11 Practice; and as an Assistant U.S. Trustee for the District of Nevada in Las Vegas. Prior to joining the U.S. Trustee Program, he was an attorney in private practice with the Des Moines, Iowa, firms of Neiman, Neiman, Stone & Spellman (1987 1990) and Whitfield & Eddy, P.L.C. (1990 2005), mostly representing creditors rights in commercial litigation, secured transactions, and bankruptcy cases. Judge Landis received his J.D. from Drake Law School in Des Moines, and is a member of the Iowa State Bar Association. He is also admitted to practice before the U.S. Supreme Court, the Eighth and Ninth Circuit Courts of Appeals, and the U.S. District Courts for the Northern and Southern Districts of Iowa.



### **Hon. Christopher G. Jaime**

Christopher D. Jaime was sworn as a United States Bankruptcy Judge in the Eastern District of California (Sacramento) on January 5, 2015. Judge Jaime was born in Sacramento, California, and resided primarily in San Jose, California. He attended Saint Mary's College of California in Moraga, California, where he graduated with a Bachelor of Science degree in Psychology in 1989. He received his J.D. in 1992 from Willamette University College of Law in Salem, Oregon, where he served as an Associate Editor of – and was published in – the Willamette Law Review.

Prior to his appointment to the bench, Judge Jaime was a vice-president and shareholder with the Reno, Nevada, law firm of Maupin, Cox & LeGoy. He was with the law firm for 22 years. He joined the law firm as an associate in 1992 and became a shareholder in 1998. His practice focused primarily on representing and advising domestic and international banks, lenders, financial and financing institutions, and individuals on creditors' rights and insolvency matters both within and outside the bankruptcy context. He appeared in hundreds of contested matters, in all pretrial and trial phases of bankruptcy and non-bankruptcy proceedings before bankruptcy and district courts, and in bankruptcy and non-bankruptcy appeals before federal appellate courts. While a practicing attorney, in 2014 Judge Jaime was recognized by the American Society of Legal Advocates as one of the Top 100 Bankruptcy Lawyers in the State of Nevada.



### **Hon. Charles Novack**

Judge Charles Novack has served as a United States Bankruptcy Judge in the Northern District of California since May 2010. He regularly lectures on a variety of bankruptcy topics, is a Rutter Group guest lecturer on bankruptcy family law issues, and is a panel member on the Bay Area Bankruptcy Forum's popular Consumer Update annual program. Judge Novack maintained his own bankruptcy practice in Oakland, California during the five years preceding his appointment, representing Chapter 7 trustees, and debtors, creditors and other interested parties in Chapter 7, 11 and 13 cases. From 1994 until 2005 he was an associate and then a partner at the Oakland bankruptcy boutique firm of Kornfield, Paul & Nyberg. Judge Novack served as an associate professor at California State University, East Bay for several years and at Hastings College of the Law during the 2017/18 school year.

Judge Novack graduated from Rutgers College in 1980 (With Honors) and Hastings College of the Law in 1983 (Cum Laude).

## TOPICS OF DISCUSSION

- 1. I would like each of you to spend a couple minutes telling the membership about the current rules in your district and bankruptcy court regarding remote appearances in this COVID time.**

What do you expect to be the remote appearance rules post-Covid?

Is your courtroom open for appearances right now and if not, when do you expect to do so?

Use of remote trials? Evidentiary hearings? Handling most matters by pre-trial rulings?

- 2. Discussion about dealing with Zombie bankruptcies in your courtroom—defined as a transfer of a real property interest (1% or more) to a person or entity that has filed a bankruptcy and has no knowledge of that transfer and has not listed the property in their schedules.**

How do you analyze these and treat these bankruptcies with reference to relief from stay motions, including seeking relief under § 362(d)(4).

- 3. Analyzing if there is a stay to stop foreclosure in the following hypothetical—**

**Facts:**

- A. Promissory note signed by John Smith, individually and Bob Jones, as managing member of ABC, LLC.**
- B. Deed of Trust on real property executed only by Jones for ABC and only ABC is in legal title to the property.**
- C. John Smith files an individual bankruptcy**
- D. Is there a stay to stop the nonjudicial foreclosure of the real property? Property of the estate? One borrower has filed bk, but relief is being sought to only nonjudicially foreclose against a non-debtor's property.**
- E. Does it make a difference if the lender sought a judicial foreclosure where court action required?**



**F. What if the property was only pledged by a non-signatory of the note, ie. DEF, LLC as legal title holder of the real property? Is the foreclosure stayed?**

(I think it is important for the membership to realize the stay in bankruptcy is very broad and that obtaining an order on whether the stay applies is always the safest course of action).

Are you seeing any uptick in stay violation litigation?

**4. Analyzing whether a lender can seek to recover default interest in bankruptcy-generally a clause in the note that increases the interest about 5% above the non-default contract rate of interest**

Post-petition, but pre-confirmation chapter 11 cases?

Default on payments triggering the clause as opposed to maturity of the note?

Whether the plan is for a sale of the property or keeping of the property?

**5. What is your position on hearing relief from stay motions after a dismissal of a bankruptcy?**

Jurisdictional issues?

Any difference re 362(d)(4) relief v. regular relief from stay under (d)(1 or (2)?

**6. Any change in your position regarding Reswick v. Rinard/Dao with regard to 362(c)(3).**

Does the stay terminate as to debtor and the estate 30 days after the bk filing?

**7. Are you seeing any issues with regard to bankruptcies filed by people that took PPP money and cannot pay it back or used it fraudulently?**



# Case Law Updates

Presented by

Matthew Aguiree, Esq.

Kirby & McGuinn

Andrew Boylan, Esq.

McCarthy Holthus

Stephen T. Hicklin, Esq.

The Hicklin Firm

Christopher McNichol, Esq.

Gust Rosenfeld

Sponsored by

**iMAILTRACKING**  
MAIL THAT MATTERS



**Matthew Aguiree, Esq.**

Since 2012, Matthew has specialized in the representation of lenders, mortgage servicers, and foreclosure trustees. He has assisted his clients in litigated matters, and in ensuring their compliance with existing and emerging law.

Matthew has developed legal training courses and consulted for legal publications. He has also volunteered his time with various community law clinics.



**Andrew Boylan, Esq.**

Andrew Boylan is a Partner with McCarthy & Holthus, LLP overseeing Risk Management & Compliance for the firm. After graduating from the University of San Diego, where he earned his Bachelor of Arts degree in Political Science and Spanish, he received his Juris Doctorate degree from the University of San Diego School of Law and his MBA from the University of San Diego Graduate School of Business Administration.

He is a member of the United Trustees Association (UTA) where he serves on the Board of Directors and previously received the New Member of the Year award, the American Legal & Financial Network (ALFN) where he received the Picture the Future Award from the Junior Professional & Executives Group, and the California Mortgage Bankers Association (CMBA) where he was a part of the group's Future Leaders Program. He has spoken on regulatory and legal compliance issues at numerous mortgage industry events. Mr. Boylan has received the highest possible AV Preeminent Rating from Martindale-Hubbell® by members of the Bar and Judiciary in both legal ability and ethical standards. He is licensed to practice law in the States of California and Washington. He can be reached at [aboylan@mccarthyholthus.com](mailto:aboylan@mccarthyholthus.com).

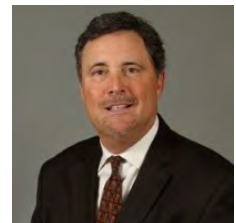


### **Stephen T. Hicklin, Esq.**

Steve Hicklin has worked in the mortgage banking industry for more than thirty years.

He has litigated cases as in-house counsel for a number of lenders and servicers, including WMC Mortgage Corp., Glendale Federal Bank, and Countrywide Home Loans.

In 2006, Steve began as the Compliance Manager and later as the Chief Compliance Officer, for ReconTrust Company, Inc., at one time the nation's largest foreclosure trustee. He has since served as General Counsel for Northwest Trustee Services and as the Managing Attorney for the California office of Bonial & Associates, P.C. In 2018, Steve founded The Hicklin Firm, an Orange County litigation boutique, and in 2020 became Of Counsel to Bonial & Associates, P.C. Steve was awarded the UTA's Dorothy Schick Veteran Member of the Year in 2019 and is a frequent speaker at industry events. He is admitted to the California, Texas, and Washington state bars. He can be reached at [shicklin@thehicklinfirm.com](mailto:shicklin@thehicklinfirm.com)



### **Christopher M. McNichol**

Christopher McNichol concentrates his practice on commercial and real estate transactions, including the sale and purchase, development, lease, title insurance and construction issues, and related litigation in these areas. In addition, Chris handles creditors' rights matters, including loan workouts, judicial and nonjudicial foreclosures, deeds in lieu, receiverships, deficiency and guarantor actions, and bankruptcy.

Chris represents lending and financial institutions, mortgage lenders and brokers, title and escrow companies, real estate brokers and agents, developers, contractors, and individuals. He writes and lectures frequently at bar and industry seminars on real estate, lending, litigation and creditors' rights topics, and is a teacher at the Arizona School of Real Estate and Business.

Chris has served as a mediator and arbitrator in various disputes involving commercial and real estate transactions and construction matters.

Chris is one of the Southwest Super Lawyers® for Real Estate Law. He is AV® Preeminent™ rated by Martindale-Hubbell®, representing the highest rating in legal ability and ethical standards, and was named by Arizona Business Magazine in Ranking Arizona Best of the Best Award Winner.





Arizona

## UTA Arizona 2021 Case Law Updates

**Bridges v. Nationstar Mortgage, L.L.C.**, 250 Ariz. 475, 481 P.3d 701 (Ariz. App. 2021), *review granted* (Aug. 24, 2021). This case addressed whether recording a notice of trustee's sale, by itself, accelerates the underlying debt and thus triggers the running of the Arizona statute of limitations.

Short answer: It does not – under the particular facts of *Bridges* (but see below re review by the Arizona Supreme Court).

In *Bridges*, the Borrower obtained a loan evidenced by a Promissory Note and secured by a Deed of Trust on a house. The Note and Deed of Trust included an optional acceleration clause, granting the Lender the power to accelerate the entire balance of the Loan upon default by giving the Borrower notice of the default and of the acceleration.

The Borrower defaulted on the Loan in 2008, before the first anniversary of the Loan. The Lender sent a notice of default, but did not affirmatively indicate an acceleration of the Note. Two separate Notices of Trustee's Sale were recorded. Neither Notice invoked or referred to the optional acceleration clause, and no trustee's sale was ever held.

The Borrower filed bankruptcy twice, in 2011 and 2014, which stayed Lender's enforcement. Over the years, the Borrower applied multiple times for loan modifications, and also for a short sale program. Presumably nothing happened in response to those applications.

In early 2016, the Borrower sued the Lender, asserting that the earlier Notices had accelerated the Loan and triggered the applicable six-year Arizona statute of limitations, which would have barred collection six years after the default. The trial court granted the Borrower's motion for summary judgment on the issue, and the Lender appealed.

The Arizona Court of Appeals reversed and held in favor of the Lender. Because that the Lender never affirmatively accelerated the Loan, and because the language in the Note and Deed of Trust provided for *optional* acceleration, more than the recorded Notices themselves was required in order to accelerate the debt.

As further support, the Court also cited to Arizona's reinstatement statute, A.R.S. § 33-813(A), which states that when "all or a *portion* of a principal sum. . . becomes due or *is declared due* by reason of breach or default," the borrower can reinstate by paying the entire amount due. The

Court reasoned that if filing a notice of trustee's sale alone automatically triggered a requirement to pay the entire amount due, the "portion" phrasing under the statute would be superfluous because every notice of trustee's sale would then constitute an automatic acceleration of the secured debt. Because the Lender did not accelerate the Loan pursuant to the language in the Note or Deed of Trust, the statute of limitations never started to run.

As noted above, *Bridges* case was recently accepted for review by the Arizona Supreme Court. A more definitive word on the issue may thus emanate in 2022.

**BMO Harris Bank v. Espiau**, 2021 WL 2931302 (Ariz. App. July 13, 2021). The lender's post-trustee's sale deficiency action against the estate of a borrower who had died three years earlier was not time-barred where the estate had failed to comply strictly with the notice requirement of the Arizona probate code.

**Webster Bank, N.A. v. Mutka**, 481 P. 3d 1173 (Ariz. App. 2021). The Arizona Court of Appeals held that the statute of limitations on a home equity line of credit with a defined maturity date commences on the due date of each matured but unpaid installment; as to unmatured future installments, the period commences on the date the creditor exercises the optional acceleration clause.

**Deutsche Bank v. Pheasant Grove**, 2020 WL 2988677 (Ariz. App. June 4, 2020). The Arizona Court of Appeals held that a party is not required to assert a claim for judicial foreclosure in the same action as a claim to reform a deed of trust, that foreclosing an imperfect deed of trust is not governed by the statute of limitations for reformation, and that reformation is not required before enforcing a deed of trust.

**Ashton Ranch Community Association, Inc. v. Jones**, 2020 WL 582347 (Ariz. App. February 6, 2020). The Arizona Court of Appeals held that excess proceeds are paid to junior lien holders only as they exist at the time of the foreclosure sale. A buyer at the trustee's sale is not a lienholder for such purposes.

**Foreclosure Excess Proceeds LLC v. Farmington Glen HOA, et al.**, 2020 WL 582346 (Ariz. App. February 6, 2020). The Arizona Court of Appeals held that the homestead protection applies to identifiable cash proceeds of the homestead's sale, but that a judgment

lien does not attach to homestead property, even when the debtor claims an out-of-state property as its residence. (*But see* new Arizona law effective in 2022).

**Bornstein v. Nationstar Mortgage, LLC**, 2019 WL 7187286 (Ariz. App., December 26, 2019), *review denied* (June 3, 2020). The borrower moved for a Temporary Restraining Order the day before a scheduled trustee's sale. The trial court entered an order granting the TRO the following morning, and before the trustee's sale – but it was filed under the wrong case number. The borrower informed the trustee of the TRO but did not provide the trustee a copy of the TRO, and the trustee could not independently confirm its issuance in light of the mis-filing. So the trustee's sale proceeded as scheduled. With the sale so held, the trial court then dissolved the TRO and dismissed the borrower's action. The Arizona Court of Appeals affirmed, holding that under A.R.S. §33-811(C), any injunction or retaining order must actually be *entered* by 5:00 p.m. the business day before the trustee's sale if the sale is to be enjoined. The borrower's TRO obtained the morning of the trustee's sale was "a day too late."

**Bramnick v. Treasurer of Maricopa County Arizona**, 2019 WL 6125921 (Ariz. App. November 19, 2019). The Arizona Court of Appeals held that a claimant to excess proceeds after a trustee's sale is required to establish the basis for its claim at the required hearing held at another claimant's request. The Court further held that the trustee's sale extinguished the claim to proceeds due to claimant's failure to establish that its *lis pendens* had priority over the deed of trust.

**Edmonds Trustee of CJE Living Trust v LSREF2 Cobalt (IL)**, 2019 WL 5701802 (Ariz. App. November 5, 2019), *review denied* (April 3, 2020). Interpreting an earlier Arizona case, the Arizona Court of Appeals held that a wrongful foreclosure claim is not recognized in Arizona.





Oregon



Texas



Utah

## CASE LAW DEVELOPMENTS FOR 2020-2021: OREGON, TEXAS, AND UTAH

### Oregon

- *Barnes v. Routh Crabtree Olsen, PC* (Ninth Cir. 2020) 963 F.3d 993
- This case evaluated the borrower/appellant's claim that a judicial foreclosure action brought against him by his lender subjected the law firm that filed the suit to the requirements of the Fair Debt Collection Practices Act. The U.S. Supreme Court, in 2019, issued its opinion in *Obdusky v. McCarthy & Holthus LLP*, 139 S.Ct. 1029, which held that a foreclosure trustee that pursues a non-judicial foreclosure is not, without more, a "debt collector" for purposes of the FDCPA. Barnes argued that a judicial foreclosure constituted "debt collection" because it necessarily seeks to enforce a debt of another. The Court in Barnes held that in Oregon, as opposed to other states like Arizona, the judgment a lender can get in a judicial foreclosure action is just to foreclose on and publicly sell the security for the loan. No deficiency judgments are allowed in Oregon judicial foreclosure cases. The Court concluded that "...if the plaintiff seeks not only to foreclose on the property but also to recover the remainder of the debt through a deficiency judgment, the plaintiff is attempting to collect a debt within the meaning of the FDCPA." Yikes!

## Texas

• *Terkel v. Center for Disease Control and Prevention* (E.D.TX, Feb. 25, 2021) Case 6:20-cv-00564

• This case challenged the Center for Disease Control's COVID-19 related eviction moratorium. The plaintiffs in the case were all landlords in and around Tyler, Texas, where Hon. J. Campbell Barker presides. The federal CARES Act, enacted March 27, 2020, stayed tenant evictions for non-payment of rent nationwide on the grounds that evicting people whose livelihood had been damaged by the pandemic would force those tenants onto the streets, worsening the spread of the disease. The CARES Act moratorium lapsed on July 27, 2021. In response, the CDC temporarily stayed tenant evictions around the country pursuant to the Public Health Service Act, essentially extending the CARES Act moratorium. The plaintiffs challenged the right of the CDC to issue the stay and the Court had to determine if the moratorium was authorized as an exercise of Congress's power, delegated to the CDC, to regulate "...those activities that substantially affect interstate commerce." The Court held that the impact of an eviction involving a landlord and tenant in a single state did not sufficiently impact interstate commerce so as to allow the federal government to issue the moratorium under the Commerce Clause.

• The Court declined to issue an injunction, however, reasoning that the federal government agreed to abide by the Court's declaratory relief ruling. The U.S. Supreme Court affirmed the District Court ruling and remanded the case to the Fifth Circuit Court of Appeals. On the motion of the CDC, the Fifth Circuit dismissed the appeal as moot in light of a similar ruling from the D.C. Circuit and the Supreme Court's decision.

