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# PERSPECTIVE

A BIMONTHLY PUBLICATION OF THE SOUTHERN NEVADA CCIM CHAPTER

September-October 2009

## PRESIDENT'S MESSAGE



**Tedd Rosenstein, CCIM**  
2009 Southern Nevada Chapter President

**H**appy Fall, finally! Now that football and Fall have finally arrived, life doesn't seem as bad. At least until my next parlay bet loss. Gambling is part of my stimulus program, I am surely helping casinos. In my last message, I wrote about finding and using perspective. After I finished writing the piece, however, I realized I may have forgotten something. So here goes.

If you really want some perspective, get a puppy. After having two children, I thought I had finished basic training with young creatures. My wife and I pick up after the kids, dress them, feed them, bathe them, teach them, protect them, and care for them. They are now four and six, so they are starting to do some things on their own. Not many, but getting themselves dressed (and being potty trained years ago) is a good start. Of course, there is the constant attention, and potential damage control. I say potential damage control, because there is no stopping some damage that they will cause. Okay, so I *had* a nice house and yard. Still, life is good and under control (under my roof).

But then everything changed. My wife, when I was away on business, went and looked at puppies up for adoption. I am sure she went to the mall to get other items, but the sight of caged puppies attracted her like the smell of cotton candy at a carnival. She called me on the spot- "I want to get a puppy"! I told her to please wait until I returned, and we would look together (not sure I said it that way). And when I returned, I

smelled the cotton candy. Surely one puppy would be a good thing, a long time companion, home protector, and buddy to my boys. We adopted the dog, a shepard / lab mix, my son named him Wisky (spelled by my son).

Well, now we needed to buy food, chew toys, shampoo, bowls, beds, etc. Ok, I guess we have to care for this animal as we do our children. So, home we went. Fortunately, we have a fenced area off our back yard, separating it from the pool and garden. That large fenced area would be Wisky's daytime home, he sleeps in at nights. That was the plan. And he had access to a side yard to do his business. So far so good, right?

Not so fast. Of course he made in the house, but that's to be expected. He is only a puppy, and needs to be trained. Hitting a dog is wrong, and doesn't really work anyway. Kind of like children, right? Then he ate our mini trampoline. Well, they do chew. Then he dug up and ate the irrigation lines serving two plum trees. Three times I repaired the lines, but he is relentless. Out came the trees, they were probably going to die anyway as a result of water loss in summer. Then he ate two door mats, we don't have anymore in the back yard. No point, he will do it again. After all, he's a puppy. And he loves to jump on anything, especially furniture we are sitting on.

As months went on, he learned some basic commands, with reward reinforcement. But the one thing we couldn't stop *CONT'D ON PAGE 10*

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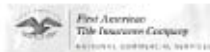


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# IMPORTANT CHANGES TO NRS 40.455

**A**s commercial defaults begin to mount, many owners are becoming confused about our state's foreclosure laws as they concern commercial real estate. There are misconceptions about 'deficiency after foreclosure' and 'short sale' and further confusion whether they apply to recourse or non-recourse in commercial lending. An important change to NRS 40.455 went into effect on October 1st for mortgage loans entered on or after that date. Today, more than ever before, we should become verse in Nevada Foreclosure Law as owners will look to us for guidance.

**Lenders prohibited from seeking deficiency after foreclosure.** Previous law allowed lenders to seek a deficiency judgment in court if the amount obtained at a foreclosure or trustee's sale is insufficient to cover the entire mortgage debt. This is a welcome change in the statute and reads as follows:

**NRS 40.455 Deficiency judgment: Award to judgment creditor or beneficiary of deed of trust.**

"1. Upon application of the judgment creditor or the beneficiary of the deed of trust within 6 months after the date of the foreclosure sale or the trustee's sale held pursuant to



By Gary Banner, CCIM  
Commerce CRG  
Cushman & Wakefield Alliance

NRS 107.080, respectively, and after the required hearing, the court shall award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust if it appears from the sheriff's return or the recital of consideration in the trustee's deed that there is a deficiency of the proceeds of the sale and a balance remaining due to the judgment creditor or the beneficiary of the deed of trust, respectively.

