RIVERSIDE LAWYER

July/August 2008 • Volume 58 Number 7

MAGAZINE

In This Issue:

Riverside County Bar Association RCBA Est. 1894

The official publication of the Riverside County Bar Association

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RIVERSIDE LAWYER
MAGAZINE

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Mission Statement

Established in 1894

The Riverside County Bar Association, established in 1894 to foster social interaction between the bench and bar, is a professional organization that provides continuing education and offers an arena to resolve various problems that face the justice system and attorneys practicing in Riverside County.

RCBA Mission Statement

The mission of the Riverside County Bar Association is to:

Serve its members, and indirectly their clients, by implementing programs that will enhance the professional capabilities and satisfaction of each of its members.

Serve its community by implementing programs that will provide opportunities for its members to contribute their unique talents to enhance the quality of life in the community.

Serve the legal system by implementing programs that will improve access to legal services and the judicial system, and will promote the fair and efficient administration of justice.

Membership Benefits

Involvement in a variety of legal entities: Lawyer Referral Service (LRS), Public Service Law Corporation (PSLC), Tel-Law, Fee Arbitration, Client Relations, Dispute Resolution Service (DRS), Barristers, Leo A. Deegan Inn of Court, Inland Empire Chapter of the Federal Bar Association, Mock Trial, State Bar Conference of Delegates, and Bridging the Gap.

Membership meetings monthly (except July and August) with keynote speakers, and participation in the many committees and sections.

Eleven issues of Riverside Lawyer published each year to update you on State Bar matters, ABA issues, local court rules, open forum for communication and timely business matters.

Social gatherings throughout the year: Installation of RCBA and Barristers Officers dinner, Annual Joint Barristers and Riverside Legal Secretaries dinner, Law Day activities, Good Citizenship Award ceremony for Riverside County high schools, and other special activities.

Continuing Legal Education brown bag lunches and section workshops. RCBA is a certified provider for MCLE programs.

MBNA Platinum Plus MasterCard, and optional insurance programs.

Discounted personal disability income and business overhead protection for the attorney and long-term care coverage for the attorney and his or her family.

Riverside Lawyer is published 11 times per year by the Riverside County Bar Association (RCBA) and is distributed to RCBA members, Riverside County judges and administrative officers of the court, community leaders and others interested in the advancement of law and justice. Advertising and announcements are due by the 6th day of the month preceding publications (e.g., October 6 for the November issue). Articles are due no later than 45 days preceding publication. All articles are subject to editing. RCBA members receive a subscription automatically. Annual subscriptions are $25.00 and single copies are $3.50.

Submission of articles and photographs to Riverside Lawyer will be deemed to be authorization and license by the author to publish the material in Riverside Lawyer.

The material printed in Riverside Lawyer does not necessarily reflect the opinions of the RCBA, the editorial staff, the Publication Committee, or other columnists. Legal issues are not discussed for the purpose of answering specific questions. Independent research of all issues is strongly encouraged.

Calendar

AUGUST

14 **Bar Publications Committee**
RCBA – Noon

22 **Judicial Demeanor Course for Temporary Judges**
(This course is mandatory for all attorneys serving as temporary judges)
RCBA Bldg., 3rd Floor, - 1:30 – 4:45 p.m.
(Registration/check-in starts at 12:30 p.m.)
Call Amelia Butts at (951) 955-0206 or Email Amelia.butts@riverside.courts.ca.gov
(MCLE - 3 Hrs. Genl.)

SEPTEMBER

1 **HOLIDAY**

3 **Bar Publications Committee**
RCBA – Noon

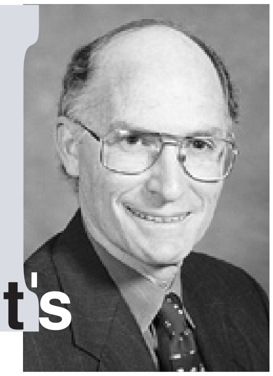
9 **Appellate Law Section**
"An Inside Perspective on Writs in the California Court of Appeal"
Court of Appeal – Noon
MCLE

RCBA/SBCBA Landlord/Tenant Law Section
"Changes in Landlord/Tenant Law"
Cask 'n Cleaver – 6:00 p.m.
1333 University Avenue, Riverside
MCLE

16 **Family Law Section**
RCBA Bldg., 3rd Floor – Noon
(MCLE)

18 **RCBA Annual Installation Dinner**
Mission Inn – 5:30 p.m.

President's Message



by Daniel Hantman

At our monthly luncheon on June 20, we honored Justice John G. Gabbert (Ret.). It was his 99th birthday. He was born in Oxnard on June 20, 1909. His family moved to Riverside in 1912, when his father purchased an interest in and took the position of editor of the Press-Enterprise. He graduated with a J.D. from U.C. Berkeley's Boalt Hall in 1934. He returned to Riverside to practice on his own or with various other attorneys until 1943, when he joined the United States Army. During that time, he was appointed to act as pro bono attorney for criminal defendants. These appointments were so numerous that he became the "unofficial" public defender. During his U.S. Army tour of duty in New Guinea and the Philippines, he reportedly appeared before the Philippine Supreme Court. In 1949, he was RCBA President.

In 1949, Governor Earl Warren appointed Justice Gabbert to the Riverside Superior Court. In 1970, Governor Ronald Reagan appointed him to the Court of Appeal. He retired in 1974. In our September 2006 *Riverside Lawyer*, Justice James Ward (Ret.) wrote an article entitled "John Gabbert – A Treasure of the Riverside Legal Community." Many of the facts above come from that article; but I would like to quote a few of the items:

> "John was active in community organizations and served as president of the Present Day Club, the Lions Club and the [UCR] Citizens University Committee. He served for three years on the Riverside Unified School District Board. His involvement with the University of California, Riverside has been extensive. He was on the founding committee for UCR [in the early 1950's], served on its Foundation Board and for years taught a pre-law honors seminar. John loves riding motorcycles and has ridden hundreds of thousands of miles in the U.S. and Canada with, among others, his court reporter, Tom Nolan, and Justice Gerald Brown. Always the Renaissance man, John has been a ham radio operator, a beer brewer, a bread maker and for some years a part-owner of a backpacking supply store. He writes well, and he cannot be surpassed as a speaker.
>
> "The recitation of the facts of his career does not tell the most compelling thing about John Gordon Gabbert. I speak of his wonderful human qualities. To learn this, you simply have to know him. John is one of the kindest, warmest and most engaging of human beings. At age [99], he has a sharp intellect and a subtle wit. He is a jewel of our legal community and is truly one of Riverside's treasures."

The law firm Best Best & Krieger, formerly known as Best Best & Gabbert, is compiling a legal history of Justice Gabbert. The RCBA is supporting this endeavor, which will be complemented by the UCR Extension program's LIFE Society two-part video, entitled, "Riverside, My Riverside." The first part of this series was presented at the LIFE Society on June 3. The second part will be presented on Tuesday, September 9, at UCR Extension. Please call if you would like to go to meet this wonderful person.

As you may know, we will be installing our 2008-2009 RCBA and Barristers officers at our installation dinner on Thursday, September 18, at the Mission Inn. The RCBA officers are President Aurora Hughes, President-Elect Harry Histen, Vice President Harlan Kistler, Chief Financial Officer Robyn Lewis, Secretary Christopher Harmon, and Directors-at-Large Jacqueline Carey-Wilson, John Higginbotham and Randy Stamen. The Barristers officers are President Christopher Peterson, Vice President David Cantrell, Secretary Kirsten Birkedal, Treasurer Jean-Simon Serrano, and Members-at-Large Jeffrey Boyd and David Lee. Please mark this on your calendars and attend.

ACKNOWLEDGMENT

The Riverside County Bar Association would like to express its great appreciation to attorney HERSHEL MARTIN for his assistance in helping the bar deal with multiple floodings in the bar building by working with the county and vendors to resolve them.

Hershel has assisted the RCBA several different times in dealing with issues that confronted the bar association building. We thank him for his expert pro bono services.

The RCBA continues to provide numerous programs to our membership and others in our legal, educational, governmental, and business communities. We have over 1,000 members. Our members continue to participate in numerous programs. One new program that is being structured is the Attorney Volunteer Program. This is a joint program of the RCBA and Riverside County Public Defender's office. Participants will receive training from the Public Defender in exchange for a commitment to three or more misdemeanor trials. Participants will also receive MCLE credit for this training.

On May 30, the Volunteer Attorney Recognition Ceremony took place at the Historic Courthouse, Department 1. Presiding Judge Richard T. Fields and Judge Craig Riemer spoke about the volunteers who have provided time to assist our judicial system during an era when Riverside County had only 78 judicial officers, although it should have had 133. Over a two-year period, there were 193 temporary judge volunteers (judges pro tem). In addition, there were 12 volunteers on the Court Congestion Committee, 12 volunteers on the Court Community Planning Committee, 4 volunteers on the Guardianship Assistance Program, 15 volunteers for Mandatory Dispute Resolution Conferences, 9 volunteers on the Self-Represented Litigants Task Force and 17 volunteers on the Teach the Teachers Committee. Please contact us if you are able to volunteer for any of these committees.

Dan Hantman, president of the Riverside County Bar Association, is a sole practitioner in Riverside.

On April 24, in *Manta Management Corporation v. City of San Bernardino* (2008) 43 Cal.4th 400 [75 Cal.Rptr.3d 353, 181 P.3d 159] the California Supreme Court held that a party that obtains injunctive relief based on an ordinance later ruled unconstitutional, and that has not misled or pressured the court, cannot be held liable under 28 United States Code section 1983 (section 1983), because "the court['s] intervening exercise of independent judgment in issuing the [injunctive relief] . . . breaks the chain of causation . . . ."

Manta Management Corporation (Manta) operated an "adult cabaret" called the Flesh Club. This violated a city zoning ordinance. On the city's motion, the trial court granted a preliminary injunction prohibiting the Flesh Club from operating. After a trial, however, the trial court dissolved the injunction and found the zoning ordinance unconstitutional. The city appealed; on the city's motion, the court of appeal issued a stay order, once again prohibiting the Flesh Club from operating. Eventually, the court of appeal affirmed the dissolution of the injunction and lifted the stay.

Meanwhile, Manta filed a cross-complaint under section 1983. The trial court ruled that the city had violated Manta's constitutional rights by obtaining the injunction and the stay; a jury awarded Manta $1.4 million in damages.

The Supreme Court began by stating: "[T]he critical question is . . . whether the city's seeking a preliminary injunction and a stay were acts in violation of the First Amendment that caused injury to Manta for which the city could conceivably be liable under section 1983." Relying primarily on a number of analogous federal case, it held that, as a general rule, when damages claimed under section 1983 flow from a court order, the court's exercise of its independent judgment is a superseding cause.

The court noted, however, that there is "an exception to the principle of superseding causation when the party seeking an injunction or stay pending appeal either misled or pressured the court, which was expected to exercise independent judgment. Accordingly, . . . this general rule of superseding causation does not apply when the judicial officer reached an erroneous decision as a result of being pressured or materially misled as to the relevant facts." This would be true, it held, even if the moving party did not *intentionally* mislead the court.

Manta claimed that the city had made factual misrepresentations in its motion for a preliminary injunction as well as its motion for a stay. The Supreme Court therefore remanded for further proceedings, in which Manta could try to prove that these representations were not only false but also material, "in that they would have undermined the courts' ability to exercise independent judgment on the issues presented."

The unanimous opinion was authored by Justice Moreno.

Advising Clients About Foreclosures

by D. W. Duke

By now, most Inland Empire attorneys have probably seen the impact of the declining housing market in their own practices. Even attorneys whose practices are outside of real estate law have seen the impact of the market decline. Family law attorneys have reported that they are now faced with questions involving real property marital assets with depreciating values, often encumbered by loans greater than fair market value. Similar concerns are being expressed by those who practice in probate and business law. An understanding of the principles of foreclosure is important in providing the proper advice to a client who is the owner of a diminishing real property asset.

A number of factors have led to the present crisis in the housing market. One of the initial factors was the overextension of credit. In the last few years prior to the present housing slump, 35% of homeowners nationwide had loans in excess of 95% of the value of the home. In California, 45% of homeowners had loans in excess of 95% of the value of the home. Many people purchased a home with an adjustable-rate mortgage, planning to refinance into a fixed-rate mortgage before the loan adjusted to the point that it would become unaffordable. The initial low payments made these loans particularly attractive, and their popularity began to exceed the popularity of the fixed-rate mortgage. However, when the homeowners attempted to refinance, they found that the equity in the home had decreased to the extent that lenders would not refinance. As a result, many homeowners found themselves in foreclosure. Mortgage fraud has also increased the number of foreclosures, through Ponzi schemes and pyramid holdings not unlike those in the securities industry in the 1920's prior to the Great Depression. Moreover, as a result of the continuing slow-down in the housing market, buyers have hesitated to purchase real estate. Thus, buyer caution has exacerbated the housing decline.

According to data from the National Association of Realtors, nationwide existing home sales were at 4.89 million in January 2008, compared to 6.38 million in January of 2007. This is a decrease of about 23.4%. The glut of existing homes on the market in the United States in January 2008 reached 4.19 million, which is a 10.3 month supply. In contrast, in January of 2007, the existing home inventory was 3.52 million, which was a 6.7 month supply. PropertyShark.com reports that foreclosures in Los Angeles in the third quarter of 2007 were up 247% over the third quarter of 2006. There were 5,320 foreclosure filings in Los Angeles in the third quarter of 2007, which was a 40% increase over filings in the second quarter of 2007. Stockton, Riverside/San Bernardino, Sacramento, Bakersfield and Fresno are five of the top 20 foreclosure-filing areas in the nation, according to the Department of Housing and Community Development.