## Texas, cont.

• *U.S. ROF III Legal Title Trust 2015-I v. Morlock, L.L.C.* (TX Court of Appeals) 2020 Tex.App. LEXIS 304

• This case is about the expiration of the four-year statute of limitations on a Texas non-judicial foreclosure. In September of 2011, Morlock purchased the property at issue at an HOA lien sale. Under Texas law, HOA liens are subordinate to first priority deeds of trust, so Morlock purchased the property subject to an existing first DOT held by MetLife Home Loans, L.L.C. ("Metlife"). Because the borrowers were delinquent on their mortgage payments in addition to their HOA dues, in December of 2011, Metlife sent them a notice accelerating the amount due on the Metlife loan and setting a foreclosure sale for January of 2012. Morlock filed suit and the foreclosure sale did not take place as a result of the litigation. In the meantime, the case was resolved in Metlife's favor and it assigned the loan to others so that eventually ROF acquired the loan in early 2016. ROF renewed the Notice of Sale, setting the sale for February of 2016. Morlock again sued, arguing that the four year statute of limitations began to run with Metlife's Notice of Acceleration in December of 2011. ROF argued that it was prohibited from foreclosing during the pendency of the first Morlock suit so the statute of limitations should be tolled for the period it was pending, making ROF's sale timely. The Court disagreed and held that the statute of limitations began to run in December of 2011 and no entity had ever rescinded or revoked it, so the non-judicial foreclosure was time-barred. Morlock acquired title free of the ROF lien.

## Texas, cont.

- Deutsche Bank Nat'l Trust Co. v. Castellon (5<sup>th</sup> Cir., 2021) 852 Fed. Appx. 841

- In 2006, Jesus Castellon executed a Texas Home Equity Note secured by his and his wife Gloria's home. Although Gloria did not sign the note, she knew of it and acquiesced in it becoming a lien on her home. By December of 2013, Jesus was 18 months delinquent. Deutsche Bank filed a Home Equity Foreclosure Application pursuant to Texas R.C.P. 736 and received its order allowing it to proceed on November 5, 2014. On January 5, 2015, Gloria filed suit against Deutsche Bank pursuant to T.R.C.P. 736.11(a), which automatically stayed the sale. That suit was dismissed without prejudice on July 12, 2018. On April 19, 2019, Deutsche Bank filed suit seeking an order allowing it to pursue a non-judicial foreclosure or, alternatively, a judicial foreclosure. The trial court granted summary judgment for Deutsche Bank and Gloria appealed, asserting the statute of limitations barred the non-judicial foreclosure. The Court ruled that the four-year statutory period was tolled by Gloria's earlier action, so the non-judicial foreclosure was not time-barred.

## Texas, cont.

- Cloward v. U.S. Bank Trust, N.A. (Tx. Ct. of Appeals, 5<sup>th</sup> Dist., 2020) LEXIS 6107\*, WL 4435306

- In this case, the lender filed an application to pursue a non-judicial foreclosure pursuant to T.R.C.P. 736 and the borrowers filed a suit pursuant to T.R.C.P. 736.11(a) which automatically stayed the sale. The borrowers argued that the four-year statute of limitations was not tolled by their suit against U.S. Bank because it could have pursued a judicial foreclosure. The Court agreed with U.S. Bank that the statute of limitations was tolled during the pendency of the borrowers' suit and the fact that U.S. Bank had another remedy available to it – judicial foreclosure – did not deprive it of tolling during the borrowers' suit.



## Texas, cont.

- PNC Mortgage v. Howard (Supreme Court of Texas, Jan. 29, 2021)
- This case was transferred from the Fifth Circuit Court of Appeals to the Texas Supreme Court. The Fifth Circuit certified the following question: "Is a lender entitled to equitable subrogation, where it failed to correct a curable constitutional defect in the loan documents under §50 of the Texas Constitution?" The Texas Supreme Court answered "Yes." In this case, a prior holder of a loan owned by PNC Mortgage originated a refinance loan paying off two existing loans of the Howards, the borrowers. The Howards fell into default but PNC failed to initiate foreclosure for more than four years, making its foreclosure time-barred. The issue was whether or not by not seeking foreclosure within the four year statute of limitations if PNC had also lost its equitable subrogation rights due to the Howards' argument that PNC's negligence barred its invocation of an equitable remedy. The Texas Supreme Court held that the foreclosure sale was barred, but that PNC, by refinancing the two prior liens, could step into the prior lenders' shoes as a result of equitable subrogation despite its purported negligence.

## UTAH

- Brimhall v. Ditech Financial, LLC (2021, Ct. App. UT) 487 P.3d 165; 2021 UT App. 34
- In this case, the borrowers defaulted on their mortgage held by Bank of New York Mellon ("BNYM") and received foreclosure notices from Ditech Financial, the loan servicer. In early 2016, they entered into loss mitigation negotiations with Ditech and received a letter denying their request for a loan modification as incomplete, which the borrowers contested. Ditech, at the same time it denied the borrowers' loan modification application, encouraged them to submit another application. Borrowers claim they did so. Nonetheless, the property went to a foreclosure sale and Post-sale, the borrowers sued Ditech and BNYM for wrongful foreclosure, alleging that the sale was held while they were still in negotiations with Ditech for a loan modification. The trial court overruled the borrowers' motion for summary judgment, granted summary judgment for Ditech, and dismissed BNYM without prejudice as the borrowers failed to serve it. The appellate court reversed, holding that a servicer in Utah can complete a foreclosure sale in its own name, so BNYM was not an indispensable party to the suit. However, it also ruled that the borrowers' declarations, submitted in support of their own motion for summary judgment, should have been considered in opposition to Ditech's motion and created a triable issue of material fact as to whether or not loss mitigation negotiations were ongoing at the time of the foreclosure sale.

## UTAH, Cont.

- *Johnson v. Nationstar Mortgage, LLC* (2020, Ct. App. UT) 475 P.3d 140
- The borrowers in this case, rather than paying their mortgage, repeatedly sought court protection from foreclosure. They first sued their lender for TILA violations; this suit was dismissed by the trial court which rejected the borrowers' contention that "mere declaration of rescission of a loan for purported TILA violations" cancels the deed of trust being foreclosed on. The borrowers then filed seven successive bankruptcies, only to eventually have the sale go forward. They again sued and the trial court again dismissed the borrowers' suit, concluding that the borrowers' TILA claim was barred by res judicata. The appellate court also held that Utah's six year statute of limitations runs from either the unequivocal acceleration of the loan balance by recording a Notice of Default or from the due date in the deed of trust.

PRESENTED BY:  
STEPHEN T. HICKLIN  
THE HICKLIN FIRM  
17821 E. 17<sup>TH</sup> STREET,  
Suite 295  
TUSTIN, CA 92780

657.294.5060

[shicklin@thehicklinfirm.com](mailto:shicklin@thehicklinfirm.com)



Nevada



Washington



Idaho



# 2021 CASE LAW UPDATES

UTA ANNUAL EDUCATIONAL CONFERENCE

---



## NEVADA CASE LAW UPDATES



Statutes of Limitation | Acceleration and Deceleration

Foreclosure Mediation Program

HOA Super-Priority Liens





## STATUTES OF LIMITATION | ACCELERATION AND DECELERATION

---

- 11/6/20: Nevada Supreme Court denied the petition for en banc reconsideration: Glass v. Select Portfolio Servicing, Inc., 466 P.3d 939 (Nev. 2020).
- 9/16/21: SFR Invs. Pool 1 v. U.S. Bank N.A., 495 P.3d 126 (Nev. 2021).

## FORECLOSURE AND MEDIATION PROGRAM

---

- 1/9/21: In re Nieto, No. 20-13031-MKN, 2021 WL 1499322, at \*4 (Bankr. D. Nev. Jan. 29, 2021)
- 5/4/21: Wilmington Sav. Fund Soc'y FSB as Tr. for Hilldale Tr. v. Deaver, 486 P.3d 710 (Nev. 2021)
- 6/14/21: Salvador v. Countrywide Home Loans, Inc., 489 P.3d 8 (Nev. App. 2021)
- 8/4/21: In re Merbach, 492 P.3d 615 (Nev. App. 2021)

2



## HOA SUPER-PRIORITY LIENS

---

- 12/16/20: RLP-Singing Dove, LLC v. Countrywide KB Home Loans, LLC, 478 P.3d 343 (Nev. 2020).
- 12/16/20: U.S. Bank Nat'l Ass'n as Tr. for Certificateholders of Structured Asset Mortg. Invs. Inc. Bear Stearns Alt-A Tr., Mortg. Pass-through Certificates, Series 2006-3 v. Bourne Valley Ct. Tr., 478 P.3d 344 (Nev. 2020).
- 4/15/21: Anthony S. Noonan IRA, LLC v. U.S. Bank Nat'l Ass'n EE, 137 Nev. Adv. Op. 15, 485 P.3d 206, 207 (2021).
- 6/25/21: Bank of New York Mellon as Tr. for Certificateholders of CWALT, Inc., Alternative Loan Tr. 2005-54CB, Mortg. Pass-Through Certificates Series 2005-54CB v. Enchantment at Sunset Bay Condo. Ass'n, 2 F.4th 1229, 1231 (9th Cir. 2021)
- 6/25/21: U.S. Bank, N.A., Tr. for Holders of J.P. Morgan Mortg. Tr. 2007-S3 v. SFR Invs. Pool 1, LLC, 489 P.3d 514 (Nev. 2021)

3



MCCARTHY & HOLTHUS, LLP

## WASHINGTON CASE LAW UPDATES

Washington Consumer Loan Act

Debt Collection

Foreclosure Fairness Act

5

## WA CONSUMER LOAN ACT | FORECLOSURE | STATUTES OF LIMITATION

- 1/1/21: Price v. SEL, Inc., 16 Wash. App. 2d 1006 (unpublished)
- 2/16/21: Diaz v. N. Star Tr., LLC, 16 Wash. App. 2d 341, 481 P.3d 557, review denied, 198 Wash. 2d 1002, 493 P.3d 748 (2021)
- 4/13/21: McGreal v. Peak Foreclosure Servs., Inc., 17 Wash. App. 2d 1009 (unpublished)
- 6/29/21: Canzoni v. Bank of Am., N.A., 18 Wash. App. 2d 1010 (unpublished)
- 8/2/21: Howard v. JP Morgan Chase Bank, N.A., No. 81968-2-I, 2021 WL 3291737, at \*1 (Wash. Ct. App. Aug. 2, 2021) (unpublished)
- 8/2/21: Luv v. W. Coast Servicing, Inc., No. 81991-7-I, 2021 WL 3288360, at \*1 (Wash. Ct. App. Aug. 2, 2021) (unpublished)
- 9/2/21: U.S. Bank Nat'l Ass'n as Tr. to Wilmington Tr. Co. v. Plumb, No. 37687-7-III, 2021 WL 3929318, at \*1 (Wash. Ct. App. Sept. 2, 2021) (unpublished)

11

## IDAHO CASE LAW UPDATES

Idaho Consumer Protection Act  
Breach of Contract  
Foreclosure Process

MCCARTHY & HOLTHUS, LLP



7



## IDAHO CONSUMER PROTECTION ACT | BREACH OF CONTRACT

- 4/1/21: Jensen-Edwards v. US Bank Nat'l Ass'n, No. 2:20-CV-00055-BLW, 2021 WL 1239792, at \*1 (D. Idaho Apr. 1, 2021), reconsideration denied, No. 2:20-CV-00055-BLW, 2021 WL 2720010 (D. Idaho July 1, 2021), appeal dismissed sub nom.
- 7/1/21: Plaintiff's renewed motion for reconsideration: Plaintiff seeks reconsideration of the Court's dismissal without prejudice of her claim under the Idaho State Deeds of Trust Act claim. The Court will deny the motion.
- 8/9/21: Ninth Circuit Court of Appeals: this court lacks jurisdiction over this appeal because the April 1, 2021 order challenged in the appeal is not final or appealable.





## QUESTIONS | KEY TAKEAWAYS

---

For questions or to request copies  
of the cases, please email:  
[aboylan@mccarthyholthus.com](mailto:aboylan@mccarthyholthus.com)



MCCARTHY & HOLTHUS, LLP

9



# THANK YOU

UTA ANNUAL EDUCATIONAL CONFERENCE

---





California

# U.T.A. Legal Update California Edition

November 7-9, 2021 – Reno, NV

Materials by Martin T. McGuinn  
Presented by Matthew Aguirre

Kirby & McGuinn A P.C.  
707 Broadway, Ste. 1750  
San Diego, CA 92101

[mmcguinn@kirbymac.com](mailto:mmcguinn@kirbymac.com)  
(619) 525-1659



Copyright Kirby & McGuinn A P.C. 2021



Copyright Kirby & McGuinn A P.C. 2021

## Update on Sheen v Wells Fargo Bank

- Update on Sheen v Wells Fargo Bank pending in California Supreme Court. No oral argument has been scheduled or conducted meaning that the decision is unlikely until the first quarter of 2022.
- Issue addressed: Does a mortgage servicer owe a borrower a duty of care to refrain from making material misrepresentations about the status of a foreclosure sale following the borrower's submission of, and the servicer's agreement to review, an application to modify a mortgage loan?
- Cases continue to be decided on a split basis depending on which

Copyright Kirby & McGuinn A.P.C. 2021

## Sheen v Wells Fargo Bank cont'd

- Pro Duty Cases include: Rossetta v. CitiMortgage, Inc. (2017) 18 Cal.App.5th 628; Daniels v. Select Portfolio Servicing (2016) 246 Cal. App.4th 1150 and Alvarez v. BAC Home Loans Servicing L.P. (2014) 228 Cal.App.4th 941.
- No duty cases: Nymark v. Heart Federal Savings & Loan (1991) 231 Cal.App.3d 1089, 1096; Lueras v. BAC Home Loans Servicing L.P. (2013) 221 Cal.App.4th 49.
- Federal Courts divided although favoring lack of a duty of care. See Shupe v. Nationstar Mortgage LLC 231 F.Supp.3d (E.D. Cal. 2017

Copyright Kirby & McGuinn A.P.C. 2021



## 2021 Litigation Trends

- Real Estate Fraud is a Growth Industry creating lien priority and “all or nothing” litigation for the parties involved.
- Fraud involving wire transfers is increasing at an exponential rate. Case law favors the lending institution which initiated the wire, the account number not the name controls whether there will be a recovery.
- Servicer fees for payment on defaulted loans is highly problematical and most courts hold that they violate Rosenthal. \$5 “convenience fees” to pay over the phone.

Copyright Kirby & McGuinn A.P.C. 2021.

## 2021 Litigation Trends

- Rosenthal applies to non judicial foreclosure at least as to the servicer/beneficiary.
- New licensing law. Can a trustee registered as a debtor collector be disciplined by the new regulator for a complaint about non judicial foreclosure services which are exempt under the statute.
- Maybe trustee cannot be disciplined for the non judicial activity but it does not mean the regulator cannot attack other aspects of your business practices.
- The only exempt activity is under FDCPA or Rosenthal is statutory activities described in Civil Code Sections 2920 to 2944.

Copyright Kirby & McGuinn A.P.C. 2021.



## 2021 Litigation Trends

- Debt Collector can no longer strictly rely upon the statement of indebtedness given to it by the creditor.
- Will this new obligation to verify the debt for the borrower cause tension in the trustee/servicer/beneficiary relationship.
- Categories that can cause litigation: Forced placed insurance, late charges exceeding statutory limits, fees not contemplated in loan documents, default interest.
- Default interest is a commercial loan or business purpose loan issue but while legal the beneficiary has to quantify the costs it incurs while the loan is in default.

Copyright Kirby & McGuinn A.P.C. 2021

## Guo v Moorpark Recovery Service, LLC

- (2021) 60 Cal App 5<sup>th</sup> 745
- Moorpark's predecessor-in-interest obtained a judgment from the sale of a spa business and received an award of fees in the lower court.
- The predecessor-in-interest was awarded fees but never filed a cost bill or filed a motion for legal fees in the trial court.
- Issue was whether the assignee of judgment holder could obtain an award of fees for post collection attorney fees incurred **in enforcing the judgement** which contained an award of fees but no amount.

Copyright Kirby & McGuinn A.P.C. 2021

## Guo v Moorpark Recovery Service, LLC

- No fees for trial and pretrial but no motion timely filed.
- Although the usual standard of review for an award of attorney fees is abuse of discretion, where the issue is whether, under statute authorizing recovery of attorney fees incurred for enforcement of judgment when underlying judgment includes award of attorney fees pursuant to contract, the trial court had the authority to issue such award, the Court of Appeal reviews this legal issue de novo. Cal. Civ. Proc. Code § 685.040.

Copyright Kirby & McGuinn A.P.C. 2021

## Guo v Moorpark Recovery Service, LLC

- There are two requirements before a motion for an award of post-judgment attorney fees may be awarded as costs:
- (1) the fees must have been incurred to “enforce” a judgment, and
- (2) the underlying judgment had to include an award for attorney fees pursuant to subdivision of Code of Civil Procedure providing that attorney fees may be awarded when authorized by contract. Cal. Civ. Proc. Code §§ 685.040, 1033.5(a)(10)(A).
- Parties’ right to fees after judgment are found in the judgment not the underlying contract.

Copyright Kirby & McGuinn A.P.C. 2021

## Best v Ocwen Loan Servicing

- (2021) 64 Cal App 5<sup>th</sup> 568
- Most significant case reviewed this year.
- Borrower alleged lender and loan servicer attempted to collect a debt secured by the home despite having no legal right to do so and thus engaged in unlawful, unfair, and fraudulent debt collection.
- Among the claims brought was a claim under California's Rosenthal Act the state equivalent of the FDCPA.
- Trial Court granted demurrer without leave to amend and borrower appealed.

Copyright Kirby & McGuinn A.P.C. 2021

## Best v Ocwen Loan Servicing

- Defendants also demurred on the ground that the Rosenthal Act(Civ. Code, § 1788 et seq.)does not apply to conduct in connection with a nonjudicial foreclosure.
- Teaching Point. Do not continue to circulate old pleadings without doing an update on previously decided cases. The California Courts are increasingly to require lenders and servicers to go through the discovery and Motion for Summary Judgment process before releasing them from a case.
- Point of this case is that later decisions of US Supreme Court, Ninth Circuit and Courts of Appeal superseded earlier decisions.