2. If the indebtedness is secured by more than one parcel of real property, more than one interest in the real property or more than

one mortgage or deed of trust, the 6-month period begins to run after the date of the foreclosure sale or trustee's sale of the last parcel or other interest in the real property securing the indebtedness, but in no event may the application be filed more than 2 years after the initial foreclosure sale or trustee's sale."

Although this change mainly benefits residential single family homes and its owners many commercial borrowers are lead astray by unqualified out of state loan modifiers who are not familiar with our state's statutes regarding foreclosure.

*CONT'D ON PAGE 8*



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# REMEMBER TO INCLUDE EFFECTIVE INTEREST PROVISIONS IN YOUR REAL ESTATE CONTRACTS



Whether you are closing a deal or collecting a judgment, you want to make sure that you have properly calculated interest so that you are not leaving any money on the table that belongs to you. The key to properly calculating interest is to properly draft interest provisions in your real estate contracts. The three required elements for calculating interest and drafting interest provisions include: (1) the rate of interest; (2) the time when the interest commences to run; and (3) the amount of money to which the rate of interest must be applied. See *Kerala Properties, Inc. v. Familian*, 122 Nev. 601, 137 P.3d 1146 (2006). Of course, the interest ceases to accrue once it is paid.

In the event that your contract provision for interest fails for some reason, you can usually receive legal interest according to statute, but legal interest does not compound and is only calculated at the rate equal to the prime rate at the largest bank in Nevada plus 2 percent. See NRS 99.040. Past and present legal interest rates are available on the State Bar of Nevada website:



By Micah S. Echols, Esq.  
Marquis & Aurbach

[www.nvbar.org](http://www.nvbar.org). So, whenever you can, you should draft the most favorable terms for recovering interest on unpaid rents, unpaid commissions, and anything else that is due and owing to you. Otherwise, you will be limited to recovering legal interest.

If you find yourself in the situation where you want to recover legal interest where no contract provision specifically covers the three required elements, you should understand how legal interest is calculated in Nevada. Two main statutes govern the calculation of legal interest: NRS 99.040 for actions involving a contract, and NRS 17.130 for actions not involving a contract, such as car accidents, slip-and-fall injuries, etc. Legal interest is

further divided into two subcategories: prejudgment interest and post-judgment interest. If you have not actually obtained a judgment, or you do not have an authorizing contract provision, you are not technically entitled to recover legal interest.

For contract actions under NRS 99.040, prejudgment interest is calculated by taking the amount of the judgment and applying it to the period between the service of the *CONT'D ON PAGE 5*

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complaint and the entry of the judgment, using the single fixed rate of interest in effect at the time the contract was signed. *Familian*. Prejudgment interest can only apply to past damages, or unpaid amounts. *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 132 P.3d 1022 (2006).

For non-contract actions under NRS 17.130, prejudgment interest is calculated by taking the amount of the judgment and applying it to the period between the service of the complaint and the entry of judgment, using the single fixed rate of interest in effect at the time the judgment is entered. *Lee v. Ball*, 121 Nev. 391, 116 P.3d 64 (2005).

Post-judgment interest for both contract actions and non-contract actions is calculated the same way. Post-judgment interest accrues on the total amount of the judgment, including components of attorney fees, costs, and even prejudgment interest. *Waddell v. L.V.R.V. Inc.*, 122 Nev. 15, 125 P.3d 1160 (2006). Post-judgment interest accrues at the legal rate previously used to calculate prejudgment interest (either fixed from the date of the contract or the entry of judgment), but the post-judgment interest rate varies every January and June, and must be adjusted according to the variable rate. *Familian*; *Lee*.

Of course, the entire legal interest rigmarole can be avoided by drafting your own favorable interest terms that include the required elements to withstand scrutiny: (1) the rate of interest; (2) the time when the interest commences to run; and

CONT'D ON PAGE 9

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**Short sale deficiency may result in a Taxable event.**

Much like the residential market of the last two years, short sales may become widespread in commercial real estate as well. Lender's may approve the short sale, 'cram-down' the mortgage amount, but may not fully release the borrower from his liability associated with the loan. In that case, the lender has up to six years to sue the borrower for the difference between the loan amount and the eventual sale amount. This is because the loan includes a promissory note, which is a contract. Nevada's statute of limitations on contract disputes is six years (NRS 11.080). It's imperative that our clients understand their potential liability during foreclosure and negotiate earnestly with their lender in these circumstances. In the cases where the lender agrees to forgive the difference entirely, Section 1001 gain/loss may be applicable depending on the owner's basis in the property. Or, the IRS may view the forgiveness as Cancellation of debt (COD) and the owner may be subject to income taxes.