Types of Foreclosure

In California, there are two types of foreclosure with which a homeowner might be faced. These are the "judicial foreclosure" and the "trustee's sale," sometimes called the "power of sale" foreclosure. In a judicial foreclosure, when the amount recovered in the sale is less than the amount owed on a loan, the difference is called the "deficiency." A "deficiency judgment" is a judgment against the borrower for the difference between the unpaid balance on the loan and the amount generated by the foreclosure sale or the fair market value, whichever is greater. When the foreclosure is accomplished by judicial action, the lender may be able to obtain a deficiency judgment against the borrower. However, the recovery of the deficiency is available only in a judicial foreclosure and is not permitted after a trustee's sale. In other words, if the lender utilizes the nonjudicial method of a trustee's sale, a deficiency cannot be collected. Additionally, the recovery of a deficiency is not possible on a purchase-money loan, including seller-carried financing, on any real property, or on a loan on property consisting of one to four family units of owner-occupied residential property. Recovery of the deficiency is possible, however, on a refinanced property loan (i.e., non-purchase money) or on a one to four family *non-owner-occupied* residential property loan.

Judicial Foreclosure

Fewer than 5% of residential foreclosures in the state of California are judicial foreclosures. A judicial foreclosure is initiated by the lender filing a lawsuit against the defaulting borrower in superior court. Upon sufficient proof at trial, the court enters a judgment of foreclosure and orders the sale of the property. After the sale, the lender files an application for a fair-value deficiency, after which there is a hearing on the deficiency. Upon approval, the court issues a fair-value finding on the deficiency and enters a conventional money judgment called a "deficiency judgment." A judicial foreclosure generally takes much longer than a trustee's sale. Subsequent to the issuance of the judgment, there is a time period during which the borrower can exercise a right of redemption and repurchase the property by paying the full amount of the defaulted loan. When the proceeds from the sale are sufficient to pay the debts on the property, the redemption period is three months. When the proceeds are not sufficient to pay the debts on the property, the redemption period is twelve months.

We are often asked by real estate professionals what the "one-action rule" means in real estate foreclosures. The one-action rule was designed to limit the number of lawsuits that would be required in order to foreclose on a piece of real estate. In California, the one-action rule has been codified as Code of Civil Procedure section 726, subdivision (a) (section 726(a)). That section requires a mortgagee (the party who lends money to the property owner [mortgagor] and takes a security interest in the property) to seek all of its relief in one legal proceeding. While most foreclosures in the state of California occur without judicial intervention, by way of a trustee's sale, the one-action rule applies in situations where the party utilizes the courts to achieve a judicial foreclosure. Judicial foreclosures are most commonly utilized when the lender is seeking to recover the deficiency.

At common law, in order for a lender to recover both the property and a money judgment for the deficiency, the lender had to file three separate actions. These were (1) a suit in equity to foreclose on the property, (2) an action at law on the debt to obtain a money judgment, and (3) an action for ejectment to remove the borrower from the property. This requirement of filing three separate actions was a significant burden to lenders who desired to foreclose on real estate. In 1851, California adopted a version of a proposed New York law and codified it in section 246 of the Civil Practice Act. In 1872, it was recast as section 726(a), which remains in effect today.

Section 726(a) is most commonly thought of as debtor protection, because it allows the debtor to avoid a multiplicity of lawsuits. In reality, it was originally intended to protect the lender from the necessity of prosecuting numerous actions to recover different forms of relief under three different forms of action. As mentioned above, the vast majority of foreclosures on residential real property occur by way of trustee's sale. However, in situations where the foreclosing lender seeks to recover a deficiency on the sale of real property, the judicial foreclosure process must be utilized and the lender must comply with the one-action rule.

Foreclosure by Trustee's Sale

In contrast to the judicial foreclosure, in a trustee's sale there is no court filing. Instead, the lender elects to accelerate the loan under the "power of sale" clause contained in the deed of trust, and the property is sold at a trustee's sale. In actual practice, when the borrower is approximately 45 to 60 days in default, the lender sends a letter advising that the loan is in foreclosure and that the lender is going to exercise the option to accelerate the loan. The borrower is also provided with information about how to reinstate the loan. If the borrower does not cure the default, the lender then records a "notice of default" against the property. The soonest the actual foreclosure sale can occur once the notice of default is recorded is three months and 21 days.

If the property sells at foreclosure for more than the amount due plus costs of foreclosure, the excess proceeds are distributed to junior lienholders whose loans or liens were wiped out by the foreclosure, and any remaining excess is returned to the property owner. When the junior lienholder's security is wiped out by the foreclosure of the primary lender, the junior lienholder may choose to sue on the note, asserting a breach of contract claim. While this was rarely done in the past, some lenders are now pursuing this course of action to recover the lost security on their loans.

OPTIONS FOR A BORROWER FACING FORECLOSURE

Workout Plans

The first option a borrower should consider when attempting to keep a home is a workout. In a workout scenario, the lender will assist the borrower in keeping the property. One of the plans usually offered to the borrower is "forbearance." Under a forbearance plan, the lender will allow the borrower to continue for a certain period of time, such as six months, without making a payment. When the borrower is able to catch up, the borrower resumes making payments, paying an additional amount to bring the loan current. Loan modification can also involve rewriting the terms of the loan to make the loan affordable for the borrower. This might consist of changing an adjustable-rate mortgage to a fixed-rate mortgage, for example. The objective is to work out the default with the borrower to allow the borrower to remain in the home and avoid foreclosure.

Short Sales

A "short sale" may occur before or after a home is in foreclosure, but before the property goes to sale. In a short sale, the lender accepts an offer from a third-party buyer for less than the outstanding loan on the property and forgives the deficiency owed by the borrower. This arrangement may be appealing to lenders, because it saves time and money by stopping the legal foreclosure process and by taking the property off the lender's books. However, recently it has come to light that some lenders agreeing to short sales are including language in the release that allows them to sue on the note, even though they are releasing the security in the property.

Until December 21, 2007, if the lender accepted less than the balance owed and cancelled the debt, that amount would be considered debt forgiveness, and tax would be due on the amount forgiven. This forgiven amount was called "phantom income." According to the IRS, it was the same as if you received that amount of income. On December 21, 2007, President Bush signed H.R.3648, the Mortgage Forgiveness Debt Relief Act of 2007, which provides relief to homeowners facing foreclosure from the phantom income realized from debt forgiveness or foreclosure. The benefit to the borrower of a short sale is that the credit report will show that the loan settled for less than full value as opposed to a foreclosure. Those who are most interested in the short sale opportunity are those who would like to preserve their credit by avoiding the foreclosure.

Deed in Lieu of Foreclosure

In a "deed in lieu of foreclosure" plan, the borrower returns the deed on the property to the lender in exchange for a release of the security interest and a cancellation of the note. Caution: A number of lenders have been offering a deed in lieu of foreclosure. However, when the borrower reads the fine print on the release of claims, he or she discovers that the lender is reserving the right to proceed against the borrower for breach of contract. Be very careful when reviewing these releases when your client is the borrower. This is a potential area of malpractice.

Conclusion

This brief survey is intended to provide an overview of some of the more salient issues that might be encountered by attorneys in the present economy. The importance of addressing these issues competently cannot be overstated. A client may have many options that are not apparent to one unfamiliar with real estate law. While the foregoing is intended to answer some of the more basic questions a client might have, when necessary it would be prudent to refer the client to an attorney familiar with real estate law and the foreclosure process.

DW Duke, of the law firm Giardinelli & Duke, is a trial attorney and a noted author and lecturer. His practice has included real estate litigation, insurance litigation, business litigation, professional liability litigation, securities law, governmental law and humanitarian law. His clients have included many major insurance companies and their insureds, as well as several public entities, including Riverside County, San Bernardino County, Los Angeles County and The University of California. DW is also a member of the California Association of REALTORS® Strategic Defense Litigation Attorney Referral Panel.

References:

Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont.Ed.Bar 3d ed. 2004)

Greenwald & Asimow, Cal. Practice Guide: Real Property Transactions (The Rutter Group 2007)

Miller & Starr, Cal. Real Estate (3d ed. 2000)

An Inside Look at Dos Lagos: The Legal Steps to Sustainable Development

by Andy Tsu

Every land developer depends on lawyers to help guide him or her through the legal minutiae of property law, entitlements, financing and construction.

In the case of Dos Lagos, an award-winning mixed-use community in Corona (www.doslagos.net), the intricacies of creating a sustainable development – one that factored in not only the financial, but also the community and environmental needs of the project – added even more steps to the legal oversight.

The project began with 543 acres of blighted land adjacent to Interstate 15 in what was then unincorporated Riverside County. Today, Dos Lagos is a thriving mix of residential, commercial, entertainment, office uses and more – a model development that in 2007, received the state's highest environmental accolade: the California Governor's Economic and Environmental Leadership award for Sustainable Communities. Dos Lagos is also a select participant in the U.S. Green Building Council's "LEED-ND" pilot certification program for sustainable neighborhood development.

To build it, developer Ali Sahabi and his team at Corona-based SE Corporation had to juggle multiple public agencies, a variety of land uses, diverse funding mechanisms and more. The enhanced complexity of the project required legal expertise on annexation, redevelopment, entitlement, financing, joint ventures and a vast array of environmental checks and balances.

This article will provide an overview of the legal services needed to develop a large-scale sustainable mixed-use community such as Dos Lagos.

Land Acquisition and Annexation

Corona in the 1990s had little interest in stretching its borders southward along Interstate 15. But the vision of a young developer changed that. Mr. Sahabi, then fresh out of graduate school at USC, presented city officials with a plan to transform an abandoned silica mine into a vibrant and upscale mixed-use community – a model for the future of the Temescal Valley south of Corona.

After Mr. Sahabi and his real estate counsel completed negotiation and documentation of the key land purchase agreements, the development went through a complicated annexation process that required the combination of public support and firm economic analysis to support the claim that Corona would benefit from including Dos Lagos within its borders. SE Corporation and the city entered into a preannexation agreement, which set forth the city's agreement to process the annexation.

Land Use Approvals

When Dos Lagos was first proposed to the City of Corona, mixed-use development was rarely found in the Inland Empire, a region where development in recent decades has been dominated by large residential tracts and distribution warehouses.

Mr. Sahabi presented a different vision to city officials – a live/work/play environment that preserves natural resources, minimizes commuting, and ultimately creates a more happy, healthy and prosperous community. SE Corporation, working in partnership with the city and community groups, developed a specific plan, designating various land uses for the subdivision of parcels and planning areas. The general plan was amended to be consistent with the Dos Lagos Specific Plan. The parties negotiated a development agreement under Government Code section 65864 et seq. – a legally binding contract that spells out the roles each side is to play in the development of the project, including applicable fees, responsibilities for infrastructure, and vesting of entitlements.

Each of these approvals required close collaboration by sophisticated land use counsel for the developer and the city attorney, to ensure they were legally enforceable, protective of the city, and feasible for the development.

Environmental Review and Permitting

As part of SE Corporation's unique development approach, one of its guiding principles is to respect the environment. Land development requires full knowledge of environmental regulations, guidelines, and standards that must be followed, including a firm grasp of the California Environmental Quality Act (CEQA) and local, state and federal laws relating to jurisdictional streams and wetlands and habitat for threatened and endangered species. The Dos Lagos site invoked all of these areas of regulation, because it was bisected by Temescal Creek and contained over 100 acres of Riversidean sage scrub habitat for multiple species, including the least Bell's vireo and the Stephens' kangaroo rat.

Going beyond basic mitigation and permitting requirements, SE Corporation entered into a permanent conservation easement with the Riverside-Corona Resource Conservation District (RCRCD) to stabilize, rehabilitate, and maintain Temescal Creek. SE Corporation also set aside 135 acres of open space as permanent habitat for indigenous plant and animal species, to be managed by RCRCD. In all, the widely recognized environmental aspects of Dos Lagos involved collaborating with multiple regulatory agencies such as the California Department of Fish and Game, the U.S. Fish and Wildlife Services, the U.S. Army Corps of Engineers, the Regional Water Quality Control Board, and more. While much of the permit work was performed by nonlawyers, environmental and real estate attorneys played an essential role in documenting the conservation easement and ensuring regulatory compliance.

Mass Grading and Infrastructure

Two abandoned mining pits on the site turned out to be environmental liabilities. They exposed the underlying groundwater aquifer to contaminants from freeway runoff. To fix the problem, SE Corporation had to dig out the pits and reconstruct them with a state-of-the art liner and filtration system to protect the aquifer. Two man-made lakes – the namesakes of Dos Lagos – were eventually built to replace the pits and maintain some of the cultural integrity of the land. During this process,. SE Corporation moved/reclaimed over six million cubic yards of dirt, implementing a grading plan approved by the city.

This massive construction effort required the use of general contractors and subcontractors, as well as an expert knowledge of risk management. As the project master planner and developer, SE Corporation had to protect itself from the potential negligence of its subcontractors, which was accomplished through insurance coverage and indemnity clauses drafted into our agreements with subcontractors. Counsel specializing in construction and insurance law carefully negotiated these provisions to protect the developer, as part of an overall risk management program that proved very effective in minimizing disputes and liability.