Copyright Kirby & McGuinn A.P.C. 2021



## Best v Ocwen Loan Servicing

- In 2005, the Bests took out a loan for \$555,000, secured by a deed of trust on their home in Lake Elsinore.
- The note was assigned in 2009 to Deutsche Bank as Trustee and another later assignment directly to Deutsche. In April 2012 Ocwen became the servicer. Then in 2014 Ocwen as agent of New Century the original beneficiary purported to assign the loan to Deutsche.
- The loan went into default in 2009 and in January 2013 Ocwen substituted its trustee and in 2015 recorded an NOD.

Copyright Kirby & McGuinn A.P.C. 2021.

## Best v Ocwen Loan Servicing

- NOS recorded in November 2018 and a sale occurred the following month.
- In 2017 a district court action was filed alleging assignments were void.
- All claims dismissed without leave to amend except contract claims for which leave was given.
- In an amended complaint all claims were dismissed including a FDCPA claim because leave had not been sought to allege additional claims.

Copyright Kirby & McGuinn A.P.C. 2021.



## Best v Ocwen Loan Servicing

- After foreclosure this action was filed.
- It included a claim for a Rosenthal violation and improper substitution of trustee.
- Demurrer sustained solely upon res judicata or claim preclusion. The preclusive effect of the prior federal judgment.
- However the Court would consider: “their argument that their current Rosenthal Act cause of action arises out of “continuing violations,” including the December 2018 foreclosure, which occurred after the judgment in the federal action.” **Id p.**

Copyright Kirby & McGuinn A.P.C. 2021.

## Best v Ocwen Loan Servicing

- “Finally, even assuming the federal action did broadly establish that the Bank is the true holder of the loan, that would not mean the Bests' current allegations are unfounded. The true holder of a loan may nevertheless “misrepresent[ ] the status of the debt,” “attempt[ ] to collect illegal fees and costs,” “refus[e] to correct accounting errors,” or “improperly attempt[ ] to collect amounts that are not due.” We cannot say, from the face of the complaint or from matters subject to judicial notice, that these allegations merely reframe the Bests' claim that the Bank is not the true holder of the loan.” **Id. P. 9**

Copyright Kirby & McGuinn A.P.C. 2021.

## Best v Ocwen Loan Servicing

- Practice Tip: there are two aspects to preclusion, issue preclusion and claim preclusion. Collateral Estoppel and Res Judicata.
- “[C]laim preclusion often cannot apply in settings of continuing or interrupted and renewed conduct, and ... the result may be burdensome repetitive litigation. To the extent that greater protection is needed, it is better to rely on issue preclusion than on efforts to draw into claim preclusion matters that could not reasonably be advanced in the first litigation.” (18 Wright et al., Federal Practice & Procedure (3d ed. 2005) § 4409.)

Copyright Kirby & McGuinn A.P.C. 2021

## Best v Ocwen Loan Servicing

- “Finally, even assuming the federal action did broadly establish that the Bank is the true holder of the loan, that would not mean the Bests' current allegations are unfounded. The true holder of a loan may nevertheless “misrepresent[ ] the status of the debt,” “attempt[ ] to collect illegal fees and costs,” “refus[e] to correct accounting errors,” or “improperly attempt[ ] to collect amounts that are not due.” We cannot say, from the face of the complaint or from matters subject to judicial notice, that these allegations merely reframe the Bests' claim that the Bank is not the true holder of the loan.” Id. P. 9

Copyright Kirby & McGuinn A.P.C. 2021

## Best v Ocwen Loan Servicing

- First the Court noted that: [a] judgment of dismissal after a demurrer has been sustained without leave to amend will be affirmed if proper on any grounds stated in the demurrer, whether or not the court acted on that ground. [Citations.]” (Carman v. Alvord (1982) 31 Cal.3d 318, 324, 182 Cal.Rptr. 506, 644 P.2d 192.)

Copyright Kirby & McGuinn A.P.C. 2021

## Best v Ocwen Loan Servicing

- “Debt collector” is defined as “any person who, in the ordinary course of business, regularly, on behalf of that person or others, engages in debt collection.” (Civ. Code, § 1788.2, subd. (c).) “
- Applies to loan for personal, family, or household purposes.” (Id., subd. (e).)
- Consumer must be a natural person. (Id., subd. (f).)
- Lender cited older federal cases that hold that Rosenthal does not apply to non judicial foreclosure. See Footnote 9 in opinion for a list of published cases from 2008-2014 supporting this position.

Copyright Kirby & McGuinn A.P.C. 2021



## Best v Ocwen Loan Servicing

- However, Court of Appeal (Dist. 4, Div. 2) normally pro lender reversed the trial court.
- *Obduskey v. McCarthy & Holthus LLP* (2019) — U.S. —, 139 S.Ct. 1029, 203 L.Ed.2d 390, the Supreme Court effectively overruled the cases cited above holding that foreclosure is not debt collection, although it came to a similar result by different reasoning — it held that a business engaged in nonjudicial foreclosure proceedings is not a “debt collector” within the meaning of the FDCPA. (Id. at pp. 1033, 1035-1040.) Id. P. 12.

Copyright Kirby & McGuinn A.P.C. 2021

## Best v Ocwen Loan Servicing

- *Obuduskey* relied upon a different definition of debt collector contained in the FDCPA The Supreme Court concluded that, by negative implication, “debt collector” did not include a “business the principal purpose of which is the enforcement of security interests” for purposes of any of the other prohibitions of the FDCPA. (*Obduskey v. McCarthy & Holthus LLP*, *supra*,
- So, even if nonjudicial foreclosure were not a direct attempt to collect a debt, because it aims to collect on a consumer's obligation by way of enforcing a security interest, it would be an indirect attempt to collect a debt.” (*Obduskey v. McCarthy & Holthus LLP*, *supra*,

Copyright Kirby & McGuinn A.P.C. 2021



## Best v Ocwen Loan Servicing

- Davidson v. Seterus, Inc. (2018) 21 Cal.App.5th 283, 230 Cal.Rptr.3d 441 (Davidson) held that a loan secured by a trust deed can be a “consumer debt” within the meaning of the Rosenthal Act. (Id. at pp. 298-300. Davidson effectively overruled the federal cases.
- Legislature recently amended the Rosenthal Act so as to state that: “The term ‘consumer debt’ includes a mortgage debt.” (Civ. Code, § 1788.2, subd. (f), Stats. 2019, ch. 545, § 2, p. 5004.) This amendment took effect on January 1, 2020;

Copyright Kirby & McGuinn A.P.C. 2021

## Best v Ocwen Loan Servicing

- Thus, even though such a business is a “debt collector” under the Rosenthal Act, it can contact third parties without violating the FDCPA, and hence without violating the Rosenthal Act. (Publish a Notice of Sale to the world, answer calls about the opening bid etc.)

Copyright Kirby & McGuinn A.P.C. 2021

## Best v Ocwen Loan Servicing

- The Bests alleged more than violations of the non judicial foreclosure statutes. These include “unethical mismanagement of the escrow account” and “refusal to correct accounting errors.” Even those federal cases that have accepted that foreclosure cannot violate the Rosenthal Act have conceded that debt collection activities “beyond the scope of the ordinary foreclosure process” can violate the Rosenthal Act. (Mulato v. Wells Fargo Bank, N.A. (N.D. Cal. 2014) 76 F.Supp.3d 929, 955;

Copyright Kirby & McGuinn A.P.C. 2021

## Urbina v National Business Factors Inc.

- 979 F. 3d 758 (9<sup>th</sup> Cir. 2020)
- FDCPA is a strict liability statute.
- FDCPA is broadly construed in favor of the consumer.
- Bona fide error is an affirmative defense that can be proven by preponderance of the evidence.
- Bona Fide error requires detailed procedural checklist and training to establish its viability.

Copyright Kirby & McGuinn A.P.C. 2021

## Urbina v National Business Factors Inc.

- Debtor collector sued Urbina based upon inaccurate information supplied by the creditor.
- NBF argues that because it contractually required Urbina's creditor to provide it with accurate information, NBF qualified for the FDCPA's bona fide error defense. 15 U.S.C. § 1692k(c). The district court granted summary judgment in favor of NBF, concluding that NBF was entitled to the defense because it employed a procedure reasonably adapted to avoid errors of the type that occurred in Urbina's case.

Copyright Kirby & McGuinn A.P.C. 2021.

## Urbina v National Business Factors Inc.

- In service contract creditor agreed to supply accurate information and enforceable obligations.
- According to NBF, its routine practice is to request that its clients notify NBF if they recognize errors in any of the accounts listed. NBF also follows a practice of calculating interest based on the date of the debtor's last payment. Here the date of last payment was incorrect.
- On appeal from a summary judgment, debtor argued NBF does not qualify for the bona fide error defense because it did not have adequate procedures in place to prevent errors of the type that occurred here.

Copyright Kirby & McGuinn A.P.C. 2021.



## Urbina v National Business Factors Inc.

- The bona fide error defense requires a showing that the debt collector: (1) violated the FDCPA unintentionally; (2) the violation resulted from a bona fide error; and (3) the debt collector maintained procedures reasonably adapted to avoid the violation.
- Parties agreed factors 1 and 2 were met.
- Reichert v. Nat'l Credit Sys., Inc., 531 F.3d 1002, 1007 (9th Cir. 2008). Instead, "the debt collector has an affirmative obligation to maintain procedures designed to avoid discoverable errors, including, but not limited to, errors in calculation and itemization." Id.

Copyright Kirby & McGuinn A.P.C. 2021

## Urbina v National Business Factors Inc.

- the bona fide error defense does not shield debt collectors who unreasonably rely on creditors' representations. Clark v. Capital Credit & Collection Serv., Inc., 460 F.3d 1162, 1177 (9th Cir. 2006).
- Reliance on prior accurate information is not sufficient for each succeeding transaction.
- See Jenkins v. Heintz, 124 F.3d 824, 834–35 (7th Cir. 1997), for the elaborate procedures required to establish the defense, including verify under oath, compliance manual, regularly updated, training seminars, detailed pre-litigation review.

Copyright Kirby & McGuinn A.P.C. 2021



## Urbina v National Business Factors Inc.

- We also recognize that the procedures our sister circuits have approved for catching errors in creditor-clients' data are significantly more likely to catch errors than a form contract requiring customers to provide only accurate information. See *Abdollahzadeh v. Mandarich Law Grp., LLP*, 922 F.3d 810, 818 (7th Cir. 2019).
- This is why the fees for fees issue discussed below is a critical one and why each charge in a demand in preparation for a NOD or NOS has to now be critically analyzed.

Copyright Kirby & McGuinn A.P.C. 2021

## Campbell v Rushmore Loan Management Services, LLC

- 2021 WL 3284816 (C.D. Cal)
- Facts: When they were in default, Defendant was their mortgage servicer. Defendant charged Plaintiffs fees of at least \$5 to make payments on the mortgage. Plaintiffs allege that these **"pay-to-pay"** fees violate the deed of trust as well as state and federal laws.
- Numerous class actions are pending and are gaining class certification across California for charging pay to pay fees.
- The premise is that the borrower pays a convenience fee for the lender to take the payment over the phone. The reality is that any other method of payment would cost more for the borrower to consummate, cashiers check, wire transfer, credit card advance.

Copyright Kirby & McGuinn A.P.C. 2021

## Campbell v Rushmore Loan Management Services, LLC

- The difference is that the lender charges and receives a fee in the pay to pay and in other methods of expedited payment a third party bank or credit card company receives the fee which presumptively is a matter of contract between the borrower and his or her banker.
- For trustees, the problem is that demanding and collecting illegal fees demanded by the servicer or beneficiary as part of a reinstatement or payoff is highly problematical.
- As the Urbina case points out blind reliance on the creditor's statement of indebtedness is not a panacea.

Copyright Kirby & McGuinn A.P.C. 2021

## Campbell v Rushmore Loan Management Services, LLC

- Plaintiffs bring this putative class action asserting six claims: (1) breach of contract; (2) violation of the Rosenthal Fair Debt Collection Practices Act ("RFDCPA"), Cal. Civ. Code § 1788 et seq.; (3) violation of the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200; (4) violation of the Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1770 et seq.; (5) unjust enrichment; and (6) violation of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq.

Copyright Kirby & McGuinn A.P.C. 2021



## Campbell v Rushmore Loan Management Services, LLC

- The Court declined to take judicial notice of the contents of Rushmore's website showing all payment options.
- Rushmore tried several defenses including the voluntary payment doctrine "an affirmative defense that bars the recovery of money that was voluntarily paid with full knowledge of the facts." Ellsworth v. U.S. Bank, N.A., 908 F. Supp. 2d 1063, 1083 (N.D. Cal. 2012). Id. \* 2. Court ruled this defense inappropriate in the context of a motion to dismiss.

Copyright Kirby & McGuinn A.P.C. 2021

## Campbell v Rushmore Loan Management Services, LLC

- Rosenthal prohibits under Cal. Civ. Code § 1788.13(e). by attorney fees or other costs of collection if said amounts cannot be legally added to the obligation.
- "A reasonable inference that a fee assessed to pay a mortgage could increase the underlying mortgage debt." See DiFlauro v. Bank of America, N.A., No. CV 20-5692 DSF (SKx), slip op. at 12–13 (C.D. Cal. Dec. 2, 2020) Id \*3. Bagdasaryan v. Bayview Loan Servicing, LLC, No. CV 14-06691 SJO (VBKx), 2015 U.S. Dist. LEXIS 193739, at \*36 (C.D. Cal. Oct. 19, 2015) (determining that pleaded act of charging fees as a means of increasing plaintiffs' debt was sufficient to sustain a § 1788.13(e) claim);

Copyright Kirby & McGuinn A.P.C. 2021

## Campbell v Rushmore Loan Management Services, LLC

- The FDCPA prohibits debt collectors from using “unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.
- Here no allegation the Loan was delinquent when Rushmore became the servicer. Yet, the Court REFUSED to dismiss the derivative FDCPA debt collector claim.
- See Torliatt v. Ocwen Loan Servicing, LLC, No. 19-cv-04303-WHO, 2020 U.S. Dist. LEXIS 68159, at \*13–14 (N.D. Cal. Apr. 17, 2020) (collecting cases holding that mortgage servicers are debt collectors under the RFDCPA's broader definition of the term, and dismissing FDCPA claim while sustaining derivative RFDCPA claim).

Copyright Kirby & McGuinn A.P.C. 2021.

## Billesbach v Specialized Loan Servicing, LLC

- (2021) 63 Cal. App. 5<sup>th</sup> 830
- Borrower filed action alleging his HOBR rights were violated because the foreclosure sale of the property occurred while a loan modification application was pending.
- Specialized prevailed on summary judgment that it sufficiently cured its material pre-foreclosure violations and did not violate dual tracking obligations

Copyright Kirby & McGuinn A.P.C. 2021.



## Billesbach v Specialized Loan Servicing, LLC

- Only appellant's wife signed the promissory note. Some time after appellant's wife died, appellant defaulted on the loan.
- Specialized Loan Servicing LLC, refused to communicate with him about the loan because he was not the named borrower.
- Specialized then initiated foreclosure proceedings by causing a notice of default to be recorded.
- The notice included a declaration that respondent had diligently tried to communicate with appellant about alternatives to foreclosure in accordance with Civil Code section 2923.55.

Copyright Kirby & McGuinn A.P.C. 2021.

## Billesbach v Specialized Loan Servicing, LLC

- Plaintiff filed HOBR claims for failure to assign him a SPOC and recording a false declaration of compliance.
- Defendant offered appellant a trial-period modification plan and gave Plaintiff a deadline to accept the offer by making his first payment.
- Plaintiff did not make his initial payment by the deadline, however, opting instead to attempt to obtain more favorable terms, without seeking to postpone the foreclosure sale.

Copyright Kirby & McGuinn A.P.C. 2021.

## Billesbach v Specialized Loan Servicing, LLC

- Specialized counsel suggested to Plaintiff's counsel to make a proposal with terms acceptable to him. Plaintiff waited three weeks until just prior to the sale to present his new proposal.
- Not surprisingly, the sale proceeded and went third party.
- Summary judgment was granted to the defendant based upon the curing of the HOBR violations by offering a trial payment plan modification.

Copyright Kirby & McGuinn A.P.C. 2021.

## Billesbach v Specialized Loan Servicing, LLC

- Plaintiff contends:(1) respondent failed to cure its pre-sale violations because it did not record a new notice of default after communicating with him;
- (2) respondent violated section 2923.6 by conducting the foreclosure sale while the parties were still in negotiations regarding a loan modification;
- (3) given the Legislature's restoration of sections 2923.55 and 2923.6, the court erred in denying reconsideration.

Copyright Kirby & McGuinn A.P.C. 2021.



## Billesbach v Specialized Loan Servicing, LLC

- What is a material violation of HOBR. No statutory definition but developed through case law.
- A material violation is one that affected the borrower's loan obligations, disrupted the borrower's loan-modification process, **or otherwise harmed the borrower**. Id p. 837.
- “where a mortgage servicer's violations stem from its failure to communicate with the borrower before recording a notice of default, the servicer may cure these violations by doing what respondent did here: postponing the foreclosure sale, communicating with the borrower about potential foreclosure alternatives, and fully considering any application by the borrower for a loan modification. Following these corrective measures, any remaining violation relating to the recording of the notice of default is immaterial, and a new notice of default is therefore not required to avoid liability.” Id p. 837.

Copyright Kirby & McGuinn A.P.C. 2021

## Billesbach v Specialized Loan Servicing, LLC

- While this panel “forgave” the violation, another court of appeal might not be so forgiving and this Court admonished the defendant to take better care of its statutory duties.
- The offered and rejected trial loan modification which would have led to a permanent loan modification sufficiently cured the premature recording of the NOD and did not require the foreclosure to be restarted.
- a violation is material if it affected the borrower's loan obligations, disrupted the loan-modification process, or otherwise harmed the borrower in connection with the borrower's efforts to avoid foreclosure. (See, e.g., Cardenas v. Caliber Home Loans, Inc. (N.D.Cal. 2017) 281 F.Supp.3d 862, 870. See page 845 for additional federal cases.