It's essential to understand the above statutes while advising our clients through the malaise of legal and tax ramifications in commercial foreclosure. Always refer your client to competent legal and tax advice, while maintaining your role as the commercial real estate **CCIM** expert.

*Gary Banner, CCIM, CRE is Senior Director of Commerce CRG/Cushman & Wakefield Alliance, Las Vegas; and RCA-National Legislation / Regulation Committee Member. He can be reached at (702) 688-6947 or gbanner@commercecrg.com.*

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LEGAL BRIEFS CONT'D FROM PAGE 5


(3) the amount of money to which the rate of interest must be applied. The lesson to be learned is that once you have your interest provisions properly drafted into your real estate contracts, you can also properly calculate the interest that is owed to you. Otherwise, you may be giving away money that is actually yours! **CCIM**

Micah Echols is an attorney at Marquis & Aurbach in Las Vegas and can be reached at mechols@marquisaurbach.com or (702) 207-6087. Mr. Echols focuses his practice on com-



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## PRESIDENT'S MESSAGE CONT'D FROM PAGE 1

him from doing was chasing our pet rabbit Elton, who roamed free in the backyard. After chasing him for the thousandth time, I realized that Elton was going to end up in pieces, and that might be gruesome for my kids to see. We found Elton a new home shortly thereafter.

So, I started to realize that this puppy (he's seven months now) is a problem. We didn't think it through when we got him, and it's been a great challenge maintaining a nice house and yard since. Maybe we should get rid of the "problem". I don't have time for cleaning up after kids and a puppy. But is that the right approach? Can we get rid of problems, instead of confronting them, and working towards a long term solution? If every time life gives us a problem, should we react by thinking the best solution is simply eliminating the problem? No, we have to fix the problem another way. We have to understand its nature, its motivation, and only then can we plan a course of resolution.


That seems to be a better way to deal with problems that will keep coming throughout life. Accept the fact that you will have them, deal with them, and fix them. Eliminating the source of the problem may work sometimes, but not always. And another problem is just around the corner. I have learned another valuable life lesson, and gained new perspective. Whisky almost ruined my life. Almost. 




### TIPS FOR CCIM CANDIDACY

Use of the CCIM Designation...A Short Tutorial

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# DEAL MAKERS!

## SALES

Soozi Jones Walker, CCIM, SIOR and Bobbi Miracle, CCIM of Commercial Executives, represented Edward M. Nigro in a sale of a 5,100 square foot retail building located at 8645 West Flamingo Road, Las Vegas, NV with a value of \$1,500,000.00.

Cathy Jones, CCIM of Sun Commercial Real Estate, Inc., represented HRSG, LLC in a sale of a 4,800 square foot office building

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## LEASES

Susan Borst, CCIM of Commerce CRG, represented Refrigeration Supplies Distributor, in an industrial lease of 13,500 square feet located at 3350 West Ali Baba, Suite J, Las Vegas, NV with a value of \$455,844.00.

Susan Borst, CCIM of Commerce CRG, represented RSC Equipment Rental, in an industrial sublease of 14,400 square feet located at 3380 St. Rose Parkway, Henderson, NV with a value of \$608,497.71.

Carolyn Curtis, CCIM and Monty Montieth, CCIM of Commerce CRG, represented TIH Bridger, LLC, in an office lease of 1,807 square feet located at 701 Bridger Avenue, Suite 140, Las Vegas, NV with a value of \$104,723.58.

Mike Dunn, CCIM, SIOR and Monty Montieth, CCIM of Commerce CRG, represented REEF Centra Point B2348, in an office lease of 2,241 square feet located at 8363 West Sunset Road, Suite 240, Las Vegas, NV with a value of \$106,223.40.

Mike Dunn, CCIM, SIOR and Monty Montieth, CCIM of Commerce CRG, represented REEF Centra Point B2348, in an office lease of 1,531 square feet located at 8337 West Sunset Road, Suite 300, Las Vegas, NV with a value of \$856,398.90.

Mike Dunn, CCIM, SIOR of Commerce CRG, represented JP Morgan Chase, in an office lease of 