Temescal Canyon Road, built along the historic Butterfield-Overland stage route, had to be widened and improved through the project, and old utility lines – some dating back to the early 1900s – had to be replaced. We upgraded the lines and enhanced them with fiber optics. Coordination of this effort with the various public utilities and corresponding easements proved to be an additional legal challenge.

Public and Private Financing

The city not only agreed to annex the land, it partnered with Mr. Sahabi through its Redevelopment Agency. Both parties were represented by redevelopment counsel and bond counsel (in addition to financial and underwriting consultants) to process the redevelopment project area adoption and hammer out terms for owner participation and community facilities district (CFD) formation. Both tax increment bonds and CFD bonds were issued to help fund the project's large public infrastructure requirements.

The blighted nature of the project area was both a challenge and an opportunity. It was difficult to secure funding in the early stages of the project. Few lenders believed in Mr. Sahabi's vision of transforming one of the most neglected pieces of land in western Riverside County into one of its most beautiful and valuable. After intense negotiations, SE Corporation was able to secure private development financing from an institutional lender, through a master development loan. Real estate counsel with extensive experience in negotiating loan documents and closing loan transactions played a key role. The master development loan, together with the public CFD and redevelopment financing, provided the funds necessary to transform land initially purchased for $5 million into a sustainable community with an assessed value of $965 million in 2008.

Joint Ventures and Partnerships

In addition to its role as master developer for the Dos Lagos backbone infrastructure and grading, SE Corporation codeveloped certain portions of the "vertical" construction. Financial partnerships with investors and developers, such as Timberline Commercial for the class A office component and Poag & McEwen for the Promenade Shops lifestyle center, required specific contracts and joint venture agreements. Coordinating these partnerships required a firm knowledge of corporations, limited liability companies, partnerships, limited partnerships and so on.

Clearly, developing Dos Lagos required detailed legal knowledge and expertise on a number of fronts. At times, the work was complex, but now that much of it is done, the rewards are very clear: Dos Lagos has become a beacon for sustainable development in Riverside County, and a national model for what can be accomplished when you collaborate with others to get the job done.

Andy Tsu is a 2006 graduate of UC Hastings School of Law. Mr. Tsu is Associate Counsel and Project Manager for SE Corporation.

The Short Sale Solution to Wealth Conservation

by Lawrence Belland, CMPS

Now may be the time to discover the greatest financial recovery and wealth preservation vehicle available for real estate today. I'm referring to a "short sale," in which a single-family one-to-four unit residence is sold for less than the amount of the loans against it, with the underlying lender(s) agreeing to accept that amount as payment in full. The lender also agrees to pay for 100% of the home owner's selling costs. It was recently reported that California leads the nation with a 24.73% decline in year-over-year value. With that in mind, it would seem that anyone who purchased their home since 2004 and made a down payment of 20% or less is "upside-down" on their property and would be a candidate for a short sale.

There's a lot of information being dispensed about short sales today and about what happens during the short-sale process, especially after a short sale is approved and closed. I've found that much of that information is only half right and in many cases the exact opposite of the truth.

My experience goes back to 1990, when I closed my first short sale, which happened to be my own home. I wiped out almost $200,000 in debt and still kept the property. Since then, I have closed hundreds of short sales throughout Southern California, and during that time I've identified six myths about this wonderful wealth conservation tool.

Myth number 1: The borrower (homeowner) needs to be in foreclosure. This is not true. In fact, many lenders today do not require a delinquent status; Countrywide, the largest home loan lender in the nation, is one of them. Do the loss mitigation departments of our country's lenders prioritize the short sale requests they receive, and do those closest to the trustee's sale get moved to the head of the line? Absolutely. This begs two questions. If the mortgage payments continue to be made on time, what is the lenders' motivation to expedite the loss they're being asked to take? And two: Why would anyone who is $100,000, $200,000 or more upside-down on their home want to continue to make those payments?

Myth number 2: Your lender won't agree to a short sale if you have assets. Your lender will agree to a short sale if you have assets; it just may ask for some of them. In the short sales we negotiate, lenders request a promissory note approximately 20% of the time, which is most often stretched over five to ten years at 0% interest. In most cases, that note can be circumvented with the offer of a cash contribution from the seller. A lender will almost certainly accept a cash contribution today over an unsecured note that can easily be eliminated in a future bankruptcy. In lieu of a $15,000 to $100,000 promissory note, a lender will usually agree to a $3,000 to $5,000 cash contribution.

Myth number 3: A lender won't agree to a short sale unless the borrower has a hardship. The reality is that everyone has a hardship, even if it's the pending readjustment of the underlying loan at some time in the future. Common hardships include divorce, separation, reduced income, job loss, job transfer, a growing family, business failures, medical bills, increased bills (e.g., tuition), and depression, to name a few. I have never had a short sale declined due to a lender's denial of the borrower's hardship.

Myth number 4: A short sale is as bad as a foreclosure. My experience, and my research, say otherwise. In fact, a short sale is infinitely easier on your credit score initially, and the time it takes to remedy the negative impact is about the same as the late mortgage payments being reflected. Any potential negative remark, such as "paid in full for less than the amount owed," can be struck from a credit report within 30 days with the certified HUD 1 closing statement provided by the escrow handling the sale. That certified document states the payoff to the lender, without any qualifying statements. A foreclosure or deed in lieu will adversely affect a credit score for five to six years and will continue to be reported for up to ten years.

Myth number 5: If you have tax liens, you can't get a short sale approved. This is false. Property tax liens will always be paid by the lender, because they run with the property. Any IRS and Franchise Tax Board liens can be released from the property to allow it to be sold, although this takes much more work on the part of the attorney or real estate agent handling the short sale. In one extraordinary case, we've negotiated for the lender to pay over $17,000 in income tax liens for our client. The lender had a compelling need to prevent the trustee's sale, and the purchase price it agreed to was significantly above its in-house opinion of the subject property's value.

Myth number 6: If a junior lienholder is owed too much, you can't get the short sale approved. It makes little difference how much is owed to any of the lienholders; what matters are how much the property is worth and how much the senior lienholder is offering to the junior. We've negotiated for a junior lienholder to accept $1,500 on a $290,000 note. We have found that the likely impact of a junior lienholder on a successful short sale depends mainly on how large a company the junior lienholder is. The smaller the company, the less sophisticated it tends to be in its negotiations. The smaller companies don't really understand the fact that California is one of only 13 states that are "non-deficiency" states, and that they will have no recourse against the borrower in the event of a foreclosure, as long as the borrower conforms to California's anti-deficiency guidelines. Thus, the smaller the junior lienholder, the greater the chance of a short sale failure.

There are two predominant "deal-killers" of short sales. The first is a tenant-occupied property, even if the tenant is a relative or a best friend. Our business model has us being compensated only when we're successful, and because we average over 100 man-hours on every listing we take, we won't list a tenant-occupied property unless a 30-day notice has already been issued. Tenants quickly tire of agent showings constantly interrupting their lives, and it's not long before they just stop allowing the property to be shown. The second major deal-killer is too great a disparity between what a buyer is willing to pay and what the lender is willing to receive. This comes about because the lender is using lagging information to determine value, e.g., closed sales. Closed sales do not correlate well with present values, especially in light of the fact that the blinding speed of the decline in Southern California property values has never been experienced before.

Notwithstanding the ancillary benefits of real estate ownership, I feel residential real estate should be held primarily for wealth creation. With that in mind, real estate needs to be bought right and especially sold right. Every homeowner would be well advised to take a serious look at the value his or her home holds, and at where it's going to be in a year or two from now. The question should then be asked, "Is my home creating wealth for me?" For many homeowners in Southern California, disposing of a non-performing asset by way of a short sale may be a financially prudent thing to do.

Lawrence Belland is the principal broker and partner of Bernadette & Belland. He began his real estate career in 1978 and has been involved in over 6,000 real estate transactions. He pioneered the short-sale niche of the real estate industry, and today his company is the leading listing broker of short-sale properties in Southern California. He can be reached at (949) 533 7653 or by email at lbelland@gmail.com.

Proposition 99 – The One and Only Voter-Approved California Eminent Domain Initiative

by Ken MacVey

The U.S. Supreme Court's decision, *Kelo v. City of New London* (2005) 545 U.S. 469 [125 S.Ct. 2655, 162 L.Ed.2d 439] in June 2005 ignited a national firestorm of controversy over eminent domain. In that decision, the Supreme Court faced the question whether using eminent domain to transfer private property to a private developer for a city economic revitalization project was a proper public use under the Fifth Amendment. The Court, in a 5-to-4 decision, held that it was.

Throughout the country, people were repulsed by the idea that a homeowner could be forced to give up his or her home and land so a private developer could make a profit. Eminent domain, for some the subject of stifled yawns and glazed eyes, suddenly became front-page news and the hot topic of talk radio.

In Congress and most of the 50 states, legislators and political groups introduced eminent domain reform proposals. California was no exception. In fact, three initiatives that promised eminent domain reform by amending the California Constitution came up for a vote. The voters approved only one. On the June 2008 ballot, Proposition 99, "The Homeowners and Private Property Protection Act," was approved by a 25% margin.

To be fully understood, Proposition 99 needs to be put in the historical context of the two other eminent domain initiatives that failed to obtain voter approval.

The first proposition that failed was Proposition 90. Shortly after the *Kelo* decision, various groups cultivated what they called the "*Kelo*-plus strategy." This was a nationwide plan to use the anger over the *Kelo* decision as a platform for a wider governmental reform agenda. One of the offspring of this strategy was California's Proposition 90. Proposition 90 – specifically citing the *Kelo* case – was placed on the November 2006 ballot. It was a sweeping measure funded by Howie Rich, a New York millionaire developer, active in the Libertarian Party, who also funded similar measures in other states.

Proposition 90 not only targeted using eminent domain to transfer property to a private developer, it redefined and expanded the concepts of just compensation and regulatory takings. Under Proposition 90, laws and regulations – including minimum wage laws, environmental protections and zoning decisions – potentially could be deemed takings requiring payment of just compensation.

Opposition to Proposition 90 was widespread. Governor Schwarzenegger, the California Chamber of Commerce and the League of California Cities, along with literally hundreds of other groups, came out in opposition. Proposition 90 lost by a 4.6 % margin.

Despite the defeat of Proposition 90, it was recognized by all sides of the *Kelo* controversy that the call for eminent domain reform in California was not going away. Shortly after Proposition 90's defeat, representatives of the Howard Jarvis Taxpayers Association, the California Redevelopment Association, the League of California Cities, and other groups began to collaborate on an eminent domain reform package.

What emerged from this collaboration was a proposed state constitutional amendment (A.C.A. 8) and accompanying proposed legislation (A.B. 887) that would extend new protections to property owners, as well as prohibit using eminent domain to transfer an owner-occupied home to a private party.

Shortly before the state legislature was to vote on this package in September 2007, the Jarvis Association withdrew its support and instead opposed it. The package received a majority vote, but not the two-thirds vote required for placing a state constitutional measure on the ballot.

The Jarvis Association, along with other groups, instead sponsored and circulated an alternative initiative measure that would amend the eminent domain clause of the state constitution. This initiative, upon certification of sufficient voter signatures on the ballot petition, became Proposition 98 ("The California Property Owners and Farmland Protection Act").

Proposition 98 followed the "*Kelo*-plus" strategy. It cited the *Kelo* case in its recitals, but it also went beyond the issues in *Kelo*. With over 85% of the campaign for Proposition 98 being funded by apartment and mobile home park owners, Proposition 98 proposed to abolish rent control – an issue not addressed by the *Kelo* decision. It also created a new category of prohibited private takings that, for example, would prohibit using eminent domain for the consumption of natural resources, such as for water wells, and would ban any regulation of real property that effected a transfer of economic benefit to another private party at the expense of a real property owner. This latter provision was widely interpreted to open the door to invalidating land use and environmental regulations.

Various groups, including the League of California Cities, sponsored their own alternative initiative measure, which became Proposition 99. Proposition 99 specifically focused on the *Kelo* controversy. It proposed to amend the state constitution to prohibit the use of eminent domain to transfer an owner-occupied home and associated real property to a private party. It carved out certain exceptions for public works projects, such as for roads, or when public health and safety were at stake. Proposition 99 also contained a "poison pill" provision. This provision stated that if Proposition 99 received a greater majority of votes than any competing eminent domain initiative, it would prevail.

The critics of Proposition 98 said it went too far – that it deceptively took on an extreme agenda that had little to do with the *Kelo* furor. The critics of Proposition 99 said it did not go far enough – that it was token reform masquerading as something more. Over 350 groups came out against Proposition 98, including the California Chamber of Commerce, the Governor's office, the AARP, and the California Chapter of the American Society of Civil Engineers. The vast majority of newspaper editorials were against Proposition 98. Group support for Proposition 99 was strong, but not as broad as the opposition to Proposition 98.

On June 3, 2008, Proposition 98 went down to defeat, with 61.4% voting no and 38.6% voting yes. Proposition 99 passed by 62.2% to 37.8%.

The Jarvis Association now says that it wants to go back to the legislature for further eminent domain reform. It is an open question how receptive the legislature will be to Jarvis' overtures, when Jarvis backed away from the reform package it originally sponsored so it could sponsor the now-defeated Proposition 98.