Copyright Kirby & McGuinn A.P.C. 2021

## Billesbach v Specialized Loan Servicing, LLC

- California case law is similar: Compare Schmidt v. Citibank, N.A. (2018) 28 Cal.App.5th 1109, 1124, fn. 7, 239 Cal.Rptr.3d 648 (Schmidt) [if borrower had opportunity to discuss financial situation and foreclosure alternatives with lender, purpose of statute is met, and any violation by lender in failing to initiate contact was not material].
- Berman v. HSBC Bank USA, N.A. (2017) 11 Cal.App.5th 465, 472, 217 Cal.Rptr.3d 674 [lender materially violated HBOR by sending borrower letter affording him **shorter time than required by statute to appeal initial denial of loan modification**, which “effectively diminished” borrower's right to appeal].

Copyright Kirby & McGuinn A.P.C. 2021

## Billesbach v Specialized Loan Servicing, LLC

- Plaintiff “offered no evidence that these pre-sale violations affected his loan obligations, disrupted his loan-modification process, or otherwise harmed him, despite appellant's subsequent remedial actions. Absent any meaningful harm to appellant, respondent's uncured violations were not material.” Id p. 846.
- Billesbach v. Specialized Loan Servicing LLC, 278 Cal.Rptr.3d 213, 222, 63 Cal.App.5th 830, 846 (Cal.App. 2 Dist., 2021)

Copyright Kirby & McGuinn A.P.C. 2021



## Billesbach v Specialized Loan Servicing, LLC

- Federal district courts have held that when an otherwise valid notice is recorded in violation of the HBOR's requirements, the notice is not void, and the violation may be cured without recording a new notice. (See, e.g., *Gilmore v. Wells Fargo Bank N.A.* (N.D.Cal. 2014) 75 F. Supp.3d 1255, 1265-1266 [notice of sale recorded in violation of dual-tracking prohibition is not void; “[o]nce the violation is remedied [by acting on the pending loan-modification application], Wells Fargo would be free to proceed with the foreclosure” (id. at 1266)]);
- *Jerviss v. Select Portfolio Servicing, Inc.* (E.D. Cal. Nov. 25, 2015, No. 2:15-CV-01904-MCE-KJN) 2015 WL 7572130, at \*4–6, 2015 U.S. Dist. LEXIS 159630, at \*14-16 [defendants not liable for recording notice of sale in violation of dual-tracking prohibition because they \*847 remedied violation by postponing sale, considering borrower's application, and denying it in writing]; H

Copyright Kirby & McGuinn A.P.C. 2021.

## Billesbach v Specialized Loan Servicing, LLC

- Borrower attempted to argue that *Mabry v Superior Court* (2010)185 Cal App 4<sup>th</sup> 208 requires the re-start of the foreclosure process and filing new foreclosure documents. The Court rejected that argument.
- *Mabry* did not assess the required remedial measures through the lens of section 2924.12 's materiality requirement. Neither Civil Code 2923.5 nor Civil Code 2924g in effect at the time when *Mabry* was decided contained a materiality element present in the current statute.

Copyright Kirby & McGuinn A.P.C. 2021.

## Billesbach v Specialized Loan Servicing, LLC

- Federal district courts have held that when an otherwise valid notice is recorded in violation of the HBOR's requirements, the notice is not void, and the violation may be cured without recording a new notice. (See, e.g., *Gilmore v. Wells Fargo Bank N.A.* (N.D.Cal. 2014) 75 F. Supp.3d 1255, 1265-1266 [notice of sale recorded in violation of dual-tracking prohibition is not void; “[o]nce the violation is remedied [by acting on the pending loan-modification application], Wells Fargo would be free to proceed with the foreclosure” (id. at 1266)]);
- *Jerviss v. Select Portfolio Servicing, Inc.* (E.D. Cal. Nov. 25, 2015, No. 2:15-CV-01904-MCE-KJN) 2015 WL 7572130, at \*4–6, 2015 U.S. Dist. LEXIS 159630, at \*14-16 [defendants not liable for recording notice of sale in violation of dual-tracking prohibition because they \*847 remedied violation by postponing sale, considering borrower's application, and denying it in writing]; H

Copyright Kirby & McGuinn A.P.C. 2021.

## Billesbach v Specialized Loan Servicing, LLC

- The ruling does provide guidance for lenders and trustees moving forward about how to cure any HOBR defects and most critically does not require the re-start of a foreclosure for failure to communicate to the borrower.
- However, since the factual record at the demurrer stage will often prevent dismissal of litigation until the servicer's entire work on the file is revealed through declarations and documents.

Copyright Kirby & McGuinn A.P.C. 2021.



## Billesbach v Specialized Loan Servicing, LLC

- Civil Code 2923.6, (c) is the dual tracking statute.
- The application exception is: the borrower does not accept an offered loan modification within 14 days of the offer;
- Loan modification refused there was no pending modification at the sale date. Further, the offer was not submitted within 5 business days of the sale under the current statute;
- Whether communications between the parties constituted “continued negotiation” is not the standard under section 2923.6.

Copyright Kirby & McGuinn A.P.C. 2021

## Billesbach v Specialized Loan Servicing, LLC

- Making a servicer's ability to proceed with the foreclosure process turn on whether continued communications fall under the nebulous concept of negotiations would create uncertainty and hinder the borrower's ability to “know where he or she stands.” (Jolley, supra, 213 Cal.App.4th at 904, 153 Cal.Rptr.3d 546.) This rule would also incentivize servicers to cut off any non-required communications with borrowers following the denial of an application or rejection of an offer, thereby reducing borrowers’ chances of obtaining foreclosure alternatives.

Copyright Kirby & McGuinn A.P.C. 2021

## Billesbach v Specialized Loan Servicing, LLC

- While the trial-period modification plan was not itself a permanent modification plan, it was the only path to permanent modification respondent offered appellant -- a path he failed to take. Id p. 851.

Copyright Kirby & McGuinn A.P.C. 2021

Thanks and Enjoy Yourselves This Evening



Copyright Kirby & McGuinn A.P.C. 2021





# Post-Pandemic Concerns

Presented by

Glenn H. Wechsler

Law Office of Glenn H. Wechsler (Moderator)

Tiffany Malm

USRES

Chet Sconyers

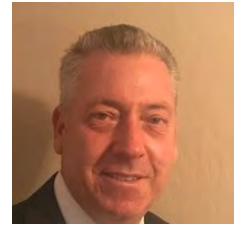
First American Mortgage Solutions

Mary Wendel

MK Consultants

Sponsored by





### **Glenn H. Wechsler**

Glenn Wechsler is the owner and senior trial attorney for the Law Offices of Glenn H. Wechsler established in Walnut Creek in 1993. Prior to branching out on his own, Glenn Wechsler was a partner at a large boutique real estate law firm. Since 1985, Mr. Wechsler has focused his legal career on business and real estate litigation representing lenders, servicers, title companies, trustees, and others in the mortgage industry for more than thirty-five years.

Glenn has extensive experience with trials, mediations, arbitrations, and appeals resulting in a significant number of published California cases affecting the default industry. Mr. Wechsler has been an active member of the United Trustees Association (UTA) for 25+years. He is a present UTA Board Member. Mr. Wechsler's published opinions include *In Re Bebensee-Wong* (Bankruptcy Appellate Panel) 248 B.R. 820; *Bank of America v. La Jolla Group II* (2005) 129 Cal.App.4th 706; *Stebley v. Litton Loan Servicing* (2011) 202 Cal.App.4th 522; *Fontenot v. Wells Fargo Bank* (2014) 228 Cal.App.4th 1358; *Kalnoki v. First American* (2017) 8 Cal. App.5th 23; *Taniguchi v. Restoration Homes* (2019) 43 Cal.App.5th 478.

Mr. Wechsler's past interests include surfing, volleyball, and raising four daughters. His current interests include live music, playing "craps" and raising four daughters plus+ He can be reached at [glenn@glennwechsler.com](mailto:glenn@glennwechsler.com).



### **Tiffany Malm**

Tiffany Malm is the Director of REO & Ancillary Services for USRES. Malm is responsible for the day-to-day operations of the REO Department as well as Ancillary Services Division including HOA Management, Lien Monitoring and Chattel. As an accomplished business leader with more than 20 years in the industry, Malm lends a broad understanding of REO, mortgage servicing, account management including vendor management and operations.



### **Chet Sconyers**

Vice President of Operations for First American Trustee Servicing Solutions (TSS) and First American Nationwide Posting and Publication (NPP). Has managed the operations of TSS for 20 years and for NPP for two years. TSS provides non-judicial foreclosure services in California, Arizona, Nevada and Texas and is located in Westlake, TX. NPP provides posting and publication services in California, Arizona, Nevada and Washington and is located in Folsom, CA. In addition to the experience with First American has also earned 12 years experience on the servicing side of the industry world in mortgage default.



### **Mary Wendel**

Ms. Wendel formed MK Consultants, Inc. in 1989, and still remains the President of the company. She has over 37 years of experience in the industry and continues to be involved with various organizations, including the United Trustees Association. Ms. Wendel has also provided educational seminars in the industry, including comprehensive foreclosure seminars to law firms and title companies.

# Post-Pandemic Concerns

46<sup>th</sup> Annual UTA Conference & Trade Show

November 7-9, 2021

Peppermill Resort, Reno, NV

Tuesday, November 9, 2021 9:00 a.m. – 10:00 a.m.

## ***MK CONSULTANTS, INC. / Mary Wendel***

One West Deer Valley Road, Suite 103, Phoenix, Arizona 85027 \* 877-440-4460

**[www.mkconsultantsinc.com](http://www.mkconsultantsinc.com)**

### **Arizona**

Arizona remained status quo from March 2020 through today. Volume is down but there've not been any changes to sale locations, sale times or days, requirements to bid, or capacity limits for interested bidders. Our agents were supplied with PPE to give to any requesting party. It wasn't necessary to carry or provide "essential business" documentation. Social distancing is requested by our agents, but not demanded due to heated bidding at times and external noises. Investors are buying almost anything going to sale.

### **California**

Here was a different ball game. Initially, there were not only county specific moratoriums but city specific restrictions on who was allowed to be out of the house conducting business. There were arguments as to the validity of the auctioneer's work and it was necessary to provide some of our agents with letters and documentation explaining the nature of the business and their requirements to be in the field so they, in turn, could provide same to authorities and law enforcement. We saw several cities/counties limit the number people who could be present at a foreclosure sale, and we ALL—all posting and publishing companies working for over half a dozen trustees—did the run around in San Francisco with our *least* favorite borrower. It was great team effort to have all of us working together and sharing costs to succeed in covering our clients. Since those summer days in 2020, we've not experienced restrictions on the number of people present at sale sites and there has been no need for additional security. Sales are proceeding as usual and without issue and we're seeing a larger number of investors present at the courthouses. SB1079 with its specific restrictions are currently the only hinderance. Auctioneers must attempt to ascertain whether or not the Affidavit Of Prospective Owner-Occupant-Successful Bidder is legitimate and must obtain this executed and notarized document at the sale site.

### **Washington**

There were several restrictions in Washington early on. The state limited how many people could be present at sales to bid, meaning if too many people showed up to bid, the trustee had to either: 1. postpone the sale to a later date or 2. ask the audience who all is present for this particular sale, count the number of people and determine if the sale could be conducted or if it needed to be postponed, or 3. announce the sale regardless of



number of people and risk potential litigation. If the trustee insisted on proceeding with an over-limit number of bidders present, we required our client trustee to indemnify all agents/vendors involved.

Washington has recently lifted all foreclosure sale restrictions BUT we're in for the long haul. Sales are only conducted once a week on Fridays at 10:00 am. We're going to run into issues where sale results and documentation are delayed simply due to the volume of sales that are going to be completed each week.

HOWEVER, new provisions effecting Seattle were established with CB120046, which provides for prohibition on evictions during the school year for a household with children or employees of a school district. As of this writing, it's unknown whether these new provisions apply to post-foreclosure evictions, but you can bet tenants of the borrowers will think so! This could chill bidding; investors aren't interested in properties with occupants.

Also, bid chillers CB 120077 and CB120090 extend indefinitely Seattle's eviction moratorium by Mayoral executive order and allows, with provisions, new lease agreements be offered by landlords to existing tenants, respectively.

But wait! There's more! Governor Jay Inslee continues to push for restrictive actions and likely will begin requiring proof of vaccination for various activities. This could be extended to include auctions and other activities that require gathering.

### **Oregon**

If you thought California was conservative, you must not work in Oregon! Oregon went on a 100% full shut down. Trustees weren't allowed to record any first legal action or enforce any ongoing foreclosures. The state's moratorium, granted via HB 4202, expired 12/31/2020 and conventional and commercial loans could proceed to foreclosure. Because of Oregon's foreclosure timeline, our office started seeing files about the end of July. HOWEVER, Oregon House Bill 2009, which took effect June 1, 2021, continued the HB 4202 foreclosure moratorium until June 30. The Bill allowed for Governor Kate Brown to extend to September 30, which she did, and further allowed to extend to December 31, 2021, if she granted the extension by August 14, which she did. However, no further extension beyond December 31, 2021 is permitted by the Bill and we'll be good to go.

### **Nevada**

Status quo in Nevada. Sale locations and times, number of people at the sale locations, or requirements to bid, have remained unchanged. However, due to COVID and related business closures, our office has discovered a few counties that no longer have newspapers that distribute.

- Esmeralda County: must use the paper out of Tonopah in Nye County, to-wit *Tonopah Times Bonanza*
- Mineral County: no suggestion... your publication choice is likely to be on a case-by-case basis and

likely a newspaper in a town closest to the subject property.

### **Utah**

Utah did slow down a bit; most sales that were in progress postponed, and conversely, anything that did go to sale--private money loans, notes in foreclosure prior to COVID, etc... , sold 3rd party with very little reverting to the lender. Investors were purchasing everything they could. Foreclosures are back to status quo with the addition of SB179 (additional mailing requirements of cancellations), but auctions and field services are moving along like normal. It was our experience that trustee's sales changed negligibly in Utah during the pandemic and our office expects status quo regardless of any new COVID strain scares.

## **Texas**

There were several county-specific shutdowns and orders to cease all foreclosure sales. Unfortunately, several of these orders--Harris County in particular--were signed at the last minute. Completing a trustee's sale in Texas between 3/2020 and 3/2021 was a risk because we never knew if an order was going to be signed, stopping the sales literally at the last minute and Texas has no opportunity to postpone. From our experience, we don't predict any additional orders stopping foreclosures and our agents are back to recording/filing, posting, and conducting sales.

## **Idaho**

Much like Arizona, Idaho is status quo. The only changes here are that a few counties have required that sales be conducted outside as opposed to inside the courthouse. With new COVID scares, we may see more of that type of minor change.

## **TN, GA, NC, FL, MS, MT, MO, AR, AL**

Nothing has changed for much of the mid-west and east coast, and certainly not in regards to trustee's sales. Our office has experienced no issues with court officers, interested bidders, borrowers, or our agents. There have been no barriers or restrictions of any sort. In our experience, no handouts, PPE or documentations, have been required.

## **SUMMATION**

Certainly, agents know to advise of any illness (confirmed COVID or not) and that they're required to stay home until they're symptom free and/or can show a negative COVID test, depending on their employer's conditions. Auctioneers may want to be provided with, or instructed to provide, PPE. Should circumstances change and we all find ourselves back where we started in March of 2020, service providers should be prepared to adjust as necessary. Backup agents for every agent in every county in every state, and a backup for that backup, has proven necessary in our experience!

Possible new concerns, related to COVID or otherwise, may require—

- possible necessity for PPE handouts again, both legal documentation and health supplies
- trustees may need to have discussions with their lender clients regarding crowd/bidding audience limits
- trustees should be prepared with possible strategies to avoid limits
- expect delays with the return of sale results across the board due to increased volume

All service providers should be ready to discuss and work together when a county sale site becomes more troublesome, whether it's due to dealing with the public on the courthouse steps or new restrictions being overly enforced by authorities.

Give attention to the sales on which you receive numerous calls. We are all required to have sale websites, however, fielding telephone calls provides the opportunity to advise our trustees where interest lies and gives them an opportunity to discuss with *their* clients various avenues to avoid potential problems.

Regardless of the state, posting agents should be more cognizant of homeowners who are finally having to leave their property and who may be aggressive.

## Post Pandemic Concerns

### ***Pre-Sale Trustee Management***

#### **Lender's Requirements of Trustee**

Surveys / Questionnaires

Representations

Fiscal Management/responsibility

#### **Trustee Quality Control**

Trustee management/staffing

Trends

Job Boards

Canvas customers

Factors to consider

#### **Trustee's Vendor Selection**

Surveys, letters

Old and new

Selection and training

Vary by task?

Lien releases

Curative

Loss Mit

Is anyone keeping track?

***Post & Pub Issues:***

Volume

Depending on the client base, some slowed others did not

***Conducting Sales:***

“Essential Business”?

Push Back by Local Authorities - SF

Auctioneer’s “proof”

Capacity

Crowd Size

Predicting Crowd Size

Pre-sale calls

2<sup>nd</sup> lien sales / vacant lots

Physical capacity with Social Distancing

Social distancing – who will enforce?

Public Locations available

Changing locations

Indoors/outdoors

Bidding restrictions?

Health & Safety

Hand sanitizer

Masks



## ***Bidders or Bidding Strategies:***

Usual Suspects still bidding?

Any differently?

Owner occupied vs Tenant occupied

Bidder Status

Determining:

Tenant

Occupant

Owner

Non-Profit

Proof requested?

Prospective Bidders' Complaints

## **Post Sale Requirements**

Title insurance?

SB1079

## **Oversight of Vendor Payments**

Is this a problem?

Do Servicers care?

Audits

## ***REO Issues***

### Real Estate Agent/Broker Selection

Staffing

Factors to consider

Old vs. New -selection and training

### Code Violations

SB1079 – discretionary

\$2,000/day fines for 30 days

\$5,000/day thereafter

Notice required if:

Owner does not:

- (i) commence action to remedy,
- (ii) notify the City/Agency of its action and
- (iii) complete the action within specified time period.

