

Focus REAL ESTATE

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LOW-BALL Home APPRAISALS

By Andrew Haley

The Enterprise

A recent trend of appraisals coming in under market value is complicating the recovery of the residential real estate market, according to industry experts. There is widespread disagreement as to whether appraisers are intentionally low-balling property assessments to placate lenders seeking to insulate themselves from risk, or are merely conforming to new guidelines imposed after the collapse of the housing bubble. Whatever the cause, an epidemic of under-market-value appraisals is sowing confusion and, in some cases, is derailing pending sales.

"There is most definitely an issue," said Christopher Kyler, CEO of the Utah Association of Realtors. "There's some strain in the marketplace right now because appraisals are not coming in where they ought to come in."

According to Kyler, the problem stems from multiple sources. He said new rules imposed by lenders on appraisers, as well as recent overregulation by the federal government, are contributing to the problem, as is the state of the appraisal industry itself, which remains mired in doldrums of historic proportions. Those factors were hobbling an upsurge in the residential real estate market that is seeing shrinking inventories and rising prices.

"It has become normal now to have multiple offers on a property," he said.

"Say you have a property selling for \$200,000, and five people make bids on it at \$200,000. Then you have an appraiser come back with a \$180,000 assessment. How

is it possible that a property with multiple offers at a set price can come in under that price?" Kyler said.

At the heart of

the issue is the nebulous world of appraising, a trade multiple real estate insiders independently characterized as an "art." Assessing real estate value is always an approximation, usually accomplished by comparing a property to recent comparable sales, or comps. In an ideal world, an appraiser is working in a market that is trending at a constant vector, and there is enough sales activity that one can easily locate close comparables.

"With recently sold, truly comparable properties, even then there's some art to it. One-hundred percent comparable is the ideal. That's the trick. The challenge comes when banks put rules on what can be considered a comparable property," Kyler said.

Government regulators, lenders, appraisers, Realtors, owners and buyers all seem to be at odds over which way, and to what degree, the residential real estate tradewinds are blowing. Compounding the situation is the fact that all parties are only able to respond to market changes at their own speeds, meaning that while willing buyers and sellers, and the Realtors who put them in contact, may be on the forefront of the recovery, they are running up against skittish banks adjusting to recent regulations. The result is that appraisers, still sifting through the fallout of the housing collapse, are making assessments that are haphazard at best and, in the worst-case scenario, constitute a new take on the kind of widespread fraud that helped create the housing collapse.

"On the banking side, it is true that banks set the parameters of how an appraisal will take place. Banks tell the appraiser, 'when you go to assess value, here are the tools I want you to use.' But the banks say, 'it's not us, it's our regulators,'" Kyler said.

"The biggest problem is the new regulations, in my view. It's a classic case of overreaction to a problem," said Howard Headlee, president of the Utah Bankers Association.

"There's no question that during the housing bubble you had a situation where undue influences were being brought to bear on appraisers that constituted upward pressures on appraisals. But then [political commentator] Eliot Spitzer decided to politicize this issue. He went on a political witch-hunt and he effectively shut down any and all communication between appraisers and lenders," he said.

"If we get an appraisal back and it's clearly not a fair reflection of value, there is little to nothing we can dare do legally," Headlee said. "Now you can't even talk to them. That complete shutdown of communication has had hugely negative ramifications. Anyone who suggests the bank is talking to appraisers doesn't know what he's saying. We can't even talk to the appraiser."

"In order to prevent what happens 10 percent of the time, they shut off 100 percent of communication. It's typical of how regulatory overreaches tend to perpetuate market problems. The flow of good information is critical," Headlee said.

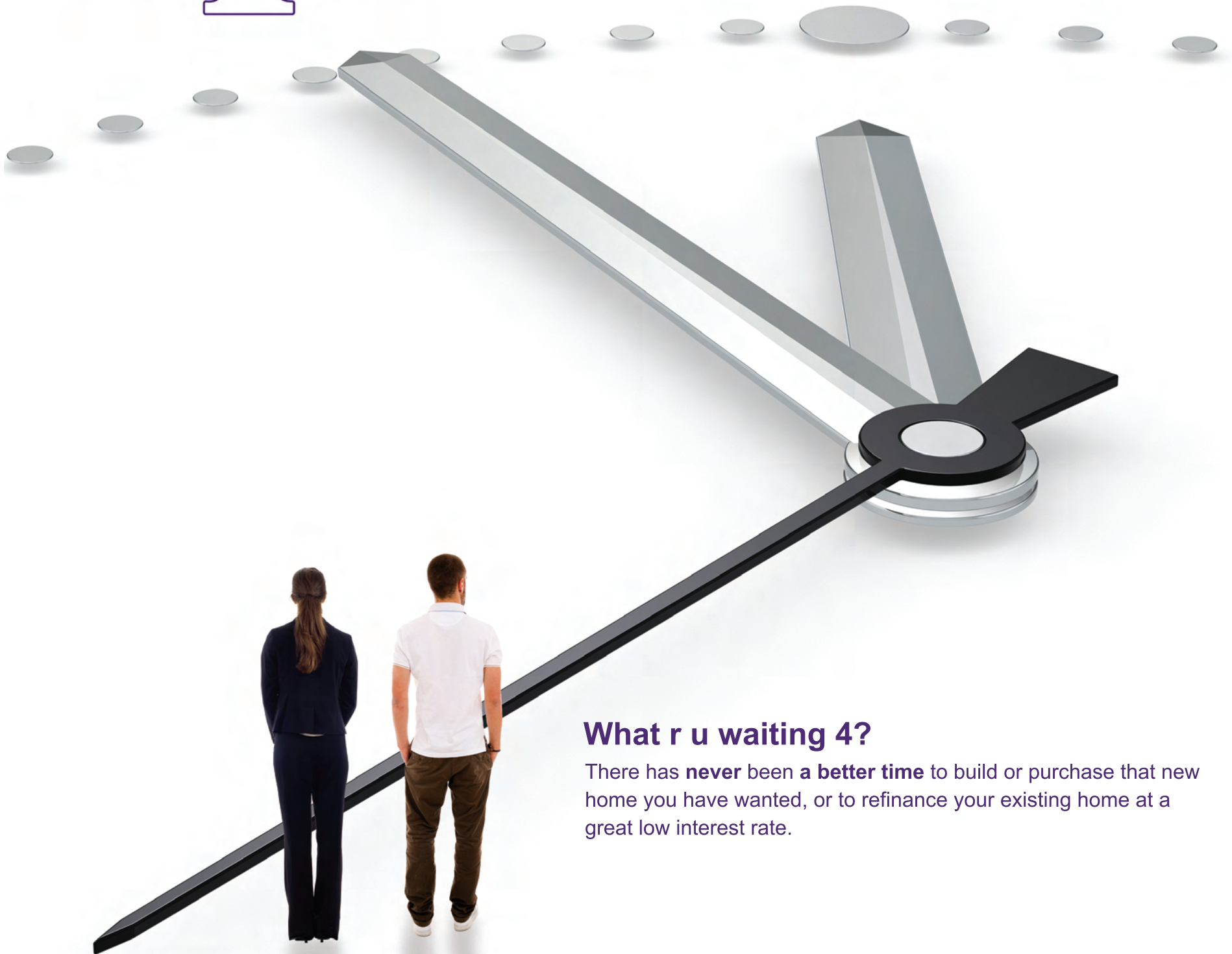
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Low interest rates, expanded SBA lending guidelines allowing more businesses to become owner/users

By Andrew Haley

The Enterprise

Small-business owners are taking advantage of low interest rates and expansive new Small Business Administration (SBA) lending guidelines to purchase rather than lease commercial real estate. So-called owner-users are able to qualify for loans of up to 90 percent set at fixed interest rates low enough that owning has become comparable to leasing in expenditure outlays, several industry specialists said. In some cases those outlays are lower for owners than they would be if they were leasing.