In the meantime, Proposition 99 does prohibit using eminent domain to take over an owner-occupied house in order to transfer it to a private party for a redevelopment project. Immediately after Proposition 99 passed, one redevelopment agency announced its plans to redo a redevelopment project that would have taken out 80 homes.

The "*Kelo*-plus" strategists have lost the battles over Propositions 90, 98, and 99. Whether these three strikes mean that they are out remains to be seen.

Ken MacVey is a partner in Best Best & Krieger, where he practices litigation, including eminent domain. In 2006, he testified before the Joint Committees of the State Assembly as the principal witness on the legal meaning of Proposition 90. He recently published an article in the State Bar Public Law Journal, "Proposition 98: A New 'Eminent Domain' Initiative and What It Really Means to Public Agencies."

Besides Taking My House, Can the Bank Also Get a Money Judgment Against Me?

by John C. Nolan

The decline ("free-fall?") of the housing market has caused more and more lawyers to be consulted about the extent of the rights and obligations of a home purchaser in the event of a default in the payment of a home mortgage.

Formerly an area of law that was in little demand, this has now become a guaranteed topic of conversation at every cocktail party and service club fundraiser. More importantly, the concept of possible *additional* liability after foreclosure has a direct and personal impact upon many of our friends and clients.

Many of us used to just assume that no deficiency judgment ever occurred. Now, we know that's not correct, but when, exactly, can one occur?

Recent articles have been presented in various periodicals, both legal and non-legal, seeking to explain California's system of real estate trust deeds and how it works. As a consequence, this article will not repeat those presentations, but will, instead, focus *only* on the possibility of a *deficiency judgment* following a foreclosure – a situation that might arise where the current value of the real estate security is *less* than the amount of the unpaid debt.

As an opening remark, let it be known that deficiency judgments – on obligations to experience more than just the forfeiture of the property upon foreclosure – can occur *only* if a *judicial* foreclosure is pursued. If your client or friend is *only* being made subject to a power of sale foreclosure, he or she will *not* be subject to any deficiency judgment, because Code of Civil Procedure section 580d simply and directly prohibits that from occurring.

All right, let's assume that your friend/client is actually being sued for a judicial foreclosure. Does he or she necessarily face the possibility of a deficiency judgment?

The short answer is "No," but, to understand how and when he or she could become subject to a deficiency judgment, the following, rather commonly occurring, fact patterns can help better explain what could happen, and whether the purchase-money exemption from deficiency judgment (Code of Civil Procedure section 580b) is, somehow, not applicable:

Situation 1

> Husband and Wife acquire their house, financing a portion of the purchase price with a loan from Bank B that is secured by a deed of trust. Later, in an effort to reduce their interest rate, they obtain a new loan from Bank X, and pay off the debt to B, giving a new note and deed of trust to X. Husband and Wife default, and the value of the home is less than the debt. Is it possible for X to get a deficiency?

X can recover a deficiency for a loan that was not a purchase-money loan. According to Miller & Starr, if the *refinanced* loan is by a lender (X) *distinct* from the first loan (B), the refinanced loan is not a deficiency-exempt purchase-money loan, and therefore, does *not* qualify for protection under the antideficiency limitations.[1] However, if the second refinanced loan is by the same lender, the second loan remains subject to the antideficiency limitations of the first.[2] Several cases, however, support the concept that a new note – secured by the same property to replace an older note – remains a purchase-money note subject to the purchase-money limitations.[3]

1 Miller & Starr, CALIFORNIA REAL ESTATE 3d § 10:253 (2003).

2 *See* Union Bank v. Wendland, 54 Cal.App.3d 393 (1976). In that case, though, the bank was unable to recover the deficiency on a third note, secured by a second deed of trust, that was used to make payments on a first note, secured by a first deed of trust. The court concluded that the second deed of trust merged into the first, thus invoking the protection of Code of Civil Procedure section 580d. (*But see* National Enterprises, Inc. v. Woods, 94 Cal.App.4th 1217, 1229-30 (2001) (disagreeing with the court in *Union Bank*, criticizing the court's merger of the lesser estate deed of trust into a greater estate.) The court looked at the bank's intent when securing the later note with a deed of trust, stating that when the bank "designated the residence as security for the third note it clearly evidenced an intention that the residence was to secure the first as well as the third note. Had its intention been otherwise it would have demanded a different security for the third note." *Id.* at 407.

3 Miller & Starr, *supra* note 1, at § 10:240 (2003) (citing Savings & Loan Bank v. Massanet, 18 Cal.2d 200, 208 (1941); Ghirardo v. Antonioli, 14 Cal.4th 39, 49–50 (1996); Costanzo v. Ganguly, 12 Cal.App.4th 1085, 1090; Ziegler v. Barnes, 200 Cal.App.3d 224, 229 (1988); Palm v. Schilling, 199 Cal.App.3d 63, 76 (1988); Jackson v. Taylor, 272 Cal.App.2d 1, 5–6 (1989); Syrek v. Gould, 244 Cal.App.2d 149, 150-1 (1966); Lucky Investments, Inc. v. Adams, 183 Cal.App.2d 462, 466 (1960)).

In light of these cases, Roger Bernhardt states that "[no] court has yet directly addressed the question of whether refinancing a purchase money loan eliminates antideficiency protection."[4] The answer, then, is that a deficiency *could* exist, but is not an absolute certainty.

Situation 2

> Same facts as in situation 1, above, except instead of getting a complete new loan from Bank X, Husband and Wife keep their loan from Bank B, and get a home equity line of credit loan from Bank Z. Husband and Wife default on their payments to Z. Can Z get a deficiency?

The equity line of credit was taken for a reason that is wholly unrelated to the purchase of the house. Based on the above, Z can recover the deficiency amount, not only because it is a different bank, but also because the loan was taken with the known intent that it would not be used as purchase money.

Situation 3

> Same facts as in situation 2 above, except Husband and Wife default in their payments to Bank X, and X forecloses. Can Z get a deficiency, and if so, how?

This scenario involves a junior creditor, Z, seeking payment *after* the senior creditor, X, has already foreclosed and taken all the value of the security. Z's second action, a nonsecured action on the debt, *bypasses* California's antideficiency statutes, and allows Z to sue the debtor directly where no security remains.

National Enterprises, Inc. v. Woods discusses this matter.[5] There, the court stated that a senior creditor's judicial proceeding on the property prevents all other junior creditors from pursuing their payment owed based on the property. The court stated: "[T]he purpose of limiting a secured creditor to only one lawsuit to enforce its security interest and collect its debt is not upset where one suit per debt is permitted, as here – unless, of course, the two debts are a subterfuge for one. Moreover, [the concept] of compelling the exhaustion of all security before the entry of a deficiency judgment is not thwarted if an independent junior lienholder is permitted to bring an action after the senior lienholder has exhausted the security."[6]

Situation 4

> After fully paying off their home, Husband and Wife obtain a loan from Bank B to finance some investments. Later, with most of the loan still outstanding, Husband and Wife sell to P, who makes arrangements with B to "assume" Husband's and Wife's loan. After the passage of some time, P defaults. Can B get a deficiency from P? Can B get a deficiency against Husband and Wife?

The couple, having fully paid off their home, is prevented from having their subsequent loan qualify as a purchase-money loan. B lent the couple money for investments unrelated to the house. P assumes a loan that was not originally purchase-money, but for P, this was effectively purchase-money.

Bernhardt offers various ways courts could construe such a case.[7] First, B, the creditor, could argue that the original non-purchase-money loan and its terms were not changed merely because P arranged a separate, distinct agreement.[8] Bernhardt notes that this would not prevent the creditor from recovering a deficiency judgment against the original trustor (Husband and Wife). Second, P, the grantee, could argue that the assumption agreement should be read as a purchase-money loan, stressing substance over form. Third, Husband and Wife could argue that P should not be protected from a deficiency judgment because, if B recovers a deficiency judgment against them, this would prevent them from recovering anything from P.[9] Despite the uncertainty, P is at much greater risk than if he had simply used a brand-new loan to buy from Husband and Wife.

Situation 5

> Same facts as in situation 4 above, except that, instead of making arrangements to "assume" Husband and Wife's loan, P acquires the home "subject to" the note and deed of trust in favor of Bank B. Can a deficiency be obtained, and, if so, against whom?

Here, P has simply acquired the property subject to the note and deed of trust *without* B's participation. B was not privy to the transition of the loan from Husband and Wife to P. For B, this loan is still a non-purchase-money loan, and a court would likely view it as such. Bernhardt discusses this situation as it occurred in *Indusco Mgmt.*

4 Roger Bernhardt, CALIFORNIA MORTGAGE AND DEED OF TRUST PRACTICE 3d § 5.69 (2008).
5 National Enterprises, Inc. v. Woods, 94 Cal.App.4th 1217, 1232–3 (2001).
6 *Id.* at 1233–4.
7 Bernhardt, *supra* note 4, at § 9.128.
8 Bernhardt cites three cases addressing this position: Paramount Sav. & Loan Ass'n v. Barber, 263 Cal.App.2d 166 (1968); Brown v. Jensen, 41 Cal.2d 193 (1953); and Stockton Sav. & Loan Bank v. Massanet, 18 Cal.2d 200 (1941).
9 Frangipani v. Boecker, 64 Cal.App.4th 860 (4th Dist. 1998).

Corp. v. Robertson,[10] where "a nonassuming purchaser guaranteed the seller's original non-purchase money note and was treated throughout the opinion as a guarantor rather than a borrower."[11] Thus, here, P might be considered as a guarantor of the note and not afforded any antideficiency protection. A deficiency could still apply to Husband and Wife who originally borrowed the amount, because for them this was not a purchase-money transaction.

From the foregoing, it is apparent that many situations are far from being black and white. It is equally clear that far greater dangers *may* exist that what we might have believed, simply based on a casual and quick analysis.

One more – and closing – caveat. Remember that the exemption from deficiency judgments provided by Code of Civil Procedure section 580d applies *only* to situations where the seller is the payee of the purchase-money note and deed of trust, or where an outsider (bank?) provides the funds, but *only* for "a dwelling for not more than four families . . . ." Therefore, any vacant property or any commercial or industrial property is *not* exempt from a possible deficiency judgment, unless the holder of the debt is the seller.

Hopefully, property values will soon return to their earlier levels. However, in the meantime – attorney beware – your quick answer may well not be the right answer.

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10 Indusco Mgmt. Corp. v. Robertson, 40 Cal. App.3d 456 (1974).
11 Bernhardt, *supra* note 4, at § 9.132.

Your Neighborhood Sidewalk – A Place of Leisure? Or Liability?

by Kathryn DiCarlo

For those of us who grew up in small-town America, most memories of childhood include happy hours spent outside, on the public sidewalks of our neighborhoods. Even today, those memories of the old neighborhood still speak to you of "home," "safety," and a carefree outlook on life.

As a homeowner, however, one place of potential liability to consider is the sidewalk and parkway area in front of your house. In California, your liability for this small plot of land can be quite different depending on where you live. With a little investigation, however, the sidewalk and parkway in front of your home need not become an added source of exposure to risk.

Property Boundary Lines in California

California law provides that a transfer of land that is bounded by a roadway passes title to the center of the road that abuts the property.[1] By operation of law, the property owner grants a permanent easement or dedicates so much of his or her frontage to the municipality as is needed to accommodate the street and any sidewalk improvements that run alongside it. The property owner, nonetheless, still holds legal title to that portion of his or her lot that has been dedicated to the city. This fiction of ownership is one of the primary tools a municipality has to fund sidewalk repairs, through enabling statutes or by its levy of an assessment, special fee or charge on the land. Legal title may also be used to impose homeowner liability to pedestrians who are injured on the public sidewalk, depending on local law.

Local Law: The Parkway, the Sidewalk and You

In California, the narrow greensward of grass planted between the public sidewalk and the street is usually referred to as the "parkway," or sometimes as the "parking strip." Most municipalities in California, in adopting beautification plans for their neighborhoods, will plant and maintain trees in this parkway area along the street. These trees can contribute to the property owner's potential risk of exposure to liability, however, particularly as they mature and their root systems start to lift up portions of the concrete sidewalk, causing it to become broken or uneven.

Not surprisingly, trip-and-fall injuries that occur on the public sidewalk abound, and municipalities frequently are sued on the theory that the uneven sidewalk causing injury is a "dangerous condition of public property." Homeowners can also find themselves one of the defendants in such a lawsuit for an injury that (1) occurred on a city-built and maintained public sidewalk, caused by (2) a city-planted and maintained tree whose root system has created the problem. While the homeowner played no active role in this scenario, depending on local law, his or her liability for such an injury may still be a reality.

In Riverside, for instance, where my firm's California office is located, Section 13.10.010 of the Riverside Municipal Code provides that the property owner "shall repair and maintain such sidewalk areas and pay the costs and expenses therefore, including . . . removal and replacement of sidewalks, repair and maintenance of curb and gutters, removal and filling or replacement of parking strips, removal of weeds and/or debris, tree root pruning and installing of root barriers," and other like activities.

Riverside Municipal Code section 13.10.030 then puts the property owner on notice that he or she is, by law, deemed to be liable if a pedestrian is injured on the public sidewalk or parkway that runs along the owner's property. This provision states: "The property owner or person in possession required by Section 13.10.010 to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a non-dangerous condition as required by Section 13.10.010, any person suffers injury or damage to person or property, <u>the property owner shall be liable to such person for the resulting damages or injury</u>." (Emphasis added.)