**COMMUNICATION IS THE KEY!**

### Law Firm Selection?

Same issues

Downsizing

Network

Selection and Training

***Looking forward to January 2022?***



# Legislative Updates

## Panelists

Michelle Mierzwa, Esq.

Wright Finlay & Zak (Moderator)

Michael Belote, Esq.

California Advocates

Holly Chisa

HPC Advocacy

Brigham Lundberg, Esq.

Lundberg & Associates, PC

Christopher McNichol, Esq.

Gust Rosenfeld

Christina V. Miller, Esq.

Wright Finlay & Zak

Sponsored by



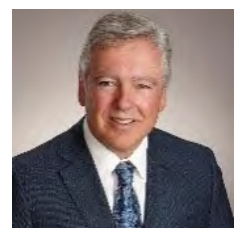
**AUCTION.COM**



**Michelle Mierzwa, Esq.**

Michelle A. Mierzwa joined Wright, Finlay & Zak's Compliance, Licensing and Regulatory Division in 2015, providing loan originators, lenders, servicers, trustees, and others in the mortgage industry with state and federal compliance and regulatory counsel. Since 1998, her accomplishments include the management and resolution of litigated matters through jury and bench trials and appellate practice, creating the legal department for one of the largest non-judicial foreclosure trustees in the Western United States, the coordination of compliance audits, and managing the California branch of a national law firm. Ms. Mierzwa has worked with lenders and mortgage servicers of all sizes to ensure their compliance with state and federal laws, including, but not limited to, California Consumer Privacy Act, California and Nevada Homeowner Bill of Rights, state and federal FDCPA, RESPA, TILA, SCRA, Washington Foreclosure Fairness Act, Nevada, Oregon, and Washington Foreclosure Mediation Programs, Dodd-Frank Act and CFPB Rules, state licensing laws, and governmental and regulatory agency investigations.

Ms. Mierzwa is serving her third three-year term on the Board of Directors of the United Trustees Association (UTA) and is a member of the Legislative Committees of the California Mortgage Bankers Association and the UTA. She has monitored, proposed, and analyzed new legislation affecting the industry, has participated on speaking panels for national lending industry conferences, and has provided education and clarification to the industry regarding the Dodd-Frank Act and the Servicing Rules of the Consumer Finance Protection Bureau. Prior to her in-house and management experience, Ms. Mierzwa was a litigation and appellate attorney at a default services firm for ten years and worked in loan originations for three years. Ms. Mierzwa is licensed to practice in California and Washington. She can be reached at [mmierzwa@wrightlegal.net](mailto:mmierzwa@wrightlegal.net)



**Michael Belote, Esq.**

Mike Belote is president of California Advocates, Inc., one of Sacramento's oldest contract lobbying firms. His 35-year lobbying career began with association lobbying jobs with CPAs, Realtors and title companies, and he has been a contract lobbyist since 1990. Specialties include issues relating to the judicial branch, real estate, and financial services, including judges, civil defense lawyers, employment law, and more. Mike has represented the United Trustees Association for nearly 30 years. He also represents a diverse range of other clients including new car dealers and Apple. A division of Belote's firm also is one of Sacramento's biggest association management providers. He is known for philanthropic work relating to domestic violence and veteran's services, and he sponsors a lecture series every year discussing a key issue of California policy. He can be reached at [mbelote@caladvocates.com](mailto:mbelote@caladvocates.com).





### **Holly Chisa**

Holly Chisa has been active in state, local and federal government issues for over 20 years. Currently, Holly is the owner of her own lobbying firm, HPC Advocacy, LLC and works to provide her clients with the best representation possible in the Washington state Legislature and local municipalities.

Holly's involvement in government affairs began in 1994. She has worked as a campaign consultant, and also as House and Senate staff. She also worked in the 106th Congress as District Field Representative for U.S. Congressman Adam Smith. In 2001, she began lobbying as the Governmental Affairs Manager for the Washington Food Industry (WFI), primarily representing retail grocery, pharmacy, and food manufacturers' interests. In 2003, she opened HPC Advocacy, her privately owned lobbying firm.

Through this work Holly has developed a broad-based knowledge of the issues facing employers. She focuses primarily on reforming major employer programs, including workers' compensation and health care. She also works with environmental legislation, regulatory reform, beverage and spirit issues, and foreclosure law. In addition to working the halls of state government, Holly has also worked extensively with local governments, protecting client interests with both large and small municipalities on local ordinances, tax issues, and regulatory requirements.

She can be reached at [HollyChisa@hpcadvocacy.com](mailto:HollyChisa@hpcadvocacy.com).



### **Brigham Lundberg, Esq.**

Mr. Lundberg joined the firm in 2009. He currently serves as President and Managing Attorney for the firm. His practice includes representing financial institutions, lenders, and mortgage servicers in business and real estate litigation, title disputes, regulatory compliance, and a variety of foreclosure, creditors' rights, collection, and eviction matters. He is a Martindale-Hubbell "AV-Preeminent" rated attorney. He can be reached at [Brigham.Lundberg@Lundbergfirm.com](mailto:Brigham.Lundberg@Lundbergfirm.com)



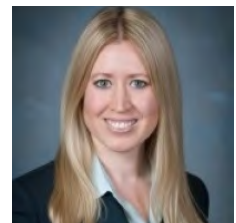
**Christopher McNichol, Esq.**

Christopher McNichol concentrates his practice on commercial and real estate transactions, including the sale and purchase, development, lease, title insurance and construction issues, and related litigation in these areas. In addition, Chris handles creditors' rights matters, including loan workouts, judicial and nonjudicial foreclosures, deeds in lieu, receiverships, deficiency and guarantor actions, and bankruptcy.

Chris represents lending and financial institutions, mortgage lenders and brokers, title and escrow companies, real estate brokers and agents, developers, contractors, and individuals. He writes and lectures frequently at bar and industry seminars on real estate, lending, litigation and creditors' rights topics, and is a teacher at the Arizona School of Real Estate and Business.

Chris has served as a mediator and arbitrator in various disputes involving commercial and real estate transactions and construction matters.

Chris is one of the Southwest Super Lawyers® for Real Estate Law. He is AV® Preeminent™ rated by Martindale-Hubbell®, representing the highest rating in legal ability and ethical standards, and was named by Arizona Business Magazine in Ranking Arizona Best of the Best Award Winner.



**Christina V. Miller, Esq.**

Christina V. Miller is the Managing Partner of the Firm's Nevada office. Ms. Miller comes from a diverse background having spent her childhood living in the Middle East and Europe. Ms. Miller graduated from The American University in Washington, D.C. with a Bachelor of Arts in Psychology in 2005. Ms. Miller earned her Juris Doctorate, with a concentration in Business Law, from the University of the Pacific, McGeorge School of Law in 2011. During law school, Ms. Miller received Witkin awards in Mediation, Business Transactions, and Commercial Law. Ms. Miller then worked as a Law Clerk for the Honorable Steven R. Kosach and the Honorable Brent T. Adams of the Second Judicial District Court of the State of Nevada before entering private practice in 2012. Since joining Wright, Finlay & Zak in 2015, Ms. Miller's practice has focused primarily on real estate litigation, including lender and servicer liability defense, wrongful foreclosure defense, fair debt collection practices defense, and title disputes. Ms. Miller regularly practices in state and federal courts throughout Nevada and is also admitted to the United States Court of Appeals for the Ninth Circuit.



Arizona

## UTA Arizona 2021 Legislative Updates

**Homesteads and Judgment Liens.** On May 19, 2021, the Arizona Governor signed into law House Bill 2617, which implemented significant modifications to Arizona's judgment lien, execution and homestead exemption statutes. These changes are effective from and after December 31, 2021. *See* Arizona Revised Statutes §§ 12-1551, 33-1101 and -1103, and 33-964.

### Overview.

As an overview, Arizona's homestead laws have historically protected a homeowner's primary Arizona residence from involuntary liens (but not, of course, from consensual liens such as deeds of trust). The so-protected property could be a single-family home, a condominium or a mobile home. The amount of the homestead has increased over the years, and was most recently \$150,000.

In the context of a case where a creditor held a recorded money judgment lien against a homeowner, the Arizona Court of Appeals recently confirmed older case law holding that homestead property in its entirety, not just as to the protected homestead amount, is held free and clear of judgment liens. *Pacific Western Bank v. Castleton*, 434 P.3d 1187 (Ariz. App. 2018). In essence, the recorded judgment, while a lien against other property of the homeowner, did not attach at all to the residence. Using that analysis, and in connection with insuring arm's-length sales and refinancings involving homesteaded properties, title companies have often not required the release of judgments even though they appear of record.

In order to reach the homeowner's equity in the residence above the homestead allowance, the creditor would need to pursue the involved judicial process leading to a sheriff's execution sale of the property. If the homeowner sold the homestead property before the judgment creditor is able to obtain a determination of its interest in the property's equity, the homeowners could deliver title to the buyer free from any lien claim by that creditor.

### New Law.

The *Castleton* case spurred creditors to push for a change in the homestead and judgment lien laws. HB 2617 became that change, essentially repealing the general no-lien-on-homestead-property rule restated in *Castleton*. In short, a recorded judgment **is** (or, rather, starting in 2022, **will be**) a lien against the judgment debtor's homestead property just as it would be against other real property.



As part of the legislative compromise to gain that significant improvement in a creditor's position, the homestead exemption was concurrently increased to \$250,000. So while the judgment is now a lien against the residence, the homeowner has protection for the first \$250,000 in equity.

Simple to state perhaps, but giving rise to complications in application, which the title companies and lenders pointed out in the legislative back-and-forth. The particular problematic scenarios involve not only valuation issues in normal sales but also in refinancings where a homeowner would be pulling money out of the residence.

#### Normal Sale.

In an attempt to address those situations, the statutes now incorporate new procedures determining whether, when and how the creditor can pursue equity over and above the protected \$250,000. 80% has become the trip cord. In a normal residential sale, if the homeowner will receive *less than 80%* of the \$250,000 homestead allowance (i.e., less than \$200,000), then a title company in a closing may unilaterally release the judgment lien against the residence as part of the sale, without notice to the lien creditor. The judgment lien is erased as to that property.

If, however, the homeowner is receiving *80% or more* of the homestead allowance, then a notice of the pending sale must be sent to the judgment lien creditor. If the creditor objects to the close of escrow within 20 days of such notice, then the title company may not release the judgment lien even if the homeowner's sale proceeds are less than \$250,000. To gain such a release over an objection, the homeowner must obtain judicial approval. In order to discourage unreasonable objections, the new law allows the court to award damages, attorneys' fees and costs against any creditor who makes an invalid objection.

#### Refinancings.

For refinancings, if the homeowner is getting "cash-out," then the creditor's lien must first be satisfied in full before the homeowner or any other person receives any of the proceeds.

If the homeowners will not receive any cash from a refinance, then the title company is authorized to record a notice of subordination of the judgment lien, meaning the judgment lien remains on the property but is junior to the new lender's deed of trust.

Conclusion.

The upshot is that, starting in 2022, the sale and refinancing of Arizona residences benefitted by a homestead and encumbered by recorded judgments will become more complicated for the sellers, buyers, lenders, lienholders, and title companies.

*Caveat:* Very recently the Arizona Supreme Court accepted review and heard oral argument in a different case, certified from the Bankruptcy Court, involving issues similar to those treated in *Castleton*, so there may be further word on the topic, although it's uncertain if any ruling there would impact the new statutory scheme §§from 2022 forward. *In re Todd M. McLauchlan*, 0:19-bk-11236-PS (Bankr. D. Ariz.), *certified to* Ariz. Supreme Ct., Apr. 8, 2021, CV-21-0095-CQ.



California

## **Legislative Updates**

### **California Legislative Issues**

- I. Key bills Enacted in 2021
  - Post-FC Auction Process
    - SB 1079 Implementation Issues
    - AB 175 Clean-up Provisions
  - Accessory Dwelling Units: Separate Conveyance: AB 345
  - Unlawful Covenants and Deed Restrictions: AB 1466
  - Escheat: SB 308
  - Liens for Labor Commissioner Citations and Decisions: SB 572
- II. Issues Raised in 2021 in Bills NOT Enacted
  - Remote Online Notarization: AB 1093
  - Monthly Property Tax Installments: SB 675



United Trustees Association  
Legislative Status Report**AB 15 (Chiu D) COVID-19 relief: tenancy: Tenant Stabilization Act of 2021.** ( Introduced: 12/7/2020 [html](#) [pdf](#) )**Status:** 9/10/2021-Failed Deadline pursuant to Rule 61(a)(15). (Last location was H. & C.D. on 1/11/2021)(May be acted upon Jan 2022)**Location:** 9/10/2021-A. 2 YEAR

**Summary:** (1)Existing law, the COVID-19 Tenant Relief Act of 2020, establishes certain procedural requirements and limitations on evictions for nonpayment of rent due to COVID-19 rental debt, as defined. The act, among other things, prohibits a tenant that delivers a declaration, under penalty of perjury, of COVID-19-related financial distress from being deemed in default with regard to the COVID-19 rental debt, as specified. Existing law defines COVID-19 rental debt as unpaid rent or any other unpaid financial obligation of a tenant that came due between March 1, 2020, and January 31, 2021. Existing law repeals the act on February 1, 2025. This bill would extend the definition of "COVID-19 rental debt" as unpaid rent or any other unpaid financial obligation of a tenant that came due between March 1, 2020, and December 31, 2021. The bill would also extend the repeal date of the act to January 1, 2026. The bill would make other conforming changes to align with these extended dates. By extending the repeal date of the act, the bill would expand the crime of perjury and create a state-mandated local program.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

**Notes 1:****AB 16 (Chiu D) Tenancies: COVID-19 Tenant, Small Landlord, and Affordable Housing Provider Stabilization Act of 2021.** ( Amended: 1/12/2021 [html](#) [pdf](#) )**Status:** 4/30/2021-Failed Deadline pursuant to Rule 61(a)(2). (Last location was H. & C.D. on 1/11/2021)(May be acted upon Jan 2022)**Location:** 4/30/2021-A. 2 YEAR

**Summary:** Existing law, the COVID-19 Tenant Relief Act of 2020, establishes certain procedural requirements and limitations on evictions for nonpayment of rent due to COVID-19 rental debt, as defined. The act prohibits a tenant that delivers a declaration of COVID-19-related financial distress from being deemed in default with regard to the COVID-19 rental debt, as specified. Existing law defines COVID-19 rental debt as unpaid rent or any other unpaid financial obligation of a tenant that came due between March 1, 2020, and January 31, 2021. Existing law repeals the act on February

1, 2025. This bill would establish the Tenant, Small Landlord, and Affordable Housing Provider Stabilization Program. The bill would authorize the Director of Housing and Community Development to direct an existing office or program within the Department of Housing and Community Development to implement the program. The bill would establish in the State Treasury the COVID-19 Tenant, Small Landlord, and Affordable Housing Provider Stabilization Fund, and, upon appropriation by the Legislature, distribute all moneys in the fund to the department to carry out the purposes of the program. The bill would require the program be implemented only to the extent that funding is made available through the Budget Act. The bill would specify that it is the intent of the Legislature to prioritize the use of available federal funds before using General Fund moneys for the program.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**AB 91** (Valladares R) **Taxation: corporations: minimum franchise tax: limited liability companies: annual tax: small businesses: microbusinesses.** ( Introduced: 12/7/2020 [html](#) [pdf](#) )

**Status:** 9/10/2021-Failed Deadline pursuant to Rule 61(a)(15). (Last location was REV. & TAX on 1/11/2021)(May be acted upon Jan 2022)

**Location:** 9/10/2021-A. 2 YEAR

**Summary:** Existing law imposes an annual minimum franchise tax of \$800, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state. Existing law also imposes an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability partnership, and limited liability company doing business in this state, as specified. Existing law requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives the tax expenditure will achieve, detailed performance indicators, and data collection requirements. This bill, for taxable years beginning on or after January 1, 2021, would reduce the minimum franchise tax to \$400 for small businesses, as defined, and to \$200 for microbusinesses, as defined. The bill, for taxable years beginning on or after January 1, 2021, would also reduce the annual tax for the limited liability companies described above that are small businesses to \$400 and that are microbusinesses to \$200. The bill would also state the intent of the Legislature to comply with the additional information requirement for any bill authorizing a new tax expenditure.

This bill contains other related provisions.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**AB 140** (Committee on Budget) **Housing.** ( Chaptered: 7/19/2021 [html](#) [pdf](#) )

**Status:** 7/19/2021-Approved by the Governor. Chaptered by Secretary of State - Chapter 111, Statutes of 2021.

**Location:** 7/19/2021-A. CHAPTERED

**Summary:** (1)Existing law defines the duties of the Treasurer, which include, but are not limited to, receiving and keeping the vaults of the State Treasury, paying warrants drawn by the Controller in certain circumstances, and keeping an account of all money received and disbursed. This bill would require the Treasurer, in consultation with other specified state agencies, to develop a framework for the California Dream For All Program, the goals of which would include, but would not be limited to, making home ownership more affordable. The bill would require the Treasurer to submit a report outlining the framework for the program to the Legislature. The bill would also state the intent of the Legislature that the program include certain elements.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

**Notes 1:**

---

**[AB 175](#)** (Committee on Budget) **Housing: mortgages and deeds of trust: use of state property: surplus land disposal: financing programs.** ( Chaptered: 9/23/2021 [html](#) [pdf](#) )

**Status:** 9/23/2021-Approved by the Governor. Chaptered by Secretary of State - Chapter 255, Statutes of 2021.

**Location:** 9/23/2021-A. CHAPTERED

**Summary:** (1)Existing law prescribes various requirements to be satisfied before the exercise of a power of sale under a mortgage or deed of trust and prescribes a procedure for the exercise of that power. Existing law prescribes the dates when a trustee's sale is deemed final if specified payments are made and, in this regard, a trustee's sale is deemed final upon the acceptance of the last and highest bid and is deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 18 calendar days after the sale, except as specified. This bill would extend the date in the above-described condition relating to the recording of the trustee's deed to 21 calendar days. The bill would require this change to become operative on January 1, 2022.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC		AA - Folder		

**Notes 1:**

---

**[AB 281](#)** ([Burke D](#)) **Personal income taxes: corporation taxes: gross income.** ( Introduced: 1/21/2021 [html](#) [pdf](#) )

**Status:** 5/7/2021-Failed Deadline pursuant to Rule 61(a)(3). (Last location was PRINT on 1/21/2021)(May be acted upon Jan 2021)

**Location:** 5/7/2021-A. 2 YEAR

**Summary:** The Personal Income Tax Law and the Corporation Tax Law, in conformity with federal income tax law, generally defines “gross income” as income from whatever source derived, except as specifically excluded, and provide various exclusions from gross income. Existing law, in conformity with the federal CARES Act, and its subsequent amendments in the Paycheck Protection Program and Health Care Enhancement Act and the Paycheck Protection Program Flexibility Act of 2020, among other things, excludes any amounts of covered loans forgiven under the CARES Act from gross income for purposes of the Personal Income Tax Law and the Corporation Tax Law. Existing law reduces the amount of any credit or deduction otherwise allowed under the Personal Income Tax and the Corporation Tax Law for any amount paid or incurred by the taxpayer upon which this exclusion is based by the amount of the exclusion allowed. This bill would state the intent of the Legislature to enact legislation that would bring California’s tax treatment of covered Paycheck Protection Program loans into conformity with federal tax laws.