Monica Rafferty, a certified commercial investment manager at Coldwell Banker Commercial, said while some investors are still searching for distressed properties to snatch up for a profitable turnaround, a parallel but separate tier of commercial clients is searching for non-distressed properties in which to operate their businesses.

"There really are two markets out there: people looking for good deals on real estate to make money on real estate and people who are looking to own their own building. The recession has brought that opportunity and continues to bring that opportunity even as distressed property becomes less and less available," she said.

Key to the emergence of the owner-user market are loosened SBA guidelines brought about as part of the 2009 federal stimulus plan. The new rules raise SBA lending caps to small businesses from \$2

million to \$5 million, up to 40 percent. They also redefine a small business as one making less than \$5 million in annual profits and with less than \$15 million in equity, said James Hilton, an SBA officer at Wells Fargo.

"Not a lot of companies in Utah make more than \$5 million a year. That opens up the possibility for a lot of companies to become SBA members," Hilton said.

"[Ownership] has become affordable for a larger segment of the population than there ever has been. It has made it possible for more and more companies to own their building," Rafferty said.

Hilton said that when asked, his clients say their primary interest in buying commercial real estate is not about price hunting or taking advantage of values. Instead, interest among his clients is driven by their own expanding business needs.

"More often than not, they say it's because orders are up and they need more space to fulfill orders. That kind of speaks to a more long-term recovery picture," he said.

Hilton is currently closing deals on office and manufacturing spaces in Sandy, West Valley, St. George, Park City, South Jordan, Murray, Ogden, Brigham City, American Fork, Delta and Salt Lake City. Approximately a quarter of those clients are manufacturing companies. The rest are professional service companies that span the continuum of industries — from janito-

rial companies to cardiologists, residential treatment facilities to engineering firms, day care centers to gastroenterologists.

"It seems that all ships are rising across the industries," Hilton said.

Hilton said he works primarily with two SBA loan programs, the SBA 7(a) and the SBA 504. The 7(a) loan program is a guaranteed loan program, which he called "an incentive for banks to do more loans and higher leverage loans" available for "anything business-wise." He said the SBA 504 loan program is for "the acquisition of capital assets."

"It's normally used for real estate acquisitions or acquisitions of non-movable heavy equipment, like printing presses."

The SBA 504 program guidelines were temporarily altered by the stimulus plan to allow companies to use the program to refinance. Put in place to give struggling companies what Hilton called "a soft landing," the refinancing option was designed as a temporary palliative to businesses suffering from the downturn.

"The problem is they put a short fuse on the [504 refinancing] program. It expires in September."

Hilton said of the 20 or so SBA projects on his books only two are using the SBA 504 to refinance.

"The SBA has a lot of rules for refinancing. The SBA won't let me refinance your note just because you want a lower rate. That's part of the reason we don't do a

lot of refinancing. There are a lot of hoops. And, a lot of the time, the people who want to refinance are not in good standing with their lender and their lender is kicking them to the curb," he said.

Far more common are companies seeking bank loans bolstered by the SBA loan programs that permit them to acquire loans worth up to 90 percent of the properties they seek to buy.

"I can finance up to 90 percent. Not everybody gets 90 percent," he said.

By raising caps on SBA loans, the federal stimulus is offering incentives to banks to renew lending and to create a sense of stability among lenders. The new guidelines put federal collateral on the line both to increase leverage and to help insulate lending-leery banks from the potential fallout of deals gone sour.

"We put up 50 percent. The SBA puts up 40 percent. The owner puts up 10 percent. The bank puts up 50 percent and puts a first trustee lien on the building. The SBA puts up 40 percent on a second loan, with a second position on my lien. So the SBA is taking the bulk of the risk," he said.

Hilton spoke of a hypothetical business deal to illustrate a common transaction under the new guidelines. In the hypothetical scenario, a small business wants to buy a \$1 million building, but only has access to \$100,000. Wells Fargo loans \$500,000, guaranteed by the lien on the \$1 million

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Tenant beware: environmental diligence recommended before taking possession

It has become commonplace for prospective buyers to obtain a Phase I Environmental Site Assessment (ESA) prior to purchasing commercial or industrial property. This is because under environmental laws the current owner is strictly liable for cleanup (even though the owner did not cause the contamination), unless the current owner qualifies for a defense. A Phase I ESA may qualify a prospective purchaser or tenant for certain defenses and helps to define the environmental condition of the property.



Lucy Jenkins

Prospective tenants and purchasers of commercial or industrial properties face similar environmental risks associated with owning or controlling the use of the property. One of the worst scenarios is where a company takes over a lease for a business that uses hazardous materials that have released into the environment. If the new tenant company does not conduct a Phase I ESA, it may not discover the contamination until after it takes possession and then may be in the unfortunate position of exacerbating the environmental condition. If the new tenant had obtained a Phase I ESA, the environmental consultant would have recommended sampling to determine the extent of the problem. Sampling data can be used to negotiate lease terms and to establish a benchmark of the condition of the property at the time of the lease takeover. The prospective tenant also could have chosen to walk away from the lease.

Prospective tenants should consider obtaining a Phase I prior to possession of the property. A Phase I assessment is limited to interviews, property inspection, review of governmental records and data searches and does not include sampling or other physical intrusion of the property. If the Phase I notes environmental conditions, the consultant may recommend a Phase II investigation, which may include sampling of soils, groundwater, water or buildings or other investigations such as an asbestos survey or the potential for vapor intrusion into buildings.

The reasons for conducting environmental diligence prior to leasing include:

- **Avoid Cleanup Liability.** Federal and state environmental laws impose strict liability on the current owners and operators of contaminated property, even if they did not cause any contamination. Tenants with control over the property are considered to be operators. Tenants with ownership-type possessory interests (long-term lease; tenant is responsible for taxes, insurance and maintenance [triple net lease]; tenant has the exclusive rights of possession and to sublease; and tenant has rights to renew the lease) may be viewed to be owners and thus strictly liable as an owner for cleanup.

- **Establish Benchmark of Environmental Conditions.** Use the results of the Phase I and II assessments to establish a benchmark of the environmental condition of the property as of the date of possession. This is especially important if the tenant is continuing a commercial or industrial use involving the use of hazardous materials.

- **Negotiate Lease Terms.** If contamination is discovered, the prospective tenant can assess whether to abandon its plans to lease the property or negotiate terms with the landlord. In negotiating with the landlord, the tenant may want to consider:

- If soils or groundwater are contaminated, define the leased premises as the building so the tenant has use and control of just the building. The landlord retains all responsibility and liability for the contaminated areas. The landlord's costs to address environmental conditions are not shared costs.