Right next door in Los Angeles County, however, Los Angeles Municipal Code section 62.104, regarding curb and sidewalk repair, is silent on the issue of homeowner liability to third persons. It requires the Board of Supervisors to send formal notice to a property owner

1 This is the primary enabling statute in California that creates homeowner sidewalk repair responsibility.

before the owner is required to pay for sidewalk repairs that are undertaken by the city, and contains the following note: "EXCEPTION: Preventive measures and repairs or reconstruction to curbs, driveways or sidewalks required as the result of tree root growth shall be repaired by the Board at no cost to the adjoining property owner."

While parkway tree roots pose a problem for sidewalk maintenance, the tree's branches or foliage may also be another source of third-person liability, for instance, if the tree is damaged by wind or disease and thereby injures a member of the public. In Riverside County, the property owner once again bears the cost of maintenance, even for parkway trees planted by the city. Riverside Municipal Code section 13.06.090 provides, in part, as follows:

A. The owner or person in possession of a lot fronting on or adjacent to any portion of a street shall maintain any trees, shrubs, hedges or other landscaping along said street or within the street right-of-way adjacent to his or her property . . . .

B. For purposes of this part, maintenance of trees . . . and other landscaping includes . . . deep root watering, root pruning, installing root barriers, clearance and structural trimming, fertilizing, pest control and removal of branches, leaves and other debris.

* * * *

D. If any property owner or person in possession fails to maintain any adjacent trees . . . in a non-dangerous condition . . . and any person suffers damage or injury to person or property, the property owner . . . shall be liable for all damages or injuries caused by the failure of the owner . . . to maintain these areas.

The Los Angeles Municipal Code, at section 62.163, is much more general, as the following language illustrates:

It shall be the duty of the Board, through its authorized officers and employees:

(a) To set out or plant any and all shade trees and shrubbery on public streets or parkways, and to take general care and supervision of all trees, plants and shrubbery planted and growing in the streets of the City…

The Los Angeles Municipal Code contains no direct provision for liability to third persons such as that found in Riverside Municipal Code section 13.06.090.

Resolving the Disparity between State and Local Law on the Issue of Liability

Streets and Highways Code section 5610 describes the duty of the owner of a lot fronting on any portion of a public street, as follows: "[I]f . . . the area between the property line . . . and the street line is maintained as a park[way] or parking strip, [the owner] shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those . . . areas . . . ."[2]

This section has no direct third-person liability language, such as Riverside Municipal Code section 13.10.030 does. The state statute has also been held to provide only a means of reimbursing the state for the cost of repairs to sidewalks or parkways undertaken by it, and not to transfer primary duty of repair to the property owner nor relieve the state or municipality from that responsibility. This statute has been interpreted *not* to impose liability on abutting property owners for injuries received by pedestrians using the public sidewalk.[3]

How can Riverside County impose such an extra measure of liability on its citizens when the comparable state statute specifically does not create personal injury liability, and when holding the private property owner liable for injuries occurring on public property appears to be unjust? Recent California case law holds that local ordinances are not in conflict with general state law where the state legislature has not expressly manifested its intent to fully occupy the field through language reflecting that the field is of paramount state concern, and where local ordinances that require a greater duty reflect a possible benefit to the local health, safety and welfare of the community.[4]

Minimize Your Risk of Exposure to Liability

What can the property owner do to safeguard against lawsuits arising from accidents occurring on the public sidewalk and parkway in front of his or her home?

(1) The most important thing to do first is read your municipal code for guidance regarding property-owner liability under local law. Search topics such as "maintenance and repair," "trees and vegetation," or "streets and sidewalks" to find those local ordinances that directly affect your obligations to the public vis-à-vis the sidewalk and parkway areas.

(2) Compare the wording of your ordinances with the sample sections quoted above from the Riverside and Los Angeles Municipal Codes and the Streets and Highways Code. An ordinance requiring a homeowner to maintain the sidewalk would be construed to create a duty of care to third persons only if the ordinance clearly and unambiguously says so.[5] If the ordinance is more general, the *absence* of explicit language provides a verbal clue that

2 This is the primary enabling statute in California that creates homeowner sidewalk repair responsibility.

3 Schaefer v. Lenahan (1944) 63 Cal.App.2d 324.

4 Gonzales v. City of San Jose (2004) 125 Cal.App.4th 1127.

5 Selger v. Steven Brothers, Inc. (1990) 222 Cal.App.3d 1585.

the ordinance will be construed as a municipal funding mechanism only.

(3) Take a close look at the sidewalk and parkway area along the length of your property. If the sidewalk is broken or deformed, or you notice a diseased tree or one in need of pruning, contact your Public Works Department or other appropriate municipal office and make a request in writing for repairs.

(4) Keep a file of all written contacts between yourself and your city wherein you requested repairs or maintenance of any public areas that surround your property. By doing so, you have put your city on notice that these potential sources of liability are in need of correction. A city has a duty to keep the sidewalks and parkways in a safe condition, and it is directly liable to pedestrians for failing to correct a dangerous condition of which it has notice.[6] Such communications may also help later to absolve you of liability should you find yourself named as a codefendant with the city in a personal injury lawsuit resulting from a condition on public property about which you had previously complained.

(5) If your local ordinances regarding vegetation maintenance are general ones and do not affirmatively create liability to third persons, do not undertake extensive custom care of that city-owned tree, vegetation or parkway area in front of your house, beyond the basics. By all means, do not customize or upgrade it to match your own landscaping. Evidence of maintenance is evidence of control. Case law in California holds that the more control a property owner exerts over adjacent public areas, the more likely the owner will be found to have assumed the attributes of ownership over the property that will create liability.[7]

(6) Do pick up debris on the sidewalk or parkway area and clear away any fallen tree branches that could cause injury to a passerby. This is just common sense. In California, a pedestrian is entitled to use every part of the street or sidewalk.[8] If you are having a yard sale, for instance, or want to install an annual holiday display on your front lawn, do not allow these materials to impede or block full access to the sidewalk. Otherwise, you have created a potentially dangerous condition by altering the sidewalk for a personal use not associated with the customary purpose of the sidewalk, which may be actionable.[9]

With a little research, personal awareness and a careful approach toward the public property around you, you may be able to hold your neighborhood sidewalk in the same fond regard you had for it as a child.

Kathryn DiCarlo is an associate with Cummings, McClorey, Davis, Acho & Associates in Riverside, where she has devoted her practice exclusively to the defense of automobile, homeowner, and commercial insureds. Ms. DiCarlo is admitted to practice in California by both the state and federal bar and is a member of the Riverside County Bar Association and the Riverside Chamber of Commerce.

6 Rodriguez v. City of Los Angeles (1959) 171 Cal.App.2d 761.

7 Alcaraz v. Vece (1997) 14 Cal.4th 1149; Contreras v. Anderson (1997) 59 Cal.App.4th 188.

8 Fackrell v. City of San Diego (1945) 26 Cal.2d 196.

9 City and County of San Francisco v. Ho Sing (1958) 51 Cal.2d 127.

Commercial Loan Workouts – A Practical Introduction

by Paul Cliff

Many lawyers are aware that it is becoming more difficult to find financing for commercial real estate projects. The causes are beyond the scope of this article, as are the bankruptcy practice implications. In this article, we will discuss the documentary and legal landscape facing a lawyer representing either a borrower whose debt is secured by a commercial real estate project or the holder of such a debt. For the purposes of this article, "commercial real estate" refers to any piece of real property, improved or otherwise, except an owner-occupied single-family home or condominium.

In California, the document that creates a voluntary security interest in commercial real estate is usually a deed of trust. In a deed of trust, the owner of the real estate (the "trustor") conveys a security interest in the trustor's property to a person (the "trustee") in order to secure the trustor's performance of some obligation to a third party (the "beneficiary"). The obligation owed to the beneficiary by the trustor is in most instances a monetary debt. This article will not cover those instances in which the obligation the trustor owes to the beneficiary is something other than a monetary debt. The monetary debt itself is typically evidenced by a promissory note, though this is not a legal requirement for the enforceability of the deed of trust. In instances where the loan is made by a bank, insurance company or other institutional lender, there will often be other loan documents certifying the authority of the individuals signing on behalf of the borrower, detailing the manner in which loan proceeds will be disbursed (particularly in the case of construction loans), detailing the rights and responsibilities concerning rents or other income generated by the property, detailing rights and responsibilities concerning hazardous material contamination of the property, and guaranteeing some or all of the obligations under the promissory note by third parties.

If the trustor performs all of its obligations to the beneficiary, then when those obligations are fully satisfied, the beneficiary is legally required to instruct the trustee to terminate the security interest in the property by way of a document called a "deed of reconveyance." If the beneficiary fails to honor one or more of the obligations secured by the deed of trust, the beneficiary may pursue two remedies: foreclosure by power of sale and judicial foreclosure. In some instances, the beneficiary may choose to pursue both processes, though once one process is completed, the other process may not be completed. (Civ. Code, § 726.)

Foreclosure by power of sale is an extrajudicial process whereby the trustor and any other claimants to title, such as junior lienholders, are put on notice of the event of default and the foreclosure sale in a manner prescribed by statute. Following the foreclosure by power of sale, the trustor ceases to have any interest in the property, as do any holders of interests in the property whose priority relates back to events occurring after the recording of the deed of trust. Judicial foreclosure is an otherwise conventional lawsuit in which the ultimate remedy to be granted by the court is an order for the sale of the property. Sale of the property following judicial foreclosure is conducted by the county sheriff, and the trustor and any successors-in-interest retain the right to repurchase ("redeem") the property from the buyer at the foreclosure sale for a period lasting possibly as long as a year after the sale. To redeem the property, the trustor, or any assignee of its interests, must reimburse the successful bidder all of its costs of ownership and acquisition, subject to a credit for any rent or other proceeds from the bidder's ownership of the property. Following foreclosure by power of sale, the beneficiary is generally without rights to make further money claims against the trustor, but following a judicial foreclosure, the beneficiary is entitled to a money judgment against the trustor for the difference between the sales price at the sheriff's sale and the fair market value of the property sold.

At each stage in the procedures for foreclosure by power of sale or judicial foreclosure, the practitioner representing either the trustor or the beneficiary must make certain key factual and legal determinations. The first fact to be determined is how much money the trustor must pay in order to stop the foreclosure process and retain its interest in the property. This usually is a straightforward accounting issue, though the calculations can be complex, and it is not safe to assume that the trustor accurately calculated this figure without some independent verification by the lawyer.

Once the amount that is due under the contractual terms is calculated, one must next determine whether these contractual terms themselves are enforceable. It is entirely possible for the interest rate to be too high. Unless the beneficiary is a member of the class of people who are exempt from the application of California's usury laws, the most that can be charged for a loan in California is interest and fees totaling the equivalent of 10% per annum. (Cal. Const., art. 15, § 1; Civ. Code, § 1916.12-1.) A violation of the constitutional and statutory limits on interest rates is a tort known as "usury," and the remedies available against a usurious lender are draconian. First, the lender is not entitled to any interest on its debt whatsoever. (Civ. Code, § 1916.12-2.) If any interest was paid, the borrower is entitled to an offset against the original principal amount of the debt in an amount equal to three times the amount of the interest paid. (Civ. Code, § 1916.12-3.) As an added bonus, charging and collecting the usurious interest rate is statutorily defined as "loan sharking," a crime which may be charged as a felony punishable by a state prison term not to exceed five years. (Civ. Code, § 1916.12-3(b).)

Unfortunately, many loan sharks are trade creditors attempting to resolve a bad debt by exchanging perfectly enforceable accounts receivable for a note and deed of trust. California law makes it clear that a late charge of 1.5% per month (18% per annum) is not usurious under something known as the "time price doctrine," since the trade creditor had no intention of extending credit beyond the due date. The courts have employed a bit of rhetorical legerdemain to characterize such service charges as enforceable liquidated damages provisions, and not usurious loans made by loan sharks. (*Southwest Concrete Products v. Gosh Construction Corp.* (1990) 51 Cal.3d 701, 709.) Unfortunately, the trade creditor inadvertently turns itself into a loan shark if it exchanges the receivable for a promissory note at 18% per annum from its account debtor. Another frequent inadvertent loan shark is an acquaintance who makes a high-risk loan, for example, to finance a development project or a business start-up. Under normal circumstances, neither loans made by regulated businesses such as banks, insurance companies, and pawn shops, nor loans arising out of transactions in which a California licensed real estate broker was involved are usurious, regardless of the interest rate. (Cal. Const., art. 15, § 1(2); Civ. Code, § 1916.12-3.) There is a common misconception that a loan secured by real estate is automatically exempt from the application of the usury laws. This is only true when the loan is made by the person selling the property, made by an exempt entity, or made or arranged by a person licensed as a real estate broker by the state of California. (Civ. Code, § 1916.1.)

Assuming the loan is not usurious, and the calculation of the interest rate is correct, the next thing a practitioner must look to is the statutory mechanics of recording and serving a notice of default. The statutory requirements for the content of the notice of default are lengthy, detailed, complex and purely a creature of statute. Civil Code sections 2924 and 2924b contain most of the details, though one new to the subject area would be well-advised to compare a notice of default with these sections, while also having a copy of a good treatise within easy reach.