This bill contains other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

**Notes 1:**

---

**[AB 345](#)** (**[Quirk-Silva](#)** D) **Accessory dwelling units: separate conveyance.** ( Chaptered: 9/29/2021 [html](#) [pdf](#) )

**Status:** 9/28/2021-Approved by the Governor. Chaptered by Secretary of State - Chapter 343, Statutes of 2021.

**Location:** 9/28/2021-A. CHAPTERED

**Summary:** The Planning and Zoning Law authorizes a local agency to provide, by ordinance, for the creation of accessory dwelling units in single-family and multifamily residential zones and requires a local agency that has not adopted an ordinance to ministerially approve an application for an accessory dwelling unit, and sets forth required ordinance standards, including that the ordinance prohibit the sale or conveyance of the accessory dwelling unit separately from the primary residence. This bill would require each local agency to allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if the above-described conditions are met. The bill would impose an additional condition on a tenancy in common agreement subject to these provisions and recorded on or after December 31, 2021, to include specified information, including a delineation of all areas of the property that are for the exclusive use of a cotenant, delineation of each cotenant’s responsibility for the costs of taxes, insurance, utilities, general maintenance and repair, and improvements associated with the property, and procedures for dispute resolution among cotenants before resorting to legal action.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

**Notes 1:**



---

**[AB 387](#)** (Lee D) **Social Housing Act of 2021.** ( Amended: 3/25/2021 [html](#) [pdf](#).)

**Status:** 4/30/2021-Failed Deadline pursuant to Rule 61(a)(2). (Last location was H. & C.D. on 3/25/2021)(May be acted upon Jan 2022)

**Location:** 4/30/2021-A. 2 YEAR

**Summary:** Existing law, the Housing Authorities Law, authorizes the establishment of a functioning housing authority within a city or county by enactment of a resolution by the city or county declaring that there is need of a functioning housing authority in the city or county. Existing law authorizes a housing authority of a city or county to, among other things, prepare, carry out, acquire, lease, and operate housing projects and housing developments for persons of low income, as provided. This bill, the Social Housing Act of 2021, would establish, in the Business, Consumer Services, and Housing Agency, the California Social Housing Council to develop policy proposals that would promote the development of social housing, as defined, to hold public meetings throughout the state to educate participants on the history and purposes of social housing, and to solicit input on the policy proposals from stakeholders. The bill would require the council to report to the Legislature by January 1, 2024, on the council's recommended policy proposals and all input received. The bill would make related findings and declarations.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB				
	CC				

**Notes 1:**

---

**[AB 528](#)** (Wicks D) **Property taxation: tax-defaulted property: sales to nonprofits.** (

Amended: 5/4/2021 [html](#) [pdf](#).)

**Status:** 5/25/2021-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/12/2021)(May be acted upon Jan 2022)

**Location:** 5/25/2021-A. 2 YEAR

**Summary:** Existing law generally authorizes a county tax collector to sell tax-defaulted property 5 or more years after the real property has become tax defaulted. Existing law authorizes a nonprofit organization to purchase residential or vacant property, with the approval of the board of supervisors of the county in which it is located, that has been tax defaulted for 5 years or more, or 3 years or more after the property has become tax defaulted and is subject to a nuisance abatement lien, as long as the property is used for low-income housing or public use, as specified. Existing law defines "nonprofit organization" as a nonprofit public benefit corporation organized for the purpose of the acquisition of either single-family or multifamily dwellings for rehabilitation and sale or rent to low-income persons or for other use to serve low-income persons, or vacant land for construction of residential dwellings and subsequent sale or rent to low-income persons, for other use to serve low-income persons, or for dedication of that vacant land to public use. This bill, among other things, would revise the definition of nonprofit organization to also require that the nonprofit organization (1) own or manage housing units located on property that is exempt from taxation, as specified, (2) contract with a nonprofit corporation that has received a tax exemption for properties intended to be sold to low-income families with financing in the form of zero interest rate loans, (3) is a community housing development organization, or (4) is a community land trust.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

**AB 790** (Quirk-Silva D) **Consumer Legal Remedies Act** ( Chaptered: 10/6/2021 [html](#) [pdf](#) )

**Status:** 10/6/2021-Approved by the Governor. Chaptered by Secretary of State - Chapter 589, Statutes of 2021.

**Location:** 10/6/2021-A. CHAPTERED

**Summary:** Existing law, the Consumer Legal Remedies Act, provides that specified unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that result in the sale or lease of goods or services to any consumer are unlawful. Existing law includes the home solicitation of a consumer who is a senior citizen as an unfair method of competition and unfair or deceptive act or practices if a loan is made encumbering the primary residence of the consumer for purposes of paying for home improvements and the transaction is part of a pattern or practice in violation of specified provisions of federal law. This bill would extend the above-described provisions of the Consumer Legal Remedies Act relating to home solicitations of a senior citizen where a loan encumbers the primary residence of the consumer for purposes of paying for home improvement to also apply to assessments. Under the bill, if transactions are part of a pattern or practice in violation of specified provisions relating to the PACE program, or specified provisions regulating PACE program administrators under the California Financing Law, they would be unfair methods of competition and unfair or deceptive acts or practices.

This bill contains other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

**AB 830** (Flora R) **Business: Department of Consumer Affairs: licensed professions and vocations.** ( Chaptered: 9/29/2021 [html](#) [pdf](#) )

**Status:** 9/28/2021-Approved by the Governor. Chaptered by Secretary of State - Chapter 376, Statutes of 2021.

**Location:** 9/28/2021-A. CHAPTERED

**Summary:** (1)Under existing law, the Department of Consumer Affairs is comprised of various boards, bureaus, commissions, committees, and similarly constituted agencies that license and regulate the practice of various professions and vocations. Existing law requires the Director of the Department of Consumer Affairs to administer and enforce those provisions. This bill would require the director to notify the appropriate policy committees of the Legislature within 60 days after the position of chief or executive officer of any bureau or board within the department becomes vacant, as specified.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**[AB 874](#) (Quirk-Silva D) PACE program: risk mitigation program.** ( Amended: 4/19/2021 [html](#) [pdf](#) )  
**Status:** 5/25/2021-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/12/2021)(May be acted upon Jan 2022)  
**Location:** 5/25/2021-A. 2 YEAR

**Summary:** Existing law, known commonly as the Property Assessed Clean Energy (PACE) program, authorizes a public agency, by making specified findings, to authorize public agency officials and property owners to enter into voluntary contractual assessments to finance the installation of distributed generation renewable energy sources or energy or water efficiency improvements that are permanently fixed to real property. Existing law also requires the California Alternative Energy and Advanced Transportation Financing Authority to develop and administer a PACE risk mitigation program for PACE financing to increase its acceptance in the marketplace and protect against the risk of default and foreclosure. This bill would require the authority, upon an appropriation by the Legislature for purposes of the bill, to develop and administer the PACE risk mitigation program to address residential PACE-related mortgage and tax delinquencies in order to avoid default or foreclosure by awarding a grant, in an amount equal to at least one annual PACE assessment but not more than 4 annual PACE assessments, to an eligible property owner, as defined. The bill would require the authority to award the grants on a first-come, first-served basis.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**[AB 1093](#) (Jones-Sawyer D) Remote online notaries public.** ( Amended: 3/18/2021 [html](#) [pdf](#) )  
**Status:** 4/30/2021-Failed Deadline pursuant to Rule 61(a)(2). (Last location was JUD. on 3/18/2021)(May be acted upon Jan 2022)  
**Location:** 4/30/2021-A. 2 YEAR

**Summary:** Existing law authorizes the Secretary of State to appoint and commission notaries public in the number the Secretary of State deems necessary for the public convenience. Existing law authorizes notaries public to act as notaries in any part of the state and prescribes the manner and method of notarizations. This bill, the California Notary Protection Act, would authorize a notary public to apply for registration with the secretary to be a remote online notary public. The bill would authorize the secretary to adopt rules necessary to implement those provisions.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

## Notes 1:

---

**AB 1146** ([Cervantes](#) D) **California Small Business Rent Relief Act.** ( Amended: 4/14/2021 [html](#) [pdf](#) )

**Status:** 4/30/2021-Failed Deadline pursuant to Rule 61(a)(2). (Last location was REV. & TAX on 4/13/2021)(May be acted upon Jan 2022)

**Location:** 4/30/2021-A. 2 YEAR

**Summary:** Existing law, the Bergeson-Peace Infrastructure and Economic Development Bank Act, establishes the California Infrastructure and Economic Development Bank (bank). The act authorizes the bank, among other things, to make loans, issue bonds, and provide financial assistance for various types of projects that qualify as economic development or public development facilities. This bill would enact the California Small Business Rent Relief Act, which would authorize a county to establish a local small business rent forgiveness and tax relief program, as provided, for the purpose of providing credits to qualified taxpayers, as defined, to be used against any tax or fee owed to the county by the qualified taxpayer, and for which the county has authority to collect a credit in lieu of cash. The bill would authorize the bank to establish the California Small Business Rent Forgiveness and Tax Relief Program, as provided, for the purpose of providing grants to qualified counties, as defined, to implement a small business rent forgiveness and tax relief program. The bill would create the Small Business Rent Forgiveness and Tax Relief Account within the California Infrastructure and Economic Development Bank Fund, for the purpose of receiving moneys transferred to the account, and would require all moneys in the account to be available for expenditure, upon appropriation by the Legislature, for the purpose of implementing the California Small Business Rent Forgiveness and Tax Relief Program. The bill would require the bank to submit a report to the Governor and the Legislature on program activities, as provided.

This bill contains other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB				
	CC				

## Notes 1:

---

**AB 1199** ([Gipson](#) D) **Homes for Families and Corporate Monopoly Transparency Excise Tax: qualified property: reporting requirements.** ( Amended: 4/5/2021 [html](#) [pdf](#) )

**Status:** 9/10/2021-Failed Deadline pursuant to Rule 61(a)(15). (Last location was REV. & TAX on 3/4/2021)(May be acted upon Jan 2022)

**Location:** 9/10/2021-A. 2 YEAR

**Summary:** Existing law requires the Secretary of State to perform various duties relating to business entities. This bill would require a qualified entity, as defined, that owns qualified property, as defined, to report annually to the Secretary of State specified information regarding the qualified property owned by the qualified entity. The bill would require the Secretary of State to create a searchable database, updated annually, on the Secretary of State's internet website, with the information provided by the qualified entity.

This bill contains other related provisions and other existing laws.



Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**[AB 1208](#) (Ting D) Unclaimed property: secure payment of claims.** ( Introduced: 2/19/2021 [html](#) [pdf](#) )  
**Status:** 6/4/2021-Failed Deadline pursuant to Rule 61(a)(8). (Last location was INACTIVE FILE on 6/3/2021)(May be acted upon Jan 2022)  
**Location:** 6/4/2021-A. 2 YEAR

**Summary:** The Unclaimed Property Law governs the disposition of unclaimed property, including the escheat of certain property to the state. Those provisions require a person holding funds or other property escheated to the state to report to the Controller certain information regarding the property and the owner, and set forth procedures whereby a person may file a claim to the property or to the net proceeds from its sale. This bill would authorize the Controller to implement additional measures designed to streamline the secure payment of claims, as specified.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**[AB 1381](#) (Gallagher R) Limited liability companies: statement of information: Secretary of State: notice.** ( Amended: 3/18/2021 [html](#) [pdf](#) )  
**Status:** 9/10/2021-Failed Deadline pursuant to Rule 61(a)(15). (Last location was B. & F. on 3/22/2021)(May be acted upon Jan 2022)  
**Location:** 9/10/2021-A. 2 YEAR

**Summary:** Existing law requires every limited liability company and every foreign limited liability company registered to transact intrastate business in this state to deliver to the Secretary of State a statement of information containing specified information. In lieu of filing the statement of information, if there has been no change in the information contained in the last filed statement of information, it may advise the Secretary of State that no changes in the required information have occurred during the applicable filing period. If the required information has changed, as specified, a current statement is required to be filed that will supersede any previously filed statement, as specified. This bill would require the Secretary of State, by January 1, 2023, to create and implement a procedure to transmit a notice to a limited liability company or a foreign limited liability company stating that an updated statement of information has been filed for the limited liability company or for the foreign limited liability company.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**[AB 1410](#) (Rodriguez D) Associations: declared emergency: protected uses.** ( Amended: 4/5/2021

[html pdf](#) )

**Status:** 5/7/2021-Failed Deadline pursuant to Rule 61(a)(3). (Last location was H. & C.D. on 3/11/2021)(May be acted upon Jan 2021)

**Location:** 5/7/2021-A. 2 YEAR

**Summary:** Existing law, the Davis-Stirling Common Interest Development Act, regulates common interest developments and associations, as defined. Existing law also regulates governing documents, as defined, and protects certain uses of a homeowner's separate property. That law, among other things, prohibits an association from restricting a homeowner's right to rent or lease a separate interest unless the governing document or amendment that restricts a homeowner's right to rent or lease their separate interest existed prior to the homeowner acquiring title to the separate interest. Existing law also prohibits the governing documents of an association from establishing unreasonable restrictions on the use of a homeowner's backyard for personal agriculture, as defined. This bill would prohibit the governing documents from restricting a homeowner's right to rent or lease a portion of the homeowner occupied separate interest for 30 days or more, without regard to whether such restriction existed at the time the homeowner acquired title to the separate interest. This bill would also extend the provision protecting a homeowner's right to use their backyard for personal agriculture to include all of the homeowner's separate interest.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

**Notes 1:**

---

**[AB 1466](#) (McCarty D) Real property: discriminatory restrictions.** ( Chaptered: 9/29/2021 [html pdf](#) )

**Status:** 9/28/2021-Approved by the Governor. Chaptered by Secretary of State - Chapter 359, Statutes of 2021.

**Location:** 9/28/2021-A. CHAPTERED

**Summary:** Existing law, the California Fair Employment and Housing Act, prohibits discrimination in housing based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information, and provides that discrimination in housing through a restrictive covenant includes the existence of a restrictive covenant, regardless of whether accompanied by a statement that the covenant is repealed or void. Existing law also provides that a provision in any deed of real property in California that purports to restrict the right of any person to sell, lease, rent, use, or occupy the property to persons having the characteristics specified above by providing for payment of a penalty, forfeiture, reverter, or otherwise, is void, except as specified. Additionally, existing law provides that any deed or other written instrument that relates to title to real property, or any written covenant, condition, or restriction annexed or made a part of, by reference or otherwise, any deed or instrument, that contains any provision that purports to forbid, restrict, or condition the right of any person or persons to sell, buy, lease, rent, use, or occupy the property on account of any of characteristics specified above, is deemed to be revised to omit that provision. This bill would require a title company, escrow company, real estate broker, real estate agent, or association that delivers a copy of a declaration, governing document, or deed to a person who holds an ownership interest of record in property to also provide a Restrictive Covenant Modification

form with specified procedural information.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**[AB 1584](#)** (Committee on Housing and Community Development) Housing omnibus. ( Chaptered: 9/29/2021 [html](#) [pdf](#) )  
**Status:** 9/28/2021-Approved by the Governor. Chaptered by Secretary of State - Chapter 360, Statutes of 2021.  
**Location:** 9/28/2021-A. CHAPTERED

**Summary:** (1)Existing law, the Planning and Zoning Law, authorizes a local agency to provide for the creation of accessory dwelling units in single-family and multifamily residential zones by ordinance, and sets forth standards the ordinance is required to impose with respect to certain matters, including, among others, maximum unit size, parking, and height standards. Existing law authorizes a local agency to provide by ordinance for the creation of junior accessory dwelling units, as defined, in single-family residential zones and requires the ordinance to include, among other things, standards for the creation of a junior accessory dwelling unit, required deed restrictions, and occupancy requirements. This bill would make void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in real property that either effectively prohibits or unreasonably restricts the construction or use of an accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the above-described minimum standards established for those units, but would permit reasonable restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with those aforementioned minimum standards provisions.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**[ACA 9](#)** ([Kiley R](#)) Property taxation: transfers of principal residences. ( Introduced: 5/3/2021 [html](#) [pdf](#) )  
**Status:** 5/4/2021-From printer. May be heard in committee June 4.  
**Location:** 5/3/2021-A. PRINT

**Summary:** The California Constitution limits the amount of ad valorem taxes on real property to 1%

of the full cash value of that property, defined as the county assessor's valuation of real property as shown on the 1975–76 tax bill and, thereafter, the appraised value of the real property when purchased, newly constructed, or a change in ownership occurs after the 1975 assessment, subject to an annual inflation adjustment not to exceed 2%. The California Constitution, until February 15, 2021, excluded from classification as a “purchase” or “change in ownership” requiring reappraisal the purchase or transfer of a principal residence and the first \$1,000,000 of other real property of a transferor in the case of a transfer between parents and their children, or between grandparents and their grandchildren if all the parents of those grandchildren are deceased. On November 3, 2020, the voters approved Proposition 19. Pursuant to Proposition 19, the California Constitution, on and after February 16, 2021, removes the above-described exclusion from classification as a “purchase” and “change in ownership” requiring reappraisal, and instead excludes from classification as a “purchase” and “change in ownership” the purchase or transfer of a family home or family farm, as those terms are defined, of the transferor in the case of a transfer between parents and their children, or between grandparents and their grandchildren if all the parents of those grandchildren are deceased, if the property continues as the family home or family farm of the transferee. In the case of the exclusion so provided to a transfer of a family home, the California Constitution, pursuant to Proposition 19, requires the transferee to claim the homeowner's or disabled veteran's exemption within one year of the transfer. This measure would repeal the above-described provisions of Proposition 19. The measure would reinstate the prior rule excluding from classification as a “purchase” or “change in ownership” requiring reappraisal the purchase or transfer of the principal residence and the first \$1,000,000 of other real property of a transferor in the case of a transfer between parents and their children, or between grandparents and their grandchildren if all the parents of those grandchildren are deceased. The measure would apply retroactively to all effected purchases or transfers occurring on or after February 16, 2021.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

**Notes 1:**

## **SB 8**

**(Skinner D) Housing Crisis Act of 2019.** ( Chaptered: 9/16/2021 [html](#) [pdf](#) )

**Status:** 9/16/2021-Approved by the Governor. Chaptered by Secretary of State. Chapter 161, Statutes of 2021.

**Location:** 9/16/2021-S. CHAPTERED

**Summary:** Existing law, the Housing Crisis Act of 2019, requires a housing development project be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application is submitted, except as specified. The act defines “housing development project” to mean a use consisting of residential units only, mixed-use developments consisting of residential and nonresidential uses with at least 2/3 of the square footage designated for residential use, and transitional or supportive housing. This bill would clarify, for various purposes of the act, that “housing development project” includes projects that involve no discretionary approvals, projects that involve both discretionary and nondiscretionary approvals, and projects that include a proposal to construct a single dwelling unit. The bill would specify that this clarification is declaratory of existing law, except that the clarification does not affect a project for which an application was submitted to the city, county, or city and county before January 1, 2022.