- The landlord is responsible for any improvements or construction involving disturbance or excavation of contaminated soils or groundwater.

- If there is a potential for vapors to migrate into a building, for example from petroleum or chlorinated solvents in subsurface soils or groundwater or from a historical landfill, the landlord pays to assess the vapor intrusion issue and for constructing or retrofitting the building to eliminate the health and safety risks.

- If the building contains asbestos that is in good condition, the landlord should prepare an operating and maintenance plan for asbestos.

- Landlord represents and warrants the environmental condition of the property. Do not accept an "as is" provision.

- Landlord indemnifies the tenant for any environmental damages, claims or liabilities.

- **Qualify for Cleanup Defenses.** A Phase I ESA can be used to qualify the prospective tenant for federal cleanup liability defenses, even with knowledge of contami-

nation. The prospective tenant can also seek state governmental liability protections.

Practical Tips: If you are subleasing or taking an assignment of lease, negotiate environmental terms with the tenant similar to those you would request from the landlord. In some circumstances it may be to the tenant's advantage to negotiate a new lease with the landlord. For example, the new tenant does not want to take on liabilities for environmental conditions caused by the prior tenant.

Hire a competent, seasoned environmental consultant. Don't rely on the landlord's Phase I ESA or use the landlord's environmental consultant. Don't rely on a Phase I ESA that is more than 180 days old. Assess the environmental consultant's professional liability coverage amounts. I generally recommend a consultant with

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Top Commercial Property Management Firms in Utah

Ranked by Total Square Footage of Properties managed in 2011

Company Name Address	Phone Fax Web	Total Square Footage of Properties Managed in 2011	# of Properties Managed in 2011	# of Property Managers	# of Full Time Employees	Examples of Properties Managed	Owner/Managing Principal
NAI West Property Management 376 E 400 S, Ste 120 Salt Lake City	801-578-5555 801-578-5500 naiwest.com	9.7 million	126	8	28	Family Center at East Downtown, Reef Parkway, Bangerter Crossing	Mike Falk
CBRE 222 S Main St, Fourth Floor Salt Lake City	801-869-8000 801-869-8080 cbre.com	8.1 million	48	9	34	257 Tower, Parkside tower, 136 East Temple, South Towne Corporate Center, Legacy at Lake Park, Edgewater Corporate Park, Western commerce Center, Crossroads Corporate Center, Landmark Commerce Center	Gary Coker
Cushman & Wakefield/Commerce 170 S Main St, Ste 1600 Salt Lake City	801-322-2000 801-322-2040 comre.com	5.3 million	56	9	20	DND	Michael Lawson William D'Evelyn
Coldwell Banker Commercial NRT 6550 S Millrock Dr Salt Lake City	801-947-8300 801-947-8301 coldwellutah.com	4.3 million	42	5	11	Fifth Third Bank, 185 South State, Lennox Industrial, OSHA Regional Headquarters, IRS Regional Facilities, Stevens Henager, Old Mill Village	Randal W. Owen
Cottonwood Management Services 2855 W Cottonwood Parkway. #560 Cottonwood Heights	801-365-6218 801-365-6201 cottonwoodpartners. com	2.2 million	18	4	10	Scowcroft Building in Ogden, Cottonwood at New Park in Park City, Foundry Square in San Francisco California, City of South Salt Lake Building, Empire lakes in Rancho Cucamonga California	Reid Brinton
Asset Management Services 488 E Winchester St, #325 Murray	801-288-8811 801-281-1330 DND	979,064	26	2	4	Commerce Park, Weley Post Plaza, Union Plaza, Centerpoint Shopping Center, Plaza 9400	Gregory W. Strong
Capstone Property Management L.C. 4422 Century Dr Murray	801-313-0700 801-313-0800 capstonepm.com	650,000	19	1	3	DND	Lee Peterson

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OWNER/USER

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building. SBA then loans \$400,000, with a second position guarantee on the lien. The potential investor then puts up \$100,000 for the purchase of the building at a low fixed interest rate.

According to Hilton, that more than doubles a small business' acquisition possibilities under traditional lending guidelines. With a traditional bank loan, the bank loans 75 percent, with the onus on the owner-user to come up with 25 percent, he said. With the hypothetical \$1 million office building, an aspiring owner-user would have to come up with \$250,000 to make the purchase.

"We've seen more deals that wouldn't have qualified. I don't want to mislead you. Business is not terribly brisk, but it is inspiring. I'm busier than I've been in a long time," Hilton said.

The increase in availability for "deals that wouldn't have qualified" is changing the owner-user/lessee ratio, according to Rafferty.

She said many small-business owners dream of owning their buildings. Previously, potential owner-users faced the twin hurdles of raising enough cash to obtain traditional loans and of paying back loans at high interest rates. With both hurdles significantly lower, those erstwhile lessees are now able to buy at rates competitive with leasing.

"I don't mean to imply that we're in a skyrocketing market. It doesn't mean that those distressed properties are back to pre-recession values. What we're seeing instead is a certain segment of the market is now

able to buy. It has changed buying power," Rafferty said.

In a hypothetical "Own vs. Lease Comparison With a 7(a) Loan" he prepared, Hilton found that an owner-user who purchases a 2,000 square commercial property, valued at \$300,000, purchased with a fixed rate 6.25 percent SBA 7(a) loan, will pay an identical amount, \$1,749 per month, as a lessee paying \$13.99 per square foot for the same property. According to his analysis, the owner-user will accumulate \$272,000 in equity in 20 years, with the same monthly expenses as the lessee who accumulates zero. Though Hilton's gross monthly costs for his hypothetical building are \$700 more per month for an owner-user, that rate is pared to equitability after tax deductions benefiting owners are accounted for.

The only hobbling factor to owner-users is the increased burden of startup capital. A potential lessee looking to open a business in Hilton's hypothetical office needs only \$4,663 in start-up expenses: pre-paid rent and a one-month security deposit. An owner-user would need \$33,000, after securing 90 percent financial backing from a lending bank and the SBA.

For Winder and Counsel, a small downtown Salt Lake City law firm, the value of user-ownership led the company to purchase its 6,600 square foot office at 460 S. 400 E. last year after two years of leasing. Kristin Winder, office administrator at Winder and Counsel, and wife of attorney, Donald Winder, the firm's lead lawyer, co-owns the building with her husband through an LLC. She said the firm, as an owner-user, is paying substantially less than it had under its previous lease arrangement.

When one adds in the perks of free parking and the promise of building substantial equity, the decision to buy was obvious, Winder said.

"We chose to buy our building because I think the economics work. Lease rates have been holding, or rising. We've got a beautiful building of almost identical square footage. We cut our expenses in half per square foot. We've saved half in that outlay," she said.

The Winders were part owner, with Gastronomy Inc., of the firm's previous building at 175 W. 200 S. They began leasing in 1983 and eventually entered into a partnership with the restaurateurs. The Winders sold their interest in 2008 and took a two-year lease in the same building.

"We felt the market was maxed out. Ultimately we were right," Winder said.

But after two years of leasing, with zero accumulation of equity and annoyed by the added expenses of tenancy, such as paying an additional \$50 per month per spot in the building's parking lot on top of the lease, they began looking to buy.