Once the notice of default has been recorded, the monetary default can be cured by paying the full amount of all delinquencies and costs of foreclosure at any time up to five business days before the date of the sale. (Civ. Code, § 2924c, subds. (a) (1), (e).) The amount that can be demanded includes everything identified in the notice of default, together with all installments that have become due after the recording of the notice of default, as well as the beneficiary's actual and reasonable foreclosure costs; this will include the beneficiary and trustee's attorney fees, if any. (Civ. Code, § 2924c, subds. (a)(1), (d).) There is an amount of attorney fees authorized by statute. (Civ. Code, § 2924c, subd. (d).) The trustee and the attorney involved in the foreclosure can demand more, but are not entitled to the statutorily conclusive presumption of reasonableness for such greater amounts. This, too, is an area fraught with complexity. The attorneys for the trustor and the beneficiary should each confirm that the cure amount and the per diem interest specified in the notice of default are both accurate. The safest course for trustor's counsel is to have the trustor tender the full amount specified in the notice of default, without regard to whether that amount is correct or not. The alternative of tendering what one believes to be the correct amount and then seeking to enjoin the foreclosure sale is risky. There is no automatic right to enjoin a foreclosure sale, regardless of any procedural or substantive defects affecting the underlying debt.

Assuming that the notice of default has been properly recorded and mailed and states a valid claim for a default, the notice of sale may be recorded three calendar months after the notice of default has been recorded. The notice of sale is another statutorily prescribed form that must contain certain information designed by the legislature to enhance the fairness and transparency of the foreclosure process: the time and place of sale, including the street address and the specific place at that street address where the sale will be held, and other very specific information concerning the property, the nature of the default, and the manner of the foreclosure sale. (Civ. Code, § 2924f.) Any practitioner looking to verify the validity of a notice of sale would be well-advised to read the code section verbatim, comparing every word and phrase to the notice of trustee's sale in question, while again having a good treatise within reach.

In most instances, the due diligence of the attorneys in reviewing the foreclosure process will yield a conclusion that there are no procedural defects in it. The companies that handle the foreclosure process have developed clerical procedures to minimize the likelihood that human error would create an inadvertent defect, but even assuming the debt is one that can be lawfully enforced, reinstatement is not practical, and the amounts demanded for reinstatement are not unlawful, the trustor's attorney is still not without tools to solve his or her client's problem. These tools should be evaluated as early in the process as possible, and none of them will work unless:

(1) The trustor has some means of paying all, or at least substantially all, of the amounts secured by the deed of trust, through, for example, a credible pending sale or refinance; and

(2) The beneficiary prefers getting paid to obtaining title to the property. There are some instances in which the ben-

eficiary either made the loan or purchased the loan from the original lender with the express intention of using the foreclosure process as a means of acquiring title to the property.

For a regulated lending institution such as a bank or insurance company, foreclosure is typically a distasteful process. In the case of such a beneficiary, once the asset is acquired at foreclosure, the law may require it to set aside reserves, which may not be used for funding loans to other, better customers, for the purposes of ensuring that the property can be maintained and that leasing or sales commissions, insurance premiums, and property taxes can be paid. Thus, upon foreclosure, the property will show on its balance sheet as an illiquid asset of uncertain value, offset by a significant and substantial liability. Many institutional lenders recognize that they are not particularly competent in the management or marketing of real property assets. Therefore, they are often willing to negotiate some sort of resolution with a delinquent trustor. These lenders' latitude is typically greatest when it comes to things like delinquent interest, in particular default interest, foreclosure costs, late fees, attorney fees, etc.

While negotiating with such an institutional lender, one should expect that that lender is negotiating not only with the borrower but also with a group of people unflatteringly known in the industry as "vultures," who are looking to buy the loans from the lender at a discount. Because such investors may intend to acquire the property through foreclosure, negotiating a further discount from them is not guaranteed. However, because they bought the loan at a discount, possibly a very substantial one, something that provides them with a quick and easy double-digit rate of return is always worth a try. The bottom line is, however, unless the trustor has a sale in hand or a solid refinance opportunity, the most one can do with defects in the foreclosure process is buy time.

Therefore, trustor's counsel should promptly establish a dialogue with the beneficiary or its counsel, seeking postponement of the beneficiary's remedies. There are two things that might be gained from this dialogue. First, many enforcement actions begun by beneficiaries arise out of mistrust caused by lack of communication between the trustor and the beneficiary. A dialogue in which trustor's counsel is civil and well-informed and conveys no facts that are not strictly true can do a great deal to reestablish the beneficiary's willingness to trust the trustor. As a secondary benefit, the actions and statements of the beneficiary, including any that occurred before involvement of counsel, may sometimes be sufficient to establish defenses of waiver, estoppel or enforceable oral modification of the loan documents. If such facts present themselves, then the trustor may be able to seek and obtain an injunction barring the foreclosure.

A trustor may also be able to enjoin a foreclosure if the trustor can establish that its failure to make payments to the beneficiary is the result of the beneficiary's failure to adhere to its obligations under the loan documents. This most frequently arises in a construction loan where the lender's failure to make timely loan disbursements or to give timely project approvals jeopardizes timely completion of the project or causes the trustor to lose leasing opportunities. These defenses will generally be waived by the language of most commercial loan documents, but some of these rights are waivable and some of them are not. Each such waiver needs to be separately investigated and researched. Since any allegations of beneficiary misconduct must ultimately be proven before a judge or jury, there is no substitute for convincing courtroom evidence, but careful reading of the loan documents, case law and proper pleading are almost as important. There are entire treatises devoted to the subject of lender liability, but the point of beginning is the actual loan documents and the facts and circumstances of the beneficiary's conduct.

Sometimes, a sophisticated and well-advised beneficiary will be unwilling even to entertain negotiations without receiving concessions from the trustor. These may include having rental income for the property deposited into an account controlled by the beneficiary, stipulating to the appointment of a receiver, expressly waiving claims that some or all of the loan documents, the notice of sale or the notice of default is defective, etc. However, one should postpone executing such a waiver until the trustor's exit strategy is at least possible, if not rock solid. In conducting the litigation, an attorney for the trustor should, within his or her obligations to use only those means consistent with the truth, remain a zealous advocate. Do not take the word of trustor's counsel with respect to applications that "courts grant these all the time," nor should one assume, without taking pains to independently verify the claim, that the waiver of one right or another is in fact lawful under California law.

When representing a beneficiary, one must be extremely careful in participating in any negotiations with the trustor or its counsel. It is therefore important that, before any of these negotiations begin, the trustor and beneficiary execute a document typically called a "pre-negotiation workout letter," in which the trustor acknowledges the validity and enforceability of the loan documents, waives any defenses to the loan documents, including defects in the foreclosure process through that date, and sets specific formal requirements for the documentation of any modification of those loan documents as a result of the parties' negotiations. This letter will narrow the scope of any subsequent litigation concerning the foreclosure. Any trustor who is unwilling to execute one should be treated with extreme caution. In the absence of such a pre-negotiation workout letter, beneficiary representatives should refrain from anything other than written communications with the trustor and its representatives, to avoid giving the trustor and its counsel any new facts upon which to base a claim that the beneficiary has somehow waived or modified its enforcement rights or committed additional contractual or other breaches of duty.

In conclusion, at each step of the foreclosure process, counsel for the beneficiary and the trustor must compare both parties' performance against their contractual and legal documents. In the event that the trustor is in a position to take some action to resolve its obligations with the beneficiary through a sale or refinance of the property, counsel for both parties should conduct the dialogue with care, and counsel for the beneficiary should at all times be aware of the potential for such dialogue to compromise the beneficiary's remedies against the trustor. At the same time, trustor's counsel needs to be alert for opportunities to buy time for the trustor when there is some benefit to be gained from that time.

Paul Cliff graduated cum laude with a degree in Mathematics and Economics from Claremont McKenna College in 1986. He earned his Juris Doctor degree from the University of Southern California Law Center in 1990, where he was Editor and Board Member of the Major Tax Planning and Computer Law Journal. In 1998, Mr. Cliff partnered with Mark Lobb, with whom he had worked at his prior law firm, to create the firm now known as Lobb Cliff & Lester. Mr. Cliff's practice primarily focuses on real property transactions and real property litigation.

Judicial Profile: Hon. Angel M. Bermudez

by Donna Thierbach

Hon. Angel M. Bermudez

I continue to be amazed at how interesting and diverse our Riverside County bench is! Judge Angel Bermudez was born in Miami, Florida and is the first generation of his family born in the United States. Judge Bermudez did not learn English until he started school. His parents were immigrants from Cuba who waited three years for their exit visa to the United States. His father played baseball in Cuba, until an injury ended that career. When his parents arrived in Miami, his father's first job was as an agricultural field worker.

Judge Bermudez grew up in Los Angeles. His father worked two full-time jobs and went to school at night to learn English. They lived like many immigrant families, moving frequently in the hope of finding a better life and safer neighborhood. By the time he was in the second grade, he had attended four different schools in as many cities. As he grew up, he attended various parochial schools where he learned to draw and paint. He attended Notre Dame High School, in Sherman Oaks.

As an undergraduate, Judge Bermudez attended UCLA and majored in English Literature, American Literature and American History. He was one of the co-founders of the UCLA Cuban-American Bruins, and exhibited his art alongside famous Cuban artists on campus. He developed an interest in law while at UCLA through a fellow student whose father was a partner at a civil law firm. The partner encouraged Judge Bermudez to seek a career in the legal field and employed him at the firm for a few years while he was in undergraduate school.

Judge Bermudez attended the University of San Diego School of Law. When he began law school, he was interested in transactional law due to his previous civil law exposure. However, in high school he had been involved in speech and debate, so when he became involved in Mock Trial, he found a new passion. He was selected for the National Mock Trial Team. As lead counsel, his team won first place in the Western Region of the ATLA Tournament. They then placed third in the National Tournament. He was named the American Board of Trial Advocates Outstanding Advocate, as well as made a member of the Order of Barristers. After graduation, he coached the national mock trial team for three years.

So how did Judge Bermudez find his way to Riverside County? He said he caught the "trial bug" and decided that he wanted to be a prosecutor. He was interviewed by the then-Riverside County District Attorney, Grover Trask, himself. Judge Bermudez was immediately struck by his persona and humility, and when he was offered a position with Riverside, he immediately accepted.

Judge Bermudez was with the Riverside County District Attorney's office from 1991 until 2002, when he started his own firm. Although it was lucrative, he found the demands of having his own firm took away too much time from the most important thing in his life, which is his family. He called up District Attorney Grover Trask, who told him he had a home in that office and was welcome to return. He did return in 2003 and remained there until he was appointed to the bench in May of 2007. He served with distinction, winning the Outstanding Achievement Award in 2000, and the Felony Prosecutor of the Year Award in 2005. His last assignment was the Homicide Unit. His last trial was the death penalty trial in *People v. Luther*, involving the tragic murder of a beloved retired La Sierra University professor. He said he found trial work rewarding, but aspired to become a bench officer. He said his trial experience has been invaluable on the bench.

Since taking the bench, Judge Bermudez has served at Southwest, Banning, Indio and now Hemet. His current assignment is in Family Law. He has presided over Limited Civil, Unlawful Detainers, Criminal Trials and Drug Court. He said the best part of moving to so many different courts and practice areas this past year has been meeting all the attorneys. He said Riverside County has many wonderful people everywhere who happen to be lawyers.

Both Judge Bermudez and his wife are UCLA graduates. They have three school-age children. Judge Bermudez continues to enjoy painting, and has even painted wall murals for friends in their children's room as baby shower gifts. He said he and his family also enjoy taking educational family vacations. What was truly amazing is that his wife speaks nine languages and Judge Bermudez four!

Donna Thierbach, a member of the Bar Publications Committee, is Chief Deputy of the Riverside County Probation Department .

Opposing Counsel: Diana Renteria

by Kelly Henry

Diana Renteria is a Riverside attorney who specializes in family law. She is a solo practitioner whose practice is a family business; Diana acts as the advocate for her clients in the emotional and often painful world of family law, while her husband acts as the firm accountant. Family is very important to Diana, to the extent that when she gets a prospective client, who is most typically seeking a divorce, often her first question is, "Do you really want to go through with this?" All too often, the answer is "yes." A particularly uncomfortable aspect of Diana's professional life comes after a client has turned the page on his or her marriage to the point that the individual has sought the assistance of counsel, when Diana finds out that her new client's spouse knew nothing about any plans for divorce. This, curiously enough, is not an infrequent occurrence. This is also an example of what lies at the core of a marriage's failure: a fundamental lack of communication, characterized by a failure to speak and a failure to listen.

Diana is a native of Riverside County and went to high school at Notre Dame. She obtained her undergraduate degree from the University of California at Riverside and attended law school at Western State University College of Law in Fullerton.

Diana Renteria

The most important skill Diana brings to her practice is maintaining a level of civility with opposing counsel in order to represent her client to the best of her ability. This is another reason why Diana likes to practice in Riverside, as it is a relatively small legal community where reputations can be won or lost based on the tone an attorney decides to set when working on a case.

Undoubtedly, the most difficult part of Diana's job is seeing the pain that children go through when the family unit disintegrates. Many adults who are going through a divorce develop tunnel vision, and the situation becomes about inflicting pain or getting one up on the other spouse. On the other hand, the most rewarding part of Diana's career is helping the children of divorce get through one of the most difficult periods of their young lives.

If you ask Diana to represent you in a family dispute, don't expect to get a hired gun. There are plenty of family law attorneys who will do their level best to make life difficult for opposing counsel or for their client's spouse by generating a blizzard of discovery, making unreasonable demands and refusing to negotiate in good faith. Diana is not one of them. A potential client may ask Diana to try and make life difficult for the soon-to-be-former spouse; however, she is usually able to sit down with the prospective client and help him or her understand that the benefits of acting in good faith far outweigh the costs of fashioning a family separation with a vindictive posture. Diana firmly believes that her duty is to pursue her client's interests in the most productive, efficient and cost-effective manner possible, but she attempts to execute her duty in the most peaceful way possible. However, when the chips are down and peace is not possible, Diana will represent her client vigorously.

Diana knows that divorce can be as devastating financially as it is emotionally for all of the individuals involved. Therefore, approaching a case in a civil manner is the first step in assisting an individual and his or her family with navigating the bruising experience that is divorce. When working on a case, she tries to keep in mind the adage that "It's better to have a really bad settlement than the very best trial."

Diana is also very active in her community – specifically, with the Junior League of Riverside and the Junior Leagues of California. The Junior Leagues are organizations of women committed to promoting volunteerism, developing the potential of women, and improving the community through effective action and leadership of trained volunteers. Diana sits on the Junior Leagues' State Public Affairs Committee, also known as SPAC. SPAC is a nonpartisan education and advocacy organization charged with promoting legislation relevant to its members' leagues' community projects and focus areas. For example, SPAC is committed to advocating legislation that protects and promotes education, health, family support and violence prevention. SPAC representatives initiate, research, analyze and assist in drafting legislation, advocate for the community by taking positions on certain pieces of legislation, develop support for legislation by building coalitions with other community groups, meet regularly with legislators, prepare and support witnesses in committee hearings, testify at committee hearings, attend community forums to educate and advocate on behalf of SPAC, and host an annual statewide conference to train other SPAC representatives and to coordinate advocacy efforts.

The Junior League of Riverside organizes a charity ball during the fall every year in order to support a number of local charities, including the Carolyn E. Wylie Center for Children, Youth and Families. Diana is active in organizing this yearly event. This year's event theme is "Youth, Mentoring and Partnership," and you can bet Diana will be leading the efforts to make this year's charity ball something to remember.

Some lawyers can worsen the turmoil that comes with divorce and child custody cases, but Diana Renteria doesn't practice with that philosophy. Diana will do all she can to zealously represent her client through one of life's toughest tests in order to help her client, and hopefully her client's family, transition into a new life after a divorce. In addition, Diana maintains a dedication to her own family and to community service that sets a shining example for all of us to follow.

If you would like to know more about the Junior League of Riverside or the Carolyn E. Wylie Center, please visit their websites at www.jlrca.org and www.wyliecenter.org.

Kelly Henry, a member of the Bar Publications Committee, is with the law firm of Thompson & Colegate in Riverside.

VIP Mentors Eighth Annual Awards Luncheon

by Judy Davis

On April 25, 2008, attorneys, judges, and government officials joined California Department of Corrections and Rehabilitation parolees at the historic Mission Inn to celebrate VIP Mentors' Eighth Annual Awards Luncheon. California Court of Appeal Justice Douglas Miller served as the master of ceremonies. Larry Grable, representing California Governor Arnold Schwarzenegger, Cheryll Bisco, representing Assemblyman John Benoit, Donna Johnston, representing Supervisor John Tavaglione, Robin Reed, representing Legislative Deputy Jeff Stone, Darlene Elliot, representing Riverside Mayor Ronald Loveridge, Manuel Ramirez, Presiding Justice of the Court of Appeal in Riverside, Daniel Hantman, President of the Riverside County Bar Association, Mathew Martel, C.R.C. Prison Warden, Mike Brownell, C.R.C. Prison Lieutenant, Earl Martin, C.I.M. Prison Supervisor of Academic Instruction, and Lisa Abma, Riverside Parole Administrator, were among the honored guests.

The recognition event showcased the accomplishments and talents of parolees and other individuals who have uniquely contributed to the program's achievements. Guests enjoyed artwork, music and poetry provided by past and present mentees. The awards ceremony was filled with moving speeches that generated moments of applause and laughter from the audience. Attorney Jody Isenberg was presented with the "Outstanding Mentor" award, and her significant other, Don Crouch, received the "Outstanding Co-Mentor" award. When Jody first joined VIP in 2002, she didn't know what was going to be asked of her. She shared with the audience that it didn't take much time to make a difference. "Mentoring parolees has meant being friends and spending time together." For over a year, Don and Jody have partnered to help their mentees successfully reintegrate back into society.

The "Outstanding Match" award was presented to two matches this year. Riverside Parole Agent Tyrone Patton recognized Miguel Castillo and his attorney mentor Hugh J. Patty for being one Outstanding Match. Agent Patton said, "I'm happy to have supervised Mr. Castillo. I believe that Hugh has shown Miguel a different side: a life without crime." The second Outstanding Match award went to attorney Kathryn Manis and Lisa Renee Hughes. Kathryn and Lisa were recognized for the difference they have made in each other's lives, for their commitment to giving back, and for their consistent attendance at VIP functions over the past year. Kathryn said, "The program is rewarding and the benefits are incredible. Where else can you go to get an award for being a friend?" Lisa stated, "Mentoring entails learning how to reach out to somebody and being there for them when they need someone to talk to somebody. The recidivism rate would diminish if more people got involved with this program."

VIP mentees Miguel Cortez and Carol were given the "Outstanding Achievement" award (Carol asked that her last name not be used as she reenters society.) Carol and Miguel share a vision of a better future, a determination to succeed, and a strong desire to be associated with winners. Carol thanked her mentor for her inspiration and sent a message to the parolees not to let anybody define them by their past.

Scott Turner was granted the "Outstanding Parole Agent" award for having the most number of parolees in a match, for his involvement with VIP's community outreach efforts, and for his enthusiastic support of VIP Mentors. Mentees Steve Urquizu, Gonzo McKnight, Miguel Castillo, Lisa Renee Hughes, and Kathy Proeschel received T.O.P.S. (Targeting Obstacles to Personal Success) scholarships to help them continue to make progress toward reaching their goals. At the conclusion of the ceremony, Kathryn Manis made a plea to the audience to assist in locating employers in the community that would be receptive to hiring ex-offenders.

Attorneys began the VIP Program in 1972 to mentor men and women on parole from California state prisons. The Riverside County chapter is one of 13 VIP mentoring programs offered throughout California. VIP is the only community service program in California that recruits attorneys to be role models, advisors, guides, and friends to parolees as they struggle to turn their lives around. Mentors spend about four hours per month with their mentees, developing friendships through mutual activities. Over the years, VIP's volunteer attorneys have helped thousands of former offenders begin new lives that are crime-free, self-respecting, and self-reliant.

To become a mentor or to learn more about this worthwhile program, please contact Judy Davis, Program Director, at (951) 782-4479, ext. 242, or vip-riverside@vipmentors.org. For additional information, or to learn about other VIP locations, visit the website at www.vipmentors.org.

27th Annual RCBA Good Citizenship Awards

by John W. Vineyard

National Law Day is a special day focusing on our heritage of liberty under law, a national day of celebration officially designated by joint resolution of Congress in 1961.

Law Day is an annual opportunity for the Riverside County Bar Association, its members and the Riverside County Superior Court to reach out to the community in an effort to expand awareness of our laws and our justice system, and of their combined impact on our lives. It is more than just a single day to reflect on our legal heritage; it is a means of sharing our daily way of life with the rest of our fellow citizens.

As part of its celebration of Law Day 2008, the RCBA once again sponsored the Good Citizenship Award program for high school students in Riverside County. These awards are given to one student, a junior, from each participating high school. The recipients are chosen by the principals and counselors of their schools based on their exemplary good citizenship. Each student receives a monetary award of $200 (from the RCBA and Lawyer Referral Service) and a certificate commemorating the day.

On Friday, May 2, 2008, the RCBA and the Riverside County Superior Court recognized the following high school students from around the county for their good citizenship:

STUDENT	HIGH SCHOOL
David Ahumada	Abraham Lincoln
Roxana Ugarte	Alessandro
Liliana Marquez	Alvord
Sophia Lopez	Amistad
Joyce Lin	Arlington
Kevin Smith	Beaumont
Julian Wyatt	Canyon Springs
Jentre Robinson	Cathedral City
Poonam Shah	Centennial
Monsura Sirajee	Chaparral
Eric Nguyen	Citrus Hill
Courtney Rogers	Desert Hot Springs
Emmanuel Sanchez-Ramos	Desert Mirage
Tiffany Zink	Elsinore
Alicia Olea	Hamilton
Jill Thomas	John F. Kennedy Middle College
Asael Flores	John W. North
Dean G. Dalmacio	Jurupa Valley
Angela P. Zendejas	La Familia
Eric Pancardo	Lakeside
Larson Ankeny	La Quinta
Michael Flotron	La Sierra
Jessenia Duran	Mt. San Jacinto Continuation
Dominique M. Salazar	Murrieta Valley
Larissa Nichols	Norco
Jeremias Asis	Norte Vista
Melissa Tapia	Nueva Vista
Claudia Garcia	Nuview Bridge Early College

STUDENT	HIGH SCHOOL
Justin Nelson	Ortega
Nicole Guido-Estrada	Palm Desert
Jessica Wilkins	Palm Springs
Jasmyn Gilmore	Paloma Valley
Matthew Fitzgerald	Polytechnic
Joe Gonzalez-Diaz	Raincross
Frankie Quintana	Ramona
Stephanie P. Cortez	Rancho Verde
Maria Elisabeth Zendejas	Sherman Indian
Meghann McCullough	Temecula Valley
Amilcar Omar Escalante	Val Verde Student Success Academy
Angelina Martinez	Valley View
Christina Harb	Vista Del Lago
Owen Weissberg	Vista Murrieta
Phylicia Barron	West Valley

Presiding Judge Richard Fields addressed the assembled high school juniors and their parents, teachers and counselors, and recognized their exemplary citizenship and accomplishments.

Certificates of recognition were given by government officials, including Senator Dianne Feinstein, Congressman Ken Calvert, Congressman Darrell Issa, Congresswoman Mary Bono Mack, Senator Robert Dutton, Assemblyman John Benoit, Assemblyman Paul Cook, Assemblyman Bill

Emerson, Assemblywoman Bonnie Garcia, and Assemblyman Kevin Jeffries.

Congratulations to all the recipients!

John W. Vineyard, President of the RCBA in 1999, is Chair of the Public Bar Relations Committee.

SAVE THE DATE

Thursday, September 18, 2008
5:30 p.m.

Annual Installation Dinner
Mission Inn, Riverside

Launching of Attorney Volunteer Program

by Robyn A. Lewis

The Riverside County Bar Association is pleased to announce the launch of a new program it is offering to its members.

The Attorney Volunteer Program, which is being organized by the RCBA and the Riverside County Public Defender's Office, will allow attorneys to gain invaluable trial experience and skills that they might not otherwise have the opportunity to achieve.

Participants in the program will undergo a training program, under the supervision of the Public Defender's office, learning everything from cross-examination to voir dire to jury selection. More seasoned attorneys, who perhaps already have a firm understanding of trial advocacy, will be introduced to criminal trial practice and procedure. The program will offer significant continuing legal education credits and is free to all RCBA members.

In exchange for their participation, volunteers will then commit themselves to act as deputy public defenders handling misdemeanor trials. With a commitment of no more than three misdemeanor trials per year (approximately six days), volunteers will then get to use the skills that they learned in the training program in an actual courtroom. In addition to this basic commitment, volunteers can also elect to be placed on a panel to handle misdemeanor cases on an on-call basis. Mentors will be assigned to volunteers to further enrich the volunteers' experience with the program.

The first training sessions will begin in September. If you are interested, please forward your résumé (or a detailed summary of your professional experience, including education) to the RCBA (email to: lisa@riversidecountybar.com). Class size is limited, so reserve your spot today!

For more information, please contact the Riverside County Bar Association at (951) 682-1015.

Robyn Lewis, RCBA Secretary and a member of the Bar Publications Committee, is with the Law Offices of Harlan B. Kistler. She is also Co-Chair of Membership for the Leo A. Deegan Inn of Court.

The Potemkin Olympics

by Richard Brent Reed

Beijing is a city of cranes and skyscrapers and smoke. The city is recreating itself in preparation for the 2008 Olympics. (Because the number eight signifies good fortune to the Chinese, the opening ceremony will take place on the eighth of August, at eight minutes past eight in the morning: 8/8/08 at 8:08.) The Chinese hope that modernizing Beijing will cause visitors from around the world to come to regard China as a happy, prosperous, thoroughly modern country, instead of the oppressive Communist dictatorship that it has been since 1949. Consequently, buildings are sprouting up like mushrooms all over Beijing. To impress Westerners, China is converting the entire city into a great theatrical set, much like Russia did in the Crimea under Empress Catherine II.

The Potemkin Villages

In 1787, Catherine the Great was determined to persuade Europe that Russia was a modern, enlightened, prosperous country, ready to take its place among the other great powers. To accomplish this, Catherine invited various European dignitaries to tour her scenic, enlightened Russia. She appointed her minister Grigori Potemkin to stage-manage the tour. Potemkin stuffed the dignitaries into carriages and mapped out several towns for them to visit.

At the first stop, the European visitors beheld a picturesque town with gleaming, freshly painted buildings, clean streets, cheering crowds, and colorfully costumed peasants who presented them with flowers and performed folk dances to the tune of a balalaika. Then, the carriages moved on down the winding road to the next village.

As soon as the caravan was out of sight, the costumes came off, the building facades came down, and the entire town was packed up and loaded onto a waiting train to be taken, at full speed, to the next stop on the itinerary, where the actors swapped roles, costumes were redistributed, and building facades were hoisted into place to superimpose a new town upon another grubby village, where the visiting dignitaries, arriving by a circuitous route, were treated to another performance. The carriages rolled on; the set was struck; and the model town was reincarnated down the road.

The dignitaries who were taken in by this show were convinced that Empress Catherine had worked miracles in modernizing her once backward, vigorously oppressed country. Those who were not fooled by the demonstration knew that, behind the painted flats and set pieces, lurked a country still rooted in serfdom and autocracy. They called the towns "Potemkin villages."

City in a Bubble

Thanks to the 2008 Olympics, Beijing has turned into one, enormous Potemkin village: a backdrop to the August games. High-rises and skyscrapers are being thrown up in a slapdash manner to await the striking of the set in September.[1] Several of the structures being built to serve as athletic venues are slated to be demolished as soon as the Olympics are over.[2]

The casual eye of the Olympic visitor will see only a vibrant, bustling, ultra-modern metropolis with glinting spires, glistening streets, and state-of-the-art infrastructure, and not the ultimate cost. Due to relentless construction and perpetual traffic jams, 21st century Beijing has 19th century air quality[3] – not the best atmosphere for an athletic competition. To remedy this oxygen-challenged condition, Beijing's industry and heavy construction will be shut down 30 days before the games, in hopes that the air will clear,[4] and Beijing's cars will be divided into two groups and assigned alternate days on which to drive. Then, after the last Olympian has received the last gold medal and the world has packed up and gone home, the Chinese people, already taxed at 25 to 50 percent, will bear the burden of paying off the gargantuan, citywide construction debt. Financially, it's a Potemkin bubble.

Five years ago, Shanghai installed a Maglev train, whose running speed is 300 kilometers per hour (about 190 miles per hour), at a cost of $1.3 billion. At $7 U.S. per trip, the commuter train, which runs between Longyang Road Station and Pudong International Airport, will pay for itself in about 545 years. In other words, the debt will far outlive the train. How long it will take the Chinese people to pay off the truly Olympian debt burden for the Beijing games – assuming that the yuan doesn't collapse under it – is uncertain.

The financing of public projects might pose a fiscal problem for free societies, but this is, after all, the People's Republic of China (PRC), whose citizens are locked into conditions dictated by their government. The People's Republic's people may grumble about the summary demolition of quaint old neighborhoods, about foreign construction firms being enriched by plum Chinese projects, and about the Stygian pollution created by those projects, but open criticism of government policies is not tolerated.

Chinese Due Process

Political dissenters are duly processed in China. The citizen who slanders the government is investigated and indicted by the People's Procurate, which submits a directed verdict to the judge; the judge, with the approval of the Procurate, pronounces sentence; the defendant is permitted to submit questions and a final statement, if time permits. But it's all done on paper, so the defendant is spared the public humiliation of a public trial. Chinese due process results in a 95 percent conviction rate. There is no appeal.

The Chinese citizen who attempts to escape from the PRC will be sentenced for the first attempt to three months in prison, there to be "reeducated." For the second attempt, the offender gets a year's vacation in a Gobi Desert labor camp – sent there for further due processing. This remedial measure is called "reeducation through work," in which the mindset of the dissenter is to be readjusted. Secret police are scattered about Beijing to ensure the political correctness of its citizens.[5]

Visitors Get the Nice Dishes and the Good China

Beijing has the look and feel of a free city in a free country: bustling commerce, televised entertainments and news shows,[6] and ubiquitous signs posted in English,[7] even on the highways. Olympic visitors will not see the real China, only the Potemkin city of Beijing. The Chinese have a lot of prestige riding on the Beijing games, so the PRC has promised to allow Western journalists free, unregulated, unpoliced access via the internet. These foreign correspondents will even get to have satellite television.

Freedom in the PRC is not to be measured in computer terminals or cell phones or cable television, all of which are monitored and controlled by the government, but in the number of satellite dishes. They crowd the roofs of banks, brokerage houses, financial firms, and foreign corporations like tufts of toadstools searching for a smoke-shrouded sun. But very few private residences are allowed to have a satellite dish.[8] Chinese citizens must content themselves with government-owned cable television, complete with the nanny state's parental controls.

In September, the Olympics – along with many of the Olympic venues – will be gone. Beijing will, once again, become a city of cranes dotting a skyline that no one can see. Wrecking balls will sail through the opaque air, skyscrapers will be scrapped, and bulldozers will raze stadiums. The wrecking balls will also sweep aside the ephemeral freedoms and Potemkin privileges that briefly visited Beijing during those deceased Olympic Games. Yet another Potemkin city will rise out of Beijing's debris, but there is not a crane big enough to lift Beijing out of the depths of its oppression.

Richard Reed, a member of the Bar Publications Committee, is a sole practitioner in Riverside.

1 The Chinese have learned, from sad experience, not to leave the leveling of substandard buildings to Mother Nature.

2 Ironically, the Japanese apparently used Potemkin's theatrical set device to mask their occupation of Manchuria from the eyes of the League of Nations in 1931.

3 The Chinese government attributes Beijing's impenetrable cloud to "dust from Mongolia."

4 Evidently, the government also intends to shut down the Gobi Desert.

5 They are easy to spot in a crowd: they are the ones trying to look inconspicuous.

6 But not CNN or Fox.

7 With Chinese subtitles.

8 Chinese citizens must apply for a license to have a satellite dish or a child: they are allowed one boy or two girls or, if the couple doesn't have a boy on the first try, one of each.

Classified Ads

Executive Suites Moreno Valley
Executive suites available in new building on Sunnymead Blvd. in Moreno Valley. Includes voice mail, direct phone number, fax number, access to T-1 high speed internet, access to conference room and more. Contact Leah at 951-571-9411 or leah@gsf-law.com. All second floor offices.

Office Space – Riverside
Office space available in the Tower Professional Building located on the corner of 13th and Lime Street in downtown Riverside. We are within walking distance to all courts. All day parking is available. Building has receptionist. Please call Rochelle @ 951 686-3547 or email towerpm@sbcglobal.net. Residential services available also.

Offices - Riverside
Class A and Garden Offices available ranging from 636 SF to 11,864 SF. Offices located at Central Avenue and Arlington Avenue at the 91 Freeway exits. Affordable pricing, free parking, close to Riverside Plaza, easy freeway access to downtown courts. Please call Evie at 951-788-9887 or evie@jacobsdevco.com.

Office Space for Rent
Remodeled building has offices for rent within walking distance of courts. 4192 Brockton. Call or email Geoff Morris, gsm@lopezmorris.com or (951) 680-1182.

Indio Office
Well located, ground floor location in Coachella Valley's largest city (not to mention it's the "Courthouse" city). Town & Country Center (760) 347-4664.

Associate Attorney
Small Riverside law firm seeks Attorney with minimum five years Real Estate litigation background with some experience in Mechanic's Lien defense. Send resume Attn: Jessica Crisler via email at jcrisler@hallandbailey.net or by fax to (951) 682-3927.

Victory Video
Wayne Marien, CLVS – Depositions, Day-in-the-Life Documentary, Ethical Wills, Site Surveys, Mock Trials, Settlement Documentaries, Video Encoding, Video & Transcript Syncing. Call (805) 404-3345 or email victoryvid@mac.com.

Conference Rooms Available
Conference rooms, small offices and the third floor meeting room at the RCBA building are available for rent on a half-day or full-day basis. Please call for pricing information, and reserve rooms in advance, by contacting Charlotte at the RCBA, (951) 682-1015 or charlotte@riversidecountybar.com.

For Sale
Free standing professional office bldg. Located near downtown. Contact Jeff (714) 612-0944. United Real Estate Group

For Sale
Office equipment, office furniture, library materials and office supplies. Contact John Vineyard (951) 774-1965 or jvineyard@vineyardlaw.com.

Membership

The following persons have applied for membership in the Riverside County Bar Association. If there are no objections, they will become members effective August 30, 2008.

Stacy Albelais – Law Offices of H. William Edgar, Riverside

Jeffrey A. Boyd – Best Best & Krieger LLP, Riverside

Reina A. Canale – Sole Practitioner, Riverside

Michael F. Creamer, Jr. – Legal Research Centre, Riverside

Scott W. Ditfurth – Best Best & Krieger LLP, Riverside

Ed Harper (A) – Advanced Imaging Strategies, Riverside

Ivan Lamont Iles – Sole Practitioner, Corona

Alishia A. Kravig – Geller & Stewart LLP, Moreno Valley

Ethan J. Marcus – Marcus Family Law Center, Hemet

Barbar M. Moore – Law Offices of Charles X. Delgado, Temecula

Tiviea Moore (S) – Law Student, Ontario

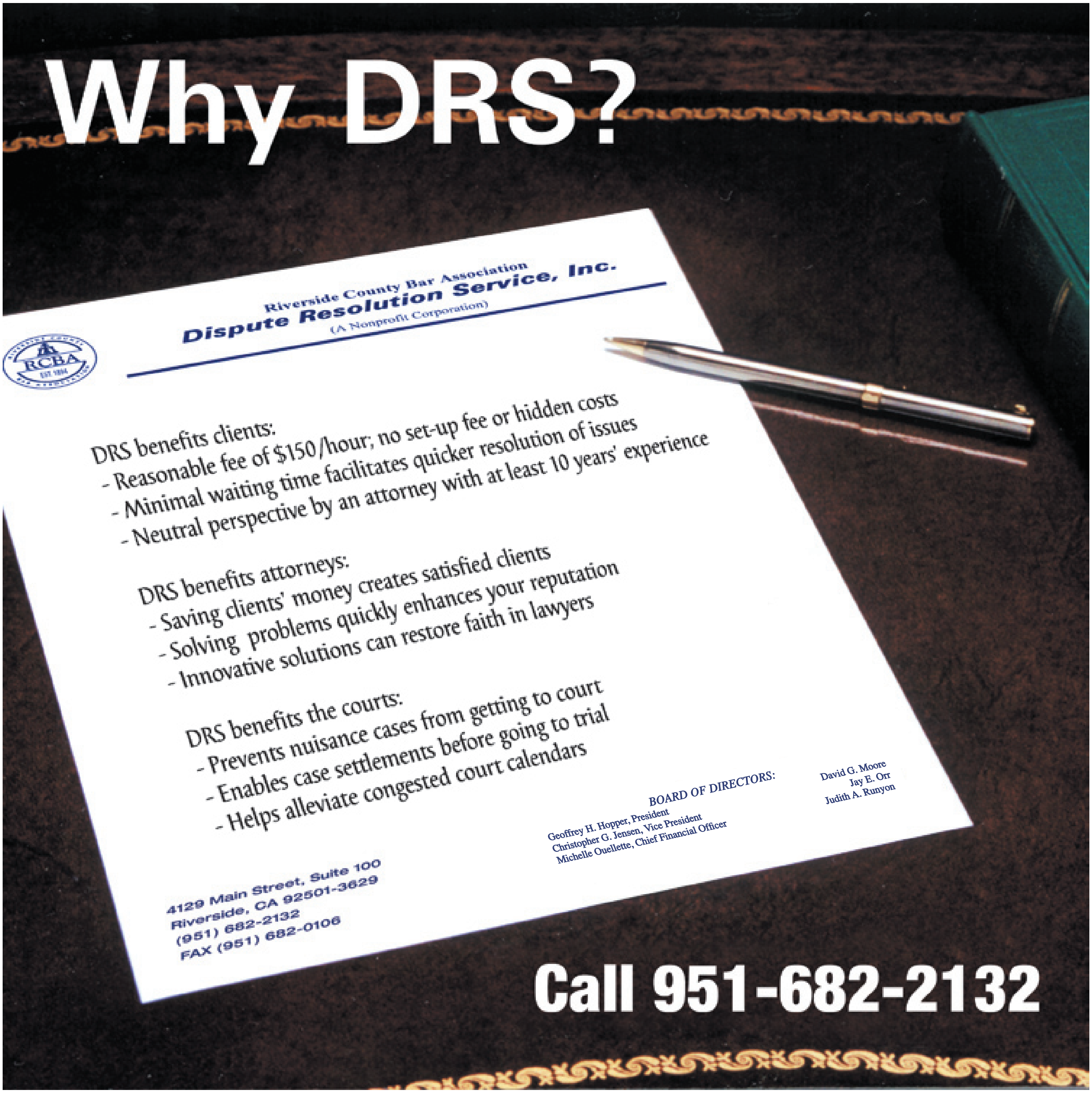
Amy H. Orgain – Sole Practitioner, Mentone

Anna D. Oshin – Law Offices of Anna D. Oshin, Riverside

Christopher E. Purcell – Sole Practitioner, Irvine

Poonam K. Walai – Sole Practitioner, Riverside

(A) – Designates Affiliate Members
(S) – Designates Law Student



Riverside County LAWYER

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