This bill contains other related provisions and other existing laws.



Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

**Notes 1:**

**[SB 140](#) (Committee on Budget and Fiscal Review) Housing.** ( Amended: 7/11/2021 [html](#) [pdf](#).)  
**Status:** 9/10/2021-Failed Deadline pursuant to Rule 61(a)(15). (Last location was BUDGET on 1/8/2021)(May be acted upon Jan 2022)  
**Location:** 9/10/2021-A. 2 YEAR

**Summary:** (1)Existing law defines the duties of the Treasurer, which include, but are not limited to, receiving and keeping the vaults of the State Treasury, paying warrants drawn by the Controller in certain circumstances, and keeping an account of all money received and disbursed. This bill would require the Treasurer, in consultation with other specified state agencies, to develop a framework for the California Dream For All Program, the goals of which would include, but would not be limited to, making home ownership more affordable. The bill would require the Treasurer to submit a report outlining the framework for the program to the Legislature. The bill would also state the intent of the Legislature that the program include certain elements. This bill would remove the above-described requirement that the leasing receive the approval of the governing body of any concerned local agency. The bill would expand the list of beneficial public purposes for which property may be leased to include permanent supportive housing and traditional housing.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

**Notes 1:**

**[SB 175](#) (Committee on Budget and Fiscal Review) Housing: mortgages and deeds of trust: use of state property: surplus land disposal: financing programs.** ( Amended: 9/7/2021 [html](#) [pdf](#).)  
**Status:** 9/10/2021-Failed Deadline pursuant to Rule 61(a)(15). (Last location was BUDGET on 9/10/2021)(May be acted upon Jan 2022)  
**Location:** 9/10/2021-A. 2 YEAR

**Summary:** (1)Existing law prescribes various requirements to be satisfied before the exercise of a power of sale under a mortgage or deed of trust and prescribes a procedure for the exercise of that power. Existing law prescribes the dates when a trustee's sale is deemed final if specified payments are made and, in this regard, a trustee's sale is deemed final upon the acceptance of the last and highest bid and is deemed perfected as of 8 a.m. on the actual date of sale if the trustee's deed is recorded within 18 calendar days after the sale, except as specified. This bill would extend the date in the above-described condition relating to the recording of the trustee's deed to 21 calendar days. The bill would require this change to become operative on January 1, 2022.(2)Existing law, until January 1, 2026, prescribes a process in connection with a trustee's sale of property under a power of sale contained in a deed of trust or mortgage on real property containing one to 4 residential units that determines when the trustee's sale is deemed final, depending on different factors. Under

existing law, in this regard, if a prospective owner-occupant, as defined, is the last highest bidder, the date upon which specified conditions required of the bidder for the trustee sale to become final is met, and the trustee must require the respective owner-occupant to submit a specified affidavit. If an eligible tenant buyer or eligible bidder, as those terms are defined, submits to the trustee either a bid, as prescribed, or a nonbinding written notice of intent to place a bid, the trustee sale becomes final after 15 days. Existing law requires the bid or written notice of intent to place a bid to be sent to the trustee in certain ways and received no later than 15 days after the trustee sale. Additionally, the trustee sale may become final based upon the date a representative of all eligible tenant buyers submits to the trustee a bid in an amount equal to the last and highest bid at the trustee's sale in the form of payment, as specified, and satisfies other conditions, including receipt by the trustee no later than 45 days after the trustee sale. Finally, the trustee sale may become final 45 days after an eligible bidder, as defined, submits to the trustee a bid in an amount that exceeds the last and highest bid at the trustee's sale in form of payment, as specified. This bill would revise the above-described process, operative until January 1, 2026, for finalizing the trustee sale. In this regard, the bill would provide that certain information to be submitted to a trustee be provided as an affidavit or declaration given under penalty of perjury, as specified. By expanding the crime of perjury, this bill would impose a state-mandated local program. The bill would authorize the trustee to reasonably rely on such an affidavit or declaration. The bill would impose additional limits on who may be a prospective owner-occupant for these purposes. The bill would prescribe requirements regarding the times by which bids are required to be received and the information that is to accompany them. The bill would specify a limit on the information that a trustee is able to provide to eligible bidders or to persons considering whether to submit a bid or notice of intent to bid. The bill would also extend the date that the trustee's sale is deemed perfected, if an eligible bidder submits a written notice of intent to bid, based on the recording of the trustee's deed, as described above, from 48 days to 60 days. The bill would require these changes to become operative on January 1, 2022. (7) This bill would appropriate \$30,000,000, available for encumbrance or expenditure through June 30, 2024, from the Labor and Workforce Development Fund for support of the Department of Industrial Relations for strategic enforcement focused on construction, alteration, and repair projects for publicly funded residential projects, including the Multifamily Housing Program. (8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC		AA - Folder		

Notes 1:

---

**SB 308**    **(Min D) Unclaimed property: electronic funds transfer.** ( Chaptered: 7/16/2021 [html](#) [pdf](#) )  
**Status:** 7/16/2021-Approved by the Governor. Chaptered by Secretary of State. Chapter 103, Statutes of 2021.  
**Location:** 7/16/2021-S. CHAPTERED

**Summary:** Existing law requires a person holding funds or other property escheated to the state to file a report with the Controller and to pay or deliver the escheated property to the Controller within a

specified time, unless another person establishes their right to the property. Existing law requires any payment to the Controller of at least \$20,000 in unclaimed cash to be made by electronic funds transfer. This bill would instead require any payment of at least \$2,000 in unclaimed cash to be made by electronic funds transfer.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**SB 454** (Bates R) Child support: enforcement. ( Amended: 6/3/2021 [html](#) [pdf](#) )

**Status:** 8/27/2021-Failed Deadline pursuant to Rule 61(a)(12). (Last location was APPR. SUSPENSE FILE on 7/14/2021)(May be acted upon Jan 2022)

**Location:** 8/27/2021-A. 2 YEAR

**Summary:** Existing law imposes a general obligation on both parents of a minor child to support their child in the manner suitable to the child's circumstances. Existing law establishes the statewide uniform guidelines for calculating court-ordered child support, based on the income of both parents and the time each parent spends with the child. Existing law authorizes, if a support obligor is delinquent in paying child support and the local child support agency is enforcing a support obligation, a lien for child support against the personal property of the obligor in specified circumstances. Existing law defines "support obligor is delinquent in payment of support" to mean that the support obligor has failed to make a payment equal to one month's support obligation. This bill would instead define "support obligor is delinquent in payment of support" to mean that the support obligor is over \$1,000 in arrears on their support obligation or has failed to make payments equal to 3 months of their support obligation, whichever occurs first. The bill would instead authorize a child support agency to record a notice of support judgment when overdue support exceeds \$1,000 or when the support obligor has failed to make payments equal to 3 months of their support obligation, whichever occurs first, regardless of whether the amounts of overdue support have been adjudicated or otherwise determined.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

Notes 1:

---

**SB 572** (Hertzberg D) Labor Commissioner: enforcement: lien on real property. (

Chaptered: 9/27/2021 [html](#) [pdf](#) )

**Status:** 9/27/2021-Approved by the Governor. Chaptered by Secretary of State. Chapter 335, Statutes of 2021.

**Location:** 9/27/2021-S. CHAPTERED

**Summary:** Existing law vests with the Labor Commissioner the authority to hear employee complaints regarding the payment of wages and other employment-related issues. Existing law imposes various civil penalties for violations of state law, including on employers for failure to pay

minimum wage, on successors to judgment debtors, on persons who do not hold a valid state contractor's license and employ workers to perform services for which a license is required, and on persons who violate provisions relating to minor employees. Existing law permits the commissioner to, as an alternative to a judgment lien, create a lien on real property to recover amounts due under final orders in favor of an employee named in the order. This bill would authorize the Labor Commissioner to create, as an alternative to a judgment lien, a lien on real property to secure amounts due to the commissioner under any final citation, findings, or decision, as provided. The bill would require the commissioner, among other things, to include specified information on the certificate of lien to be recorded on the relevant party's real property and to issue a certificate of release once the amount due, including any interest and costs, has been paid.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB				
	CC				

Notes 1:

---

**SB 633** (Limón D) Contracts: translations. ( Amended: 4/27/2021 [html](#) [pdf](#) )

**Status:** 6/4/2021-Failed Deadline pursuant to Rule 61(a)(8). (Last location was INACTIVE FILE on 6/1/2021)(May be acted upon Jan 2022)

**Location:** 6/4/2021-S. 2 YEAR

**Summary:** Existing law requires a person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into specified agreements, to deliver to the other party to the contract or agreement, and before the execution thereof, a translation of the contract or agreement in the language in which the contract or agreement was negotiated, which includes a translation of every term and condition in that contract or agreement. Existing law specifies that these provisions do not apply to a person engaged in a trade or business who negotiates primarily in a language other than English, as specified, if the party with whom that person is negotiating is a buyer of goods or services, or receives a loan or extension of credit, or enters an agreement obligating that party as a tenant, lessee, or sublessee, or similarly obligates the party by contract or lease, and the party negotiates the terms of the contract, lease, or other obligation through the party's own interpreter. This bill would also require a specified notice to be delivered to a person who will sign the contract but who will not receive the goods, services, money, or other subject of the contract if that person is not proficient in English, in the above-specified languages, by the party who is a person engaged in a trade or business before execution of the contract and on a separate page immediately preceding the contract or agreement. The bill would require the Department of Financial Protection and Innovation, on January 1, 2022, to make available for download on its internet website translations of the notice described above, which may be used by any person engaged in a trade or business to satisfy these requirements.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB				
	CC				

Notes 1:

---

**SB 668** (Bates R) Property taxation: change in ownership: inheritance exclusion. ( Amended: 4/27/2021 [html](#) [pdf](#) )

**Status:** 9/10/2021-Failed Deadline pursuant to Rule 61(a)(15). (Last location was GOV. & F. on 3/3/2021)(May be acted upon Jan 2022)



**Location:** 9/10/2021-S. 2 YEAR

**Summary:** The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, “full cash value” is defined as, among other things, the appraised value of that real property when a change in ownership has occurred. Existing property tax law provides that specified transfers are not deemed a change in ownership if a claim is filed, including, in accordance with the California Constitution, the purchase or transfer between parents and children, and in certain circumstances between grandparents and grandchildren, of the transferor’s principal residence and the first \$1,000,000 of full cash value of all other real property. The California Constitution makes this exclusion inoperative as of February 16, 2021, and, beginning on and after that date, instead excludes the purchase or transfer of a family home or a family farm, as those terms are defined, between parents and their children or, under certain circumstances, grandparents and their grandchildren, subject to certain limitations and restrictions. This bill would exclude from “change in ownership” for purposes of property taxation transfers between parents and children and grandparents and grandchildren of the transferor’s principal residence and the first \$1,000,000 of full cash value of all other real property, in a manner similar to the above-described existing statutory provisions. The bill would require a person seeking to claim the exclusion under these new provisions to file a claim that includes certain information, certified under penalty of perjury. The bill would provide that the claim is not a public document and is not subject to inspection, except to specified parties. The bill would require the State Board of Equalization to design the claim form. The bill would apply its provisions retroactively to February 16, 2021, make these provisions inoperative as of February 16, 2023, and repeal these provisions as of January 1, 2024. The bill would make legislative findings with regard to its provisions.

This bill contains other related provisions and other existing laws.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB CC				

**Notes 1:**

---

**[SB 675](#)** (**[Ochoa Bogh R](#)**) **Property taxation: monthly installment payments.** ( Vetoed: 10/6/2021 [html pdf](#) )

**Status:** 10/6/2021-Vetoed by the Governor. In Senate. Consideration of Governor's veto pending.

**Location:** 10/6/2021-S. VETOED

**Summary:** Existing law requires real property taxes to be paid in 2 installments and requires the tax collector to collect those taxes. Existing law authorizes the tax collector, with the approval of the county board of supervisors, to accept partial payment of real property taxes from the taxpayer in the case of a deficiency in the payment of those taxes. This bill would authorize a county board of supervisors to adopt a resolution or ordinance to implement a monthly property tax payment program, which would authorize a qualified taxpayer, as defined, to pay, in monthly installments, their real property taxes on their principal residence, as defined. The bill would authorize the ordinance or resolution implementing the program to set forth specific procedures for purposes of determining delinquency and default, as specified. The bill would require revenues received by the county from property tax payments pursuant to the bill’s provisions to be distributed in the same manner and time as all other property tax apportionments pursuant to applicable state law and related procedures and agreements established by the county auditor. The bill would exclude from its provisions property for

which an escrow account is established, as provided.

Organization	Assigned	Position	Priority	Subject	Group
UTA	MDB				
	CC				

**Notes 1:**

Total Measures: 30

Total Tracking Forms: 30



Nevada

**UTA Annual Conference**  
**Legislative Update Session – Nevada**

Notable bills that passed:

**AB 141:** Provides that “If a court grants an action for summary eviction pursuant to NRS 40.253 during the COVID-19 emergency, the court *shall automatically* seal the eviction case court file.”

- “COVID-19 emergency” defined as beginning on March 12, 2020, through the date on which the Governor terminates the Declaration of Emergency for COVID-19.
- “Eviction case court file” defined as “all records relating to an action for summary eviction which are maintained by the court, including, without limitation, the affidavit of complaint and any other pleadings, proof of service, findings of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, Justice Court Rules of Civil Procedure and local rules of practice and all other papers, records, proceedings and evidence, including exhibits and transcript of the testimony.”
- Effective May 27, 2021.

**AB 308:** Prohibits landlords from charging late fees for leases longer than a week until three days have passed since the rent became due. The bill also increases the notice period for a landlord to provide notice of a rent increase.

- For tenancies of a month or longer: 60-day notice (previously 45 days).
- For tenancies of less than one month: 30-day notice (previously 15 days).
- Effective July 1, 2021.

**AB 486:** This bill makes several changes to the eviction process for a default in rent payment.

- Exempts eviction relating to commercial property or an unlawful detainer action pursuant to NRS 40.2514 or 40.255.
- Allows tenants to claim as an affirmative defense to an eviction that they have a pending application for rental assistance or that the landlord refused to accept rental assistance provided by the tenant.
- The court is required to stay all proceedings if the tenant asserts these defenses to allow the landlord to rebut them. The court is also authorized to (1) refer the designated eviction proceeding to mediation, (2) hold a hearing, or (3) maintain the stay of proceedings.
- If the court finds that the landlord failed to accept rental assistance, the eviction is terminated, and the tenant may be awarded damages. If the landlord accepts rental assistance but continues to pursue eviction/evict a tenant, the tenant or the



governmental entity who administered the rental assistance may file a claim for wrongful eviction against the landlord.

- Landlords are also now required to include with the eviction notices rental assistance options as well as information regarding the tenant's rights to claim these affirmative defenses.
- Requires disbursement of \$5 million in federal money for rental assistance.
- Effective June 4, 2021. Certain sections expire on June 5, 2021.
- The provision providing for a stay of an eviction proceeding to facilitate mediation, expires on the earlier of (a) the date that the Supreme Court determines that the programs of alternative dispute resolution do not have sufficient funds to administer the programs, or (b) June 5, 2023.

**AB 359:** Provides that it is a deceptive trade practice not to provide certain translations in a language other than English. Willful violation may result in a fine of \$5,000 per violation and the violator may be found guilty of a misdemeanor or gross misdemeanor (up to a category d felony for three or more offenses).

- Specifically, a business and an agent or employee of a business that advertises in a language other than English and negotiates certain transactions in a language other than English must provide a translation of the contract or agreement that results from such advertising and negotiations in the language that was used in the advertisement and negotiation to the person who is party to the contract. The translated contracts or agreements must be provided before the execution of the contract or agreement. If the business is a financial institution that is required to provide certain disclosures to comply with the federal Consumer Leasing Act and the Truth in Lending Act, such disclosures are required to be translated into the same language as the contract or agreement.
- The provisions of this bill, do not apply to a person who: (1) is a bank, savings and loan association, savings bank, thrift company or credit union; (2) has a physical location; and (3) engages in a transaction other than the issuance of a credit card or an automobile loan.
- Effective October 1, 2021.