"We decided it is much better to be owners, plus the property comes with a 33-car parking lot. So we saved on the parking too," she said.

The Winders bought in September 2011 and moved in the following October, after some minor remodeling. Though SBA loans can cover remodeling costs, the Winders chose to finance them through other means because of strict SBA lending guidelines for remodeling. Winder said they had never considered bargain hunting for a distressed property.

"We wanted something in good condition. We didn't mind doing some cosmetic remodeling, but we didn't want a fixer-upper," she said. "It was already remodeled so all we had to do was some light cosmetic work. Everyone's very happy."

She said in the search for its new property the firm's one caveat was location. It was imperative for the firm to be near downtown civic, legal and business centers. The new address provides that, as well as the perk of greenery absent the firm's previous neighborhood.

"We're only one block more away from the courts and we love it because of its neighborly feel. It's green. We have grass and trees out front," she said.

The Winders' experience may be symptomatic of a larger recovery. During the period they were hunkered down in a two-year lease waiting for the market to stabilize, Hilton had some very slow years. Then, at the same time the Winders began seriously looking to buy, Hilton's business came back to life.

"It started getting busy for me in August of last year and it hasn't let up. As a general rule, they are bigger deals, which speaks to the fact that the stimulus allows us to do bigger deals," Hilton said.

"The economy is improving and increasing demand is feeding on itself and creating some excitement. I'm really excited about it. I'm seeing some pretty good excitement that I think is sustainable. It's not tied to one industry or to any legislation that's going away. I think it's got legs. I hope I'm not wrong," he said.



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Ranked by Combined sales and leasing volumes in 2011

Company Name Address	Phone Fax Web	Total Commercial Sales Volume in 2011	Total Commercial Leasing Volume in 2011	# of Utah Offices # of Commercial Agents	# of Commercial Transactions completed in 2011	Specialties	Owner/Managing Principal
NAI West commercial Real Estate 376 E 400 S, Ste 120 Salt Lake City	801-570-5555 801-578-5500 naiwest.com	\$610 million	\$323 million	5 91	1,772	Office, retail, land, investment, multi-family, property management, facility services, M&A, corporate services	Michael B. Falk
CBRE, Inc. 222 S Main St Salt Lake City	801-869-8000 801-869-8080 cbre.com	\$451 million	\$306 million	2 35	626	DND	Mark Bouchard
Coldwell Banker Commercial NRT 6550 S Millrock Dr, Ste 200 Salt Lake City	801-947-8300 801-947-8301 coldwellutah.com	\$193 million	\$463 million	2 81	1,031	Full service brokerage (office, retail, industrial, investment, land); Asset advisory, corporate real estate services, business brokerage, property/facility management, construction management	Steven Bogden Randall W. Owen
Mountain West Retail/Investment 376 E 400 S, Ste 120 Salt Lake City	801-578-5555 801-578-5500 mtnwest.com	\$53.1 million	\$155 million	3 17	282	Full service retail and investment brokerage, retail land lord tenant representation, advisory services	Chad Moore
Knight Realty Co. 254 S 600 E, #100 Salt Lake City	801-363-4949 DND DND	\$13.2 million	\$5.8 million	1 1	58	commercial Sales, leasing and investment services, property management	Spencer Knight
Capsone Property Management L.C. 4422 Century Dr Murray	801-313-0700 801-313-0800 capstonepm.com	DND	\$1.8 million	1 1	30	"Full Service" management and leasing for third party owners; office, medical, detail, and flex space	Lee Peterson
Chapman-Richards & Associates 1414 E Murray-Hooday Rd Salt Lake City	801-278-4414 801-278-2724 chapmanrichards.com	DND	DND	1 8	DND	Commercial real estate sales and leasing	George Richards
Cushman & Wakefeild/Commerce 170 S Main St, Ste 1600 Salt Lake City	801-322-2000 801-322-2040 comrs.com	DND	DND	5 92	1,042	Office, industrial, retail, land, investment, property management, asset services, lender asset services, valuation and advisory	Michael Lawson William D'Evelyn
InterNet Properties, Inc. 51 E 400 S, Ste 210 Salt Lake City	801-355-0600 801-363-6869 iproperties.com	DND	DND	1 17	DND	Brokerage, services market analysis, project management, construction management, real estate consulting	Vasilios Priskow

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What every guarantor should know about the one-action rule and deficiency actions

Personal guarantees are an inherent part of obtaining a business loan. A personal guarantee is an unsecured promise from an individual (typically an individual who is closely associated with the business trying to obtain the loan) to make loan payments when the business is not able to do so. In other words, it is simply an added assurance for the lender that the loan will be paid in full. Generally, if the borrower defaults, the lender can file suit against both the borrower and the guarantor for payment.

Oftentimes, lenders require another layer of protection, in addition to the personal guarantee: collateral to secure the loan. A secured loan is simply a loan in which the borrower pledges some asset as collateral for the loan, which then becomes a secured debt. This collateral can be anything from equipment, accounts receivable or deposit accounts, to name a few. But the most common form of collateral to a secure a business loan — especially if the business loan is of a sizeable magnitude — is real property.

In Utah, the majority of loans that involve real property are secured by a deed of trust, commonly referred to as a trust deed, as opposed to a traditional mortgage. A trust deed is similar to a mortgage in that both are encumbrances on real property to secure a loan or other obligation. But one key difference is that a trust deed can be foreclosed by the trustee who has the power

to sell the property without filing a lawsuit. This is called a non-judicial foreclosure or a power of sale foreclosure.

As real estate loses its value, however, some lenders are seeking judgments against guarantors instead of proceeding first against the principal borrower and the property securing the borrower's obligation. When this occurs, two important rules under Utah law become applicable and could make the difference in the guarantor's fight against the lender. The first rule is commonly referred to as the "one-action rule." The second rule deals with the protections under what is known as the "deficiency" statute.



David Hague

Many states have enacted statutes known as "one-action"

rules, which limit a lender to only one action for the recovery of any debt secured by a lien on real property. These rules are best viewed as "security first" requirements, under which a lender must exhaust the security before recovering from the borrower personally. In Utah, the statute provides that "[t]here is only one action for the recovery of any debt, or the enforcement of any right, secured solely by mortgage upon real estate and that action shall be in accordance with the provisions of this chapter." The Utah Supreme Court has interpreted this statute as preventing a lender from suing the borrower personally on the note until it first forecloses against the real property. And while the statute uses the word "mortgage,"

the Utah Supreme Court has also recognized the statute's applicability to trust deeds. The one-action rule advances two purposes. First, it minimizes the borrower's liability by forcing the lender to look first to the security before suing the borrower, and it attempts to eliminate multiple lawsuits.

In some jurisdictions, the one-action rule extends to a guarantor of debt, but in Utah, a lender is not required to resort to collateral security before seeking judgment against a guarantor. In a lender's action against a guarantor to recover on a loan, the Utah Supreme Court held that a creditor need not foreclose on a trust deed prior to seeking recovery from a guarantor of payment. Since guarantees are meant to protect the creditor, the court held that applying the one-action rule to actions against guarantors unnecessarily limits the parties' ability to allocate risk and undermines the primary purpose of guarantees of payment.

The above holding represents an enormous risk to guarantors. Indeed, it is not uncommon for guarantors to sign unconditional guarantee agreements with the assumption that the real property securing the underlying loan will serve as a partial shield to their legal obligation to repay the lender. Under Utah law, such reasoning is faulty. While other defenses against the lender might be available to the guarantor, standing behind the real property is not one of them. On the other hand, while a lender may proceed directly against a guarantor of payment without first foreclosing on the trust deed, if the lender elects to seek fore-

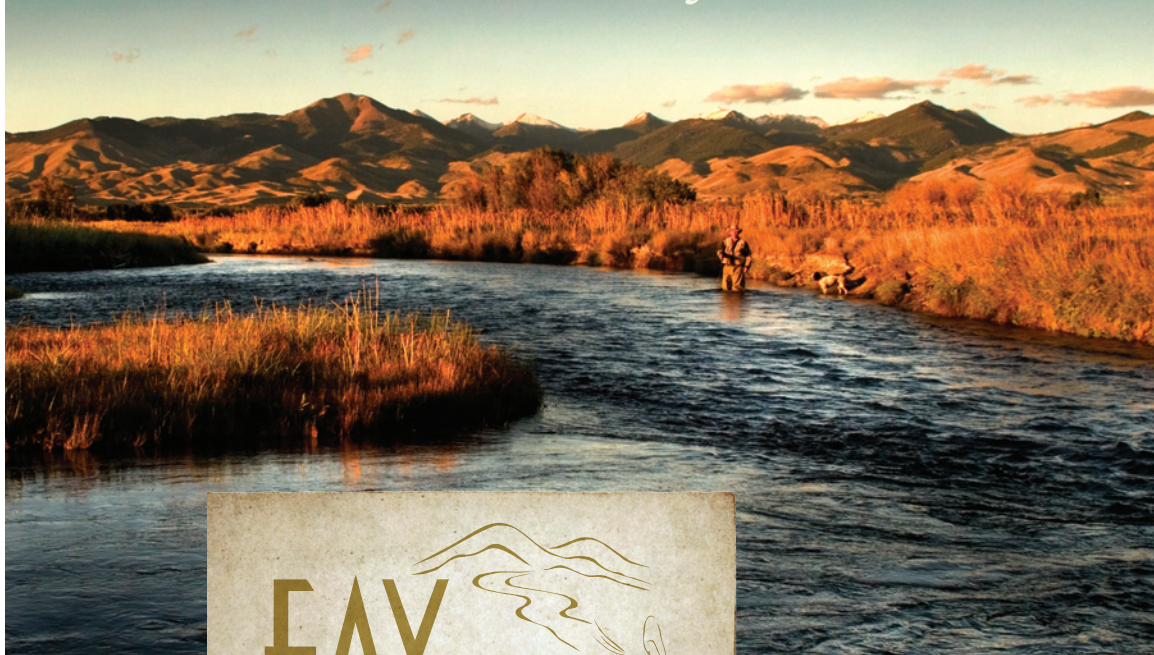
closure, it must do so in accordance with the procedure set forth in the Utah Trust Deed Act.

In most cases, a foreclosure sale does not generate sufficient proceeds to fully pay the entire indebtedness for which the trust deed was conveyed as security. When that happens, the lender may file a lawsuit against the borrower and guarantor to recover any remaining balance due. The remaining balance due after foreclosure is called a "deficiency," and the lawsuit to recover that deficiency is called a "deficiency action."

Section 57-1-32 provides the only mechanism for obtaining recovery of the remaining balance due. Under Utah law, a deficiency action must be filed within three months after the non-judicial foreclosure sale. The lender must plead the entire amount of the indebtedness that was secured by the trust deed, the amount for which the property was sold, and the fair market value of the property at the date of sale. This prevents lenders from obtaining excessive recoveries against the borrowers for the deficiency amount. The court in which the action is filed may not render a judgment for more than the amount by which the amount of the indebtedness with interest, costs and expenses of sale, including trustee's and attorney's fees, exceeds the fair market value of the property as of the date of the sale. Utah courts have stated that the purpose of the fair market value provision is to protect the borrower, who in a non-judicial

see DEFICIENCY next page

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Will renting out foreclosures help the housing market?

Is this the initiative that could turn things around?

Another big idea – with a big opportunity attached. No magic wand will repair the sluggish housing market, yet the idea of converting foreclosed homes into rental properties has opened eyes – especially the eyes of private equity firms.

The federal government and major lenders are now putting that idea into action. Inventory abounds – between them, Fannie Mae and Freddie Mac are saddled with about 180,000 foreclosures, and the Federal Housing Administration has about 32,000 REOs. RealtyTrac says banks own more than 600,000 REOs by themselves.

In Q4 2011, home ownership hit its lowest level (66 percent) in 14 years. The rental market is red-hot right now, and private equity firms see some amazing potential profits within their short-term reach.

How catalytic could this effort become? Karl Case (yes, the Case in Case-Shiller), who co-created this proposal, thinks that “the seeds to a recovery are being planted” via this program. Accompanying visions of recovery, there is genuine excitement: a principal at a California private equity firm told Bloomberg that “this will be a new institutional asset class in the next 24 months.”

Trial programs launch in April. As a first step, the Federal Housing Finance Agency (Fannie and Freddie’s parent) is auctioning off almost 2,500 down-trodden residential properties this month in eight metro areas. They will be offered to institutional investors in bulk (for example, 99 properties in Chicago and 572 properties in Atlanta) and investors must agree to rent them out for X number of years (the number has not been determined).

In the private sector, Bank of America is launching a program this spring with a slightly different slant. It will give 1,000 homeowners in Arizona, Nevada and upstate New York a chance to stay in their homes as renters as the foreclosure process plays out. BofA plans to sell these REOs to investors within three months (or as soon as the occupants surrender ownership and start paying

rent). Borrowers can’t apply for the program themselves, but they can alternately ask BofA to cancel their mortgages via a deed in lieu of foreclosure and then contractually agree to rent the same home for up to 36 months at or below market rates. This program could go national if it succeeds.

Could the ROI go through the roof? One private equity firm thinks it can package its envisioned portfolio of converted foreclosures into a public REIT with an internal rate of return approximating 25 percent within three years. Reuters recently cited other institutional investors with more cautious visions of ROI of 8-15 percent from their efforts.



Mark Lund

Still, that looks pretty rosy next to current yields from 10-year Treasuries and CDs. If the housing market perks up, perhaps it may prove true.

What about the ethics of this? Not all economists think this is a great idea. Detractors ask: should hedge funds become landlords? Should homes owned by Fannie and Freddie be sold to institutional investors at deep discounts? Is this another example of the 1 percent benefiting from the misfortunes of the 99 percent?

Other proposals were up for consideration. Some of the ones not chosen by the federal government could be copied in the private sector. Dean Baker, co-director of the Center for Economic and Policy Research, pitched the idea that Fannie and Freddie could offer borrowers the chance to stay put in their foreclosed homes and pay market rent. Morgan Stanley lobbied for special loans to institutional investors and tax breaks on rental income.

Is this the cure for the housing blues? These public and private foreclosure conversion programs boast intriguing potential: a possibility of sizable profit, and a chance to fight blight. A Morgan Stanley report notes that by 2016, circa 7.5 million homes with a present market value of \$1 trillion will be liquidated via foreclosures and short sales. This could expand the total of rental homes in America from the current 20 million to 27.5 million. Morgan Stanley reminds investors that single-family homes operated as rentals

process. The majority of small-business loans require personal guarantees from business owners. A personal guarantee demonstrates that you are serious about your business – and most importantly – serious about repaying the loan. One court decision has created a new risk for guarantors who have guaranteed debts secured by real property. The Utah Supreme Court has ruled that the plain language of the one-action rule does not mandate its applications to guarantors, and construing the statute to do so would not further the purpose the rule was intended to serve. On the other hand, guarantors are protected by the deficiency procedures set forth in the Utah Trust Deed Act. Upon conclusion of a trustee’s sale, a creditor simply may not recover any balance from a guarantor unless it satisfactorily complies with section 57-1-32.

Signing a personal guarantee comes with substantial risks, primarily related to your obligation to repay the business loan and the lender’s legal right to go after you and your personal assets if the business defaults. Think twice about providing your personal guaran-

tee, particularly when you believe that it is not a prerequisite to obtaining a business loan. If your business is strong financially or it can offer the lender collateral to protect the loan, the lender may consider waiving the personal guarantee requirement. When faced with signing a personal guarantee, you should carefully review the personal guarantee agreement and have a lawyer review all the paperwork involved.

David Hague is a shareholder at Fabian and chair of the firm’s bankruptcy practice group. Hague practices primarily in the areas of bankruptcy law and commercial litigation. He has extensive experience representing secured and unsecured creditors, debtors and debtors-in-possession, and Chapter 7 and 11 trustees in complex bankruptcy cases. He also represents clients in the areas of equipment leasing, collection law, secured transactions, ERISA litigation, and employment law. Hague can be reached at (801) 531-8900 or dhague@fabianlaw.com.

DILIGENCE

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scope of diligence and plan of action if contamination is discovered, lease terms, and federal and state governmental liability protections.

Consider a build-to-suit lease for contaminated property where the landlord constructs the building, owns the building and parking area and the tenant leases the building only.

Business types that deserve special environment scrutiny include gasoline stations; dry cleaners; automotive service, repair and maintenance; and manufacturing plants and other heavy industrial operations.

Leasing a commercial or industrial property generally merits the same environmental diligence as purchasing (except for short-term office leases). Prospective tenants should obtain a Phase I ESA prior to taking possession.

Lucy Jenkins an attorney at Jones Waldo, where she chairs the Environmental Law Practice Group. She has over 20 years of experience in environmental law and has expertise in business transactions involving environmentally impaired properties, redevelopment of Brownfields properties, remediation under state and federal environmental programs, voluntary cleanup, EPA and state administrative environmental enforcement actions, environmental permitting and compliance, environmental insurance and toxic torts. She has also had experience with environmental regulation of solid and hazardous and radioactive waste, underground storage tanks, water quality, wetlands, stormwater discharges, air quality and Superfund sites.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO,
SITTING AS THE
JUVENILE COURT

In the Matter of:
TYSON FRANK
Minor(s) born: 7-8-97

Case No(s): 229557
PUBLISHED CITATION
WELFARE AND
INSTITUTIONS CODE
SECTIONS 294 & 366.26

THE PEOPLE OF THE
STATE OF CALIFORNIA

TO: TYSON LEFRANCE AKA TYSON LAFRANCE, FATHER, DATE OF BIRTH IS August 25, 1980 aka August 21, 1980, OR ANYONE CLAIMING TO BE THE FATHER OF THE ABOVE-NAMED CHILD BORN TO TRASHHELL FRANK AKA TRACHELL FRANK, MOTHER, DATE OF BIRTH March 14, 1982

PUBLISHED NOTICE OF HEARING AND NOTICE TO PARENT OF RIGHTS AND PROCEDURES PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTIONS 294 and 366.26

1. YOU ARE HEREBY NOTIFIED THAT on May 29, 2012, at 8:30 a.m. in Department 134 of the Sacramento County Juvenile Court, Superior Court of California, located at 3341 Power Inn Road, Sacramento, CA 95826, a hearing will take place pursuant to Welfare and Institutions Code, Section 366.26, to either terminate your parental rights or to establish a guardianship for your child or to place your child in long-term foster care.

2. You are further notified that the Sacramento County Department of Health and Human Services, Petitioner, will recommend the following action: termination of parental rights permanently and a court order that the above-named minor be placed for adoption.

3. You have the right to personally appear in court and be heard in this matter.

4. On the above date the Court will determine the best permanent plan for your child. Evidence will be presented. After hearing the evidence presented by the parties, the Court will make one of the following orders:

a. Terminate your parental rights permanently and order that the child be placed for adoption;

b. Without permanently terminating your parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for your child for a period not to exceed 60 days;

c. Without permanently terminating your parental rights appoint a legal guardian for your child and issue letters of guardianship; or,

d. Order that your child be placed in long-term foster care, subject to the regular review of the Juvenile Court.

5. You may have the right to have an attorney represent you at the hearing. If you cannot afford an attorney, the Court will appoint an attorney for you, unless you knowingly and willingly waive your right to representation by an attorney. You have the right to present evidence at the hearing.

6. You have the right to request a trial on the issue of what permanent plan is best for your child. You have the right to present evidence. You have the right to use the Court’s power to compel the attendance of witnesses to testify on your behalf. You have the right to confront and cross-examine any adverse witnesses. You have the right to confront and cross-examine the preparers of any reports submitted to the Court by the Sacramento County Department of Health and Human Services, Petitioner. You have the right to assert the privilege against self-incrimination.

7. Any order of the Court permanently terminating your parental rights shall be final and you shall have no legal rights to the care, control or custody of the child.

8. Ten (10) days prior to the hearing, the Sacramento County of Sacramento Department of Health and Human Services will prepare an assessment report containing its recommendation in this matter. You have the right to read the report and obtain a copy of the report. You should immediately contact the social worker assigned to your child dependency case or your attorney if you have any questions or if you would like to read and obtain a copy of the report.

9. If you fail to appear at the hearing, the Court will proceed in your absence to adopt one of the above-mentioned permanent plans. Such proceedings may include the termination of your parental rights so that your child may be placed for adoption. If you have any questions regarding this procedure, please contact the specified below or an attorney.

DATE: March 29, 2012

ANN EDWARDS,
DIRECTOR DHHS
by , Hans A. Gregerson Paralegal
Department of Health and Human Services
Paralegal Services
(916) 875-4136

DEFICIENCY

from previous page

foreclosure has no right of redemption, from a lender who could purchase the property at the sale for a low price and then hold the borrower liable for a larger deficiency.

In another case, the Utah Supreme Court concluded that the Utah Trust Deed Act protects more than just the borrowers – it protects all parties, including guarantors, who may be liable for a deficiency. Thus, section 57-1-32 also provides the exclusive procedure to recover from a guarantor the balance due on a trust deed following foreclosure. As long as the lender brings an action to recover the balance due on the indebtedness secured by a trust deed, the Utah Trust Deed Act provides the only mechanism for recovering the deficiency and guarantors are clearly protected by the act’s three-month statute of limitations and its fair market value requirement.

There is no doubt that personal guarantees will always be part of the business-loan

2012: an improving housing economy

In 2011, seven out of 10 homes sold in Salt Lake County were considered affordable to the median household income of \$57,000. For home buyers in 2012, affordability is again the dominant theme. With interest rates near record lows and the median home price within reach of many households, 2012 could mark a significant change as demand heats up. In fact, home sales have shown double-digit increases over the past nine consecutive months.

Most Utah Households Prefer Homeownership

Low levels of real estate sales have led to much discussion about the prospects of a long-term decline in homeownership. We've had this conversation before. In the housing bust of the early 1980s — which featured stagnant housing prices, a 57 percent decline in real estate sales and double-digit interest rates — housing demand shifted to the rental market. Over a period of eight years, 43 percent of all new residential units built in Salt Lake County were apartments, and the home ownership rate in the county dropped from 68.1 percent to 65.1 percent. Many wondered would the home ownership market ever return to its old self. Of course it did in the 1990s and for much of the past decade. The 2010 Census reports that 67.3 percent of households in Salt Lake County are homeowners.

Most Utah households prefer homeownership. Unfortunately, many cannot express that preference due to tarnished credit. Over time, however, lending requirements will loosen and household balance sheets improve, creating increased demand for ownership units. The federal tax structure gives a significant advantage to homeowners, providing deductions for mortgage interest and property taxes plus relief in most cases from capital gains taxes. Furthermore, in recent years the Federal Reserve has invested several hundred billion dollars in the credit market, driving down interest rates to the current low levels, again an advantage for the homeownership market. Without doubt, federal fiscal and monetary policy provide substantial incentives for homeownership.

Utah is No. 4 in House-Price Appreciation over Past 20 Years

Homeownership in Utah remains a reasonable long-term investment despite the performance of housing prices over the past four years. Historically, the value of a home has increased slightly faster than the rate

of inflation. From 1980 to 2011 the average sales price (adjusted for inflation) of a home in Salt Lake County has increased from \$175,700 to \$260,145. Keep in mind this 30-year period includes the 10 years of declining real prices in the 1980s and the drop in prices over the last few years.



Donna Pozzuoli

Confirmation of Utah's particular price appreciation advantage is also provided by the House Price Appreciation Index, published quarterly by the Federal Housing Finance Agency. Recently published data show the increase in the index from 1991 through the third quarter of 2011. Utah ranked fourth among all states in appreciation over the 20-year period, exceeded only by Wyoming, Montana, Colorado and Oregon. Utah's price appreciation index increased by 139 points compared to an 80 point increase for the U.S.

One in Four Households in Salt Lake are Mortgage Free

As an asset, a home provides a hedge against inflation, tax advantages and forced savings. Furthermore, once a mortgage is paid off, housing costs are reduced to maintenance and property tax costs. In Salt Lake County 55,000 households are mortgage free, 25 percent of all households in owner-occupied units.

For the first time in four years existing homes sales in Salt Lake County showed signs of improvement. In 2011 single-family home sales totaled 9,300 up about 9 percent over the 8,565 sales in 2010. During the peak of the boom, home sales in Salt Lake County reached an unsustainable level of 15,000 in 2005 and 2006. With the collapse of the housing market, sales dropped 44 percent from 2005 to 2010, a serious contraction but less severe than the 57 percent drop in sales during the 1979-1982 housing downturn.

Prices Decline for Fourth Year

There are several measures of housing prices, but they all tell a similar story. The median sales price of homes in Salt Lake County over the past four years fell 22 percent and in 2011 dropped 9.5 percent. The National Association of Realtors reports median price data for the Salt Lake Metropolitan Area (Salt Lake, Tooele and Summit counties). These data show prices falling 26 percent over the four-year period and 15.3 percent in 2011. And finally, the Federal Housing Finance Agency shows a 25 percent decline in the housing price index for Utah from 2007 to 2011.

Falling prices erode equity, leaving many home owners "underwater." In Utah there are currently about 480,000 mortgage loans, with 124,000 of these loans having a status of negative equity or near negative equity (within 5 percent of negative equity). The households with these loans are effectively stuck in their homes. Moving up to a larger home is not an option for the vast majority. This has hurt demand and contributed to sluggish home sales. Traditionally, the move-up buyer has been a source of significant demand for both the existing and new home markets.

Table 1
Notices of Default in Salt Lake County

	Number of Notices	Percent Change
2007	3132	
2008	5267	68.2%
2009	8152	54.8%
2010	7541	-7.5%
2011	5400	-28.4%

Source: New Reach.

Foreclosures Have Fallen Steadily Over Past 18 Months

The Mortgage Bankers Association reports quarterly foreclosure filings and delinquencies by state. In the second quarter, the percent of mortgage loans in Utah in the foreclosure process was 2.45 percent or 10,500 loans. While this level is still high, the number of loans in foreclosure has fallen steadily over the past two years. The peak in foreclosures was the first quarter of 2010, when nearly 15,000 loans, or 3.4 percent of all mortgages, were in the foreclosure process.

Consistent with the decline in foreclosure filings is the recent drop in notices of default in Salt Lake County. The estimated number of notices in 2011 was 5,400, down 28 percent. This is a positive sign since notices of default are a leading indicator of foreclosures.

Clear Signs of Recovery for Utah Economy

The Utah economy has showed clear signs of recovery, which should give a boost to the real estate market in 2012. Most impressive has been the strength of Utah's job market. Employment growth jumped from an annual rate of around 1.5 percent, where it had been stuck for several months, to the 2.5 to 2.9 percent range. The employment forecast for 2012 shows an increase of 2.7 percent or 33,000 additional jobs. Currently, Utah ranks fourth among all

states in job growth. The only states growing at a faster pace are all energy-producing states: North Dakota with 5.1 job growth, Wyoming at 3.03 percent and Texas at 2.5 percent.

For Utah's job market the results of the Great Recession are closer to a V shaped cycle rather the prolonged U shaped cycle predicted for the national economy. Utah had sharp declines in employment in 2008 and 2009. Job growth dropped by 46,000 in 2008 to near zero and in 2009 turned negative with a loss nearly 64,000 jobs. In 2010 losses shrank to 7,200 followed in 2011 by job gains of 27,000. The relatively swift recovery underscores the strong fundamentals of the Utah economy.

Home Sales to Rise 15 Percent in 2012

In 2012, higher levels of real estate sales will be supported by favorable interest rates and housing prices. In addition, the Utah labor market is expected to grow by over 30,000 jobs, and all sectors of the economy will expand. These conditions will lead to an improvement in home buyer confidence, which should stimulate housing demand. Over the last three years pent-up demand has been building as the weak job market has caused households to double up, postpone marriage and move. With improved economic conditions some of this pent-up demand will be released in 2012 pushing sales of single family homes up by 15 percent to 10,500 units. Total residential sales, including condominiums, townhomes and twin homes, will also increase by about 15 percent to 12,500 units.

Home Prices to Decrease 3 to 5 Percent in 2012

Prices will continue to face downward pressure from REO and short sales. As 2011 ended there was no sign of improvement, as fourth quarter prices declined by more than 10 percent. This weakness will linger through the first two quarters of 2012, but in the second half of the year prices should stabilize. And with record-low housing inventories, some areas may even see price increases as home buyers compete for the same properties. The median sales price for a single-family home in Salt Lake County will likely drift down another 3-5 percent in 2012.

Donna Pozzuoli is the president of the Salt Lake Board of Realtors and works for Prudential Utah Real Estate at the North Salt Lake office.

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APPRAISALS

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According to Kyler, banks, whether acting in their own interests or conforming to regulations, are partly to blame for the spate of erroneous appraisals.

“[Banks] are oftentimes more concerned with when a property sold than with absolute comparability,” he said.

He gave as an example a case of two comparables: one, very much like the house being appraised, sold 91 days ago. The second, quite dissimilar, sold 86 days ago. According to Kyler, appraisers, abiding by their operating rules, will often choose the second house as a comparable, because it fell this side of 90 days.

“Ninety days seems to be a magic number. In the equation of finding comparability, there’s a premium placed on when the property sold rather than absolute comparability,” he said.

Craig Morley, a career appraiser and chair of the state appraiser licensing board, also laid a fair share of the blame at the banks’ door. Though he said his group’s decision to “meet all of Fanny and Freddie’s guidelines to a T” was a reaction to the federal government’s forcing banks to buy back distressed properties, he insinuated their steadfastness was motivated by spite.

“Secondary financial markets are in chaos,” he said.

Morley said overzealous compliance with lenders’ guidelines is causing appraisers to make incorrect assessments. Any appraisal process is complicated by nuance for which those guidelines made little room, he said; assessing a property becomes more complicated “anytime I have a home that’s at all unique, and in Utah we don’t have a lot of production homes.”

“Say you have a bonus room over the garage. The bank says ‘don’t value that.’ They want to see a bracket. That sounds nice, but if you have a home with a four-car garage but all your comparables have a three-car garage, we’re not going to value you that four-car garage,” Morley said.

“The guidelines are really tight right now,” he said.

According to Morley, much of the problem with under-market appraisals arises from an over-reliance on simplistic quantifiable data, which forces appraisers to find comps where there often aren’t any that are truly comparable. He said the chance of finding a comparable home in a one-mile radius, particularly when one is dealing with custom-built or older houses, is slim in the best of circumstances. In a slow housing market, the likelihood of there being a recent sale of a truly comparable property – a house with the same number of bedrooms and bathrooms, on a similar size lot with the same amenities – is extremely remote.

“Some appraisers are more or less forced into accessing homes that are [dissimilar]. They manufacture adjustments to fit in with the guidelines, which leads to low-balling,” Morley said.

“Most of the problems we’re running into are evaluation guidelines ruining valuations. They don’t even care if the number is right. That’s not even a consideration. A lot of the problems caused by the run-up

of values have been placed on the backs of appraisers. It’s better to be safe and be on the low end than be on the high end and run the risk of getting in trouble,” he said.

“Appraisers and Realtors don’t set market value. The buyer and seller do. But the results end up being skewed because of poor analysis,” he said.

The woeful state of the appraisal industry was one topic of agreement.

“I can’t think of a harder thing to do in the last few years than to appraise real estate,” Headlee said.

“The job of the appraiser in this real estate market is very challenging. Some of them are playing it safe and coming up with a low appraisal. It’s as frustrating for us as for anybody. I can assure you that no one is more frustrated with inaccurate or undervalued appraisals than the lender, and it makes it hard for the borrower to believe, but it’s true. If we’ve learned anything over



the last few years, it’s the value of a good appraisal,” Headlee said.

Kyler said the poor state of the appraisal industry is another major factor causing incorrect valuations.

“Appraisers are in a bad place right now professionally. We are bleeding appraisers. The federal government has overreacted. They passed new regulations that require appraisers to do more. There’s more bureaucracy that appraisers have to pay for out of pocket. Appraisers 30 years ago were making more money than they are today. Poor appraisers aren’t making any money,” he said.

Morley agreed with Kyler’s assessment of the woes of the appraisal trade.

“The barriers for entry into the appraisal industry are tougher than they’ve ever been. We’re under the thumb of the federal government. There is no clear-cut path for appraisers. Now, to be an appraiser, you

need a college degree and a two-year real estate apprenticeship,” Morley said.

Simply finding an open apprenticeship is difficult, he said. When business is slow, there are fewer working appraisers, and those with enough business to support an apprentice are reluctant to train someone who is going to become their competition.

“There’s not a ton of demand because most appraisers are not working at full capacity. They are going out of their market, to areas that are not a part of their MLS, and so will have a problem producing a real appraisal. All real estate is local,” Morley said.

“That’s contributing to a lot of the problems in real estate. ‘How cheap can I get an appraisal done?’ My concern is not getting a good appraisal but more a focus on getting it done fast and cheap,” he said.

According to Kyler, another contributing factor to the decline of the appraisal

mortgage guys who lost their mortgage licenses,” he said. “There are a lot of these AMCs that are national. We were able to avoid a lot of these problems because we got legislation enacted. We were able to keep some of the worst offenders out of the market.”

But Morley said AMCs aren’t entirely to blame.

“There’s just some basic poor appraisal practice thrown into the mix. If I look at four to five houses being sold in a range of values, a lot of guys just go average it out and place a price several thousand under the average, when there’s pretty good evidence it will sell at market value. We need to do a better job in educating appraisers,” he said. Realtor Kenny Parcell said part of the problem is that appraisers and lenders have yet to catch up to recent strides in the market.

“The problem is inventories are down, so prices are up. But an appraiser can pull prices for six months prior,” he said, in essence, burdening growth with obsolete prices.

“It’s hard for the market to correct itself,” he said.

“If I sell 10 homes I have appraisal problems on eight to nine of them,” he said, something he blamed on “people evaluating out of their area” and burdensome bureaucracy.

“Appraisers are required to do a lot more work for less money,” he said.

However, tiresome paperwork does not account for the entire problem. Parcell said that appraisers, already hurting financially, are leery of putting their business at further risk, and are following the lead set by lenders to come back with lower appraisals.

“Appraisers don’t want to get blackballed by a mortgage company. They know if they appraise one way, they won’t work for that company again,” he said.

He said the problem amounts to risk-leery banks, and their risk-leery appraisers, assigning values to real estate rather than allowing the market to do so. Consequently, by coming in consistently under market value, lenders and appraisers are putting the brakes on residential real estate’s comeback.

“It’s frustrating for a market that wants to recover. A buyer and seller come up with a price. That’s market value,” he said.

Parcell said that for appraisers, getting jobs, wherever they can find them, is tantamount, and they will go where the jobs are and follow the rules of whoever is providing them.

“Appraisers do it because they are getting a fee no matter what,” he said.

But any adjustments outside lenders’ guidelines can lead to an appraiser not being hired again, he said.

Parcell said the behavior of lenders is another story. Because lenders stand to benefit from higher sales prices, one would assume they would minimize downward pressure on prices.

“You would think that, but that would make sense,” he said. “Banks are not reissuing loans to loan holders paying \$80,000 to \$100,000 a year in interest because they don’t like the conditions of the loan.”