**\*\*Of note,** no changes to the Nevada Homeowner Bill of Rights or Foreclosure Mediation Program were made during this last legislative session. It is not surprising that the Legislature did not make any major changes to foreclosure laws considering the CFPB's new COVID-19-related rules and the current procedures in place to provide foreclosure alternatives, such as HOBR and mediations, to homeowners.

Notable mentions which may show up in future sessions:

**AB 152:** Would have expanded the definition of a “Creditor debt collector” to means “a person who engages, directly or indirectly, in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to the person.”

**AB 161:** Would have eliminated actions for summary evictions for default in the payment of periodic rent due monthly or a shorter period, requiring a landlord to proceed through a formal action for unlawful detainer.

**SB 159:** A bill similar to one in California that would have allowed tenants or non-profits to bid on properties after foreclosure sales had taken place.

**SB 339:** Permitting a common-interest community to lease residential property within the common-interest community in certain circumstances, including when there is a security interest attached.



Washington



- 2021 Legislative Summary - Capitol Gains passes, expanded worker benefits, foreclosure moratoriums - all under the guise of COVID-19
- Significant tax increases even with a budget surplus for 2021
- Legislature provides \$173 million in funding for housing issues, rental assistance, and other programs
- ESSB 5408 Expansion of the homestead act
- E2SHB 1277 - increase in filing fees for documents in Washington
- ESSB 5355 Wage Liens now law in Washington
- ESHB 1108 Expansion of the Foreclosure Fairness Act (FFA) to non-owner occupied properties
  - Repeated extensions of the foreclosure moratorium by the Governor
  - Repeated extensions of the rental eviction moratorium by the Governor
- Seattle housing/rental ordinances - permanent law changes



#### And..... What's On Tap for 2022

- ▶ Surplus Funds - UTA legislation AND a bill from the advocates to address the same issues
- ▶ Licensure and regulation of trustees - components of the Colorado model?
- ▶ Aggressive efforts by advocates to make significant changes to the FFA and mediation generally





- ▶ 2021 Legislative Summary - Capitol Gains passes, expanded worker benefits, foreclosure moratoriums - all under the guise of COVID-19
- ▶ Significant tax increases even with a budget surplus for 2021
- ▶ Legislature provides \$173 million in funding for housing issues, rental assistance, and other programs



- ▶ [HB 1277](#) - Filing fees - \$100 per document filed with the county now charging a fee - effective July 25, 2021
- ▶ Revenue generated is intended for use for housing programs, rental protections
- ▶ Exemptions from the fee:
- ▶ Certain documents types are exempt from this increase:
  - ▶ Assignment of Deed of Trust
  - ▶ Appointment, Substitution, or Resignation of Trustee
  - ▶ Recorded marriage, birth, death records
  - ▶ Liens and Releases recorded by state, city, county, or a water/sewer district
  - ▶ Federal tax liens and releases



▶ **ESSB 5408** - Significant expansion of the Homestead Act

▶ Effective May 12, 2021

▶ The new allowance is \$125,000 OR the county median sale price of a single family home, whichever is greater. Most homes in Washington will fall above the \$125,000 mark, with homes in the greater Pierce and Snohomish County areas above \$500,000. King County (with Seattle at its heart) has a current median value of \$800,000.

▶ Estimated values now exempt by County:

1. Pierce County: \$424,300
2. King County: \$729,600
3. Kitsap County: \$425,100
4. Thurston County: \$383,600
5. Mason County: \$319,600
6. Snohomish County: \$549,400

▶ The new law also changes the definition of forced sale to include any sale of the homestead property in a bankruptcy proceeding to reflect the recent court case of *In re Good*.



**ESSB 5355** Wage Liens now law in Washington

- ▶ Employees can now file a wage claim against real and personal property of a business owner for unpaid wages
- ▶ Liens can be filed for unpaid attorneys' fees, benefits, damages or other amounts owed. A wage lien does not apply to any claim that is a lien covered by the construction lien statutes.
- ▶ An action to foreclose on the wage lien must be filed within eight months of the date the wage lien was recorded.
- ▶ It can be done either judicially or through Washington Labor and Industries if the claim has been handled administratively through the Agency.
- ▶ The wage lien is subordinate to any prior perfected security interest, lien, mortgage deed of trust, or other encumbrance.



## Evictions, extensions, the Governor and the Mayor.... Protecting renters and homeowners

- ▶ Governor Inslee eviction restrictions
- ▶ Limitations by the Legislature via SB 5160
- ▶ E2SSB 5160 specifically limited the Governor's authority to continue to extend the moratorium. From E2SSB 5160 - *NEW SECTION. Sec. 4. A new section is added to chapter 59.18 RCW to read as follows: (1) The eviction moratorium instituted by the governor of the state of Washington's proclamation 20-19.6 shall end on June 30, 2021.*
- ▶ Governor Inslee "bridge" proclamation
- ▶ Governor Inslee foreclosure restrictions
- ▶ Extensions of those orders
- ▶ November 1 - what happens next for renters and landlords statewide?



## Seattle gets into the mix, passing three ordinances

- ▶ [CB 120046](#) Establishes a prohibition on evictions for a household during the school year for children or their guardians or parents, or an employee of a school district (teacher or support staff.)
- ▶ [CB 120077](#) extends the eviction moratorium for Seattle through the Mayor's executive order.
- ▶ [CB 120090](#) Establishes a tenant's right to first refusal for a new lease agreement after expiration of their previous rental agreement. It also requires the just cause standards to be met when first right of refusal is not provided to the tenant. It requires the landlord offer a new rental agreement on "reasonable terms" with the tenant for the same unit with the existing renter. The renter must provide the new lease agreement 90 days prior to the lease agreement expiring; the tenant has 30 days to respond. If the tenant declines the offer, there is a rebuttable position that the new rental agreement was not "reasonable" and that's why it was declined. This only applies if the unit is listed to prospective new tenants under materially favorable terms to the land lord.
- ▶ Tenants receive 60 days notice to terminate, and 60-90 days notice for just cause termination of a lease depending on circumstances.
- ▶ Additional documents:
- ▶ Staff analysis of CB 120046 eviction prohibition for school-aged children and school staff - found [here](#)
- ▶ Staff analysis of CB 120090 tenant's first right of refusal - found [here](#)
- ▶ CB 119784 Original eviction moratorium - found [here](#) from May 4, 2020





**ESHB 1108** makes changes to the Foreclosure Fairness Act

- ▶ Expands the meet and confer requirement to non-owner occupied up to four units
- ▶ Removes the requirement that the owner occupy the property

Provisions of the FFA that now applied to nonowner occupied up to 4 units:

- ▶ notice of default; prominent statement with specific information about the foreclosure process and homeowner's options;
- ▶ a beneficiary's declaration to prove that the beneficiary is the owner of the obligation secured by the deed of trust; and
- ▶ compliance with the "meet and confer" requirement and, if applicable, the mediation requirement.



- ESHB 1108 (continued) - Adjustments to funding and participation by financial institutions
- Makes changes to the requirements of financial institutions to participate in Mediation - uses the number of trustee sales in 2019 instead of 2020 and 2021
- Makes changes to the requirements of financial institutions to pay fees to the program per NOTS based on the number of NOTS filed in 2019, not 2020 or 2021
- Beginning on January 1, 2022, the remittance requirement is modified to be based on the number of the NOD, rather than the NOTS, that a beneficiary issues or causes to be issued during the previous quarter
- Beginning on January 1, 2023, a beneficiary is exempt from foreclosure mediation if it certifies that during the preceding calendar year, it was not a beneficiary of deeds of trust in more than 250 trustee sales of residential real properties of up to four units, whether or not a property is owner-occupied.
- Beginning on January 1, 2023, the remittance exemption is also modified to be based on the number of NOD, rather than the NOTS, issued during the preceding year. Specifically, a beneficiary is exempt from the remittance requirement if it certifies that it has issued or caused to be issued fewer than 250 NOD during the preceding year.





- What's Next in 2022
- Likely virtual
- Likely additional taxes/fees
- UTA legislation for surplus funds - UTA has a bill, the advocates have a bill



And what's on the advocates' list?

- 1 - Licensing and regulation of trustees as they are paid for by the beneficiary and thus biased toward beneficiary;
- 2 - Mediations should require presence of same rep from bene at all meetings;
- 3 - The Notice of Default should expire;
- 4 - The Beneficiary Declaration should have to be signed by someone employed directly by the Beneficiary;
- 5 - The Statute of Limitations should apply to non-judicial foreclosure;
- 6 - Changes to the Deceased borrower process - contacting those under age 16, mailing requirements
- 7 - All loan modifications should have to be recorded;
- 8 - We need to "deal" with the NPV issue;
- 9 - The Trustee's Deed should not be allowed to be issued until 11 days after the sale;
- 10 - The trustee should be required to "timely" deposit surplus funds;
- 11 - The local contact (required physical presence in WA) for the trustee must know everything about the individual foreclosure when someone calls.



Utah

## **2021 Utah Legislative Changes Affecting Default Mortgage Servicing**

**by Brigham J. Lundberg  
Lundberg & Associates, PC**

After a turbulent and memorable 2020 across many segments of society, the year 2021 has slowly begun to bring back a sense of calm and normalcy. These sentiments were reflected in Utah's 2021 general legislative session, in which no major bills were passed affecting the mortgage servicing industry. However, a few minor legislative changes occurred that are worth noting. The effective date for these bills was May 5, 2021. These four (4) bills amend provisions regarding mortgage loan reinstatements and cancellations of notices of default; attorney referral fees; restrictive covenants; and public notice. The bills are described more fully below. We recommend that lenders, mortgage servicers, law firms, and trustees familiarize themselves with the legislative changes that follow.

### **Trust Deed Amendments**

**Senate Bill 197** implements additional notice requirements to the conclusion of the Utah non-judicial foreclosure process. When a mortgage loan default is cured and the loan obligation is reinstated, the foreclosure trustee, after executing and recording a Cancellation of Notice of Default (CNOD), will now be required to mail, by certified mail or registered mail, return receipt requested, with postage prepaid, within 20 days of recording, a copy of the recorded CNOD to each party that was previously entitled to receive statutory notice of the Notice of Default (NOD) and/or the Notice of Trustee's Sale (NOTS). The intent of this purportedly consumer friendly bill was, apparently, to make sure borrowers received affirmative notification that the foreclosure had ceased, as previously there was no requirement for the trustee to mail the recorded CNOD. However, the bill will almost certainly have the unintended consequence of making reinstatement more expensive for the borrower, as it will increase the attorney fees and costs associated with reinstatement, which amounts are passed along to and recoverable from the borrower. Trustees handling foreclosures in Utah should make sure their clients are aware of the additional fees and costs the trustee may incur when closing a file following a reinstatement, to be sure that such amounts are included in all quotes provided to the borrower.

### **Private Cause of Action for Undisclosed Referral Fees**

**House Bill 179** creates a private cause of action that may be brought against an attorney or a law firm to recover a referral fee that is paid, on or after May 5, 2021, to a person that is not an attorney, if the attorney or the law firm pays the referral fee for a client and fails to provide notice of the referral fee to the client. Under this new legislation, there is, however, an exemption to the private cause of action, if the referral fee was paid (a) as part of a profit-sharing plan; (b) to a person that provides marketing services for the attorney or the law firm, and the referral fee was not contingent on whether the attorney or law firm retains a client; or (c) to a third-party debt collection agency. Additionally, any attorney or law firm that provides legal services to the client in the matter in which the referral fee was paid shall be jointly and severally liable in the private cause of action. Attorneys practicing in Utah should be aware and remain vigilant in providing this necessary notice, so as to avoid potential claims for undisclosed referral fees.

### **Restrictive Covenant Amendments**

**House Bill 374** prohibits the enforcement of a discriminatory restrictive covenant in a previously recorded written instrument relating to real property. The bill targets any preference, limitation, and discrimination based

on race, color, religion, sex, national origin, familial status, source of income, disability, sexual orientation, or gender identity. In fact, this bill affirmatively declares such discriminatory provisions to be void. Additionally, the bill allows a property owner to record a modification document declaring a restrictive covenant to be void and allows a condominium or community association to amend the association's governing documents to remove any discriminatory restrictive covenants. Moreover, to encourage and incentivize property owners, HOAs, and COAs to remove any such discriminatory restrictive covenants, this bill prevents the county recorder from charging a fee for recording any such modification document. Utah's legislators continue to work to make Utah a diverse, inclusive, and non-discriminatory environment for all of its citizens, and this prohibition of restrictive covenants is a step in the right direction.

### **Public Notice Amendments**

*Senate Bill 201* continues the gradual erosion of newspaper publication in legal notices in the state of Utah. Like a similar bill passed in 2020, this new bill chips away at the newspapers' foothold by eliminating a number of statutory requirements to publish notices in a newspaper and on a specified legal notice website, allowing notice instead to be posted on the Utah Public Notice Website. This effort to do away with newspaper publication for legal notices is being led by Utah's League of Cities and Towns as a way to reduce costs for local municipalities. Foreclosure notices and publication of summonses in litigation matters were not included in the list of statutory notice matters that no longer require newspaper publication. However, it is likely that, at some point within the next five (5) years, newspaper subscribership will fall to levels that no longer support newspaper publication as an effective and necessary means of notifying the public of pending foreclosure sales and/or litigation. At that point, the legislature will likely work to do away with legal notice newspaper publication altogether.

### **Conclusion**

While the past year in the mortgage default industry has been quiet due to ongoing foreclosure and eviction moratoria, the anticipated moratoria expiration, the potential wave of foreclosures, and the pending heightened scrutiny of default matters by the CFPB should give financial institutions pause and encourage their compliance departments, law firms, and other vendors to be fully compliant with these changes to Utah law going forward.

For any questions regarding this article or the new laws summarized herein, please contact Brigham J. Lundberg, Managing Attorney of Lundberg & Associates, PC at [brigham.lundberg@lundbergfirm.com](mailto:brigham.lundberg@lundbergfirm.com).





# Large Trustees Roundtable

Facilitator

Cathe Cole-Sherburn

Trustee Corps

Sponsored by



**SUPERIOR DEFAULT SERVICES, INC.**

FORECLOSURE SALES, POSTING, PUBLISHING



## **Cathe Cole-Sherburn**

Cathe Cole-Sherburn serves as Senior Vice President of Default Operations for Trustee Corps. She is responsible for managing all aspects of operations, including audit, compliance and strategic planning and development of all offices.

Cathe brings over 35 years of all aspects of real estate mortgage default experience to the company.

Before joining Trustee Corps, Cathe was with the First American Trustee Servicing Solutions, where she was Senior Vice President. While there, her duties included the oversight and management of the Trustee Division. Prior to that, she was with the firm of Routh Crabtree Olsen/Northwest Trustee Services, where she was the Director of Operations and instrumental in setting up the AZ, CA, and HI offices and obtaining the Freddie Mac and Fannie Mae Counsel Designations. Prior to that, she was the Director of Operations for the Law Offices of Steven J. Melmet, Inc., for 14 years, and instrumental in obtaining in the Freddie Mac Designation and HUD Foreclosure Commissioner for state of CA.

Cathe currently serves as on the Board of the United Trustees Association as Vice President, as well as a Board member of the Women in Legal Leadership for American Legal & Financial Network. She is also a member of Arizona Trustee Association, Mortgage Bankers Association, California Mortgage Bankers Association, National Association of Professional Women and Society of Corporate Compliance and Ethics.

Cathe can be seen as a Moderator and/or Panelist at various industry conferences and provides seminars/training to our existing clients. She can be reached at [ccole@trusteecorps.com](mailto:ccole@trusteecorps.com).

**Large Trustees Roundtable**  
**Facilitator: Cathe Cole-Sherburn**

Some items that will be discussed:

1. CA SB1079
  - How are you processing NOI's/Bids?
  - Releasing of information
  - Eligible Bidder NOI's
  - Frustrations
  - What's working/what's not
2. Debt Validation Letters – CFPB effective 11/30/21
  - Trustee vs. Law Firm – do we or don't we?
3. Bidding Strategies for Senior Lien Monitoring files
4. Multiple APN's, one Deed of Trust

Open Questions/Answers session for all



# Small Trustees Roundtable

Facilitators

Robert Cullen

Redwood Trust Deed Services

Randy Newman

Total Lender Solutions

Sponsored by



**Metropolitan News Company**





### **Robert Cullen**

Robert Cullen has over 26 years of foreclosure experience which encompass both trustee and loan servicing related organizations. He started his career in 1989 as a Trustee Sale Officer for a small mortgage company processing their own foreclosures. He helped found Redwood Trust Deed Services, Inc. in 1992 as a small independent foreclosure trustee. As the owner and operator, Robert has experienced first-hand the myriad of changes, both good and bad, in the foreclosure industry. He has processed foreclosures for a wide variety of both lenders and borrowers. He helped Redwood Trust Deed add loan servicing to its list of services and continues to be intimately involved in the day to day activities. He has also held a California Bureau of Real Estate license since 1991. He can be reached at [robert@redwoodtrustdeed.com](mailto:robert@redwoodtrustdeed.com).



### **Randy Newman**

Randy Newman is one of the principals of Total Lender Solutions. Licensed as an attorney in New York since 1989 and New Jersey since 1994, Randy has personally represented hundreds of buyers, sellers, owners, and lenders in connection with the sale, purchase, finance, lease, and foreclosure of residential and commercial real property throughout the United States. Randy holds a BBA in Accounting and is licensed as a real estate broker in California. Randy is certified by the United Trustees Association as a Trustee Sale Officer, Level II California. Randy has previously been an adjunct assistant professor of business law and currently teaches Real Estate Principles to aspiring new real estate licensees and trains new real estate agents on contracts and real estate transactions in California. He can be reached at [rnewman@totallendersolutions.com](mailto:rnewman@totallendersolutions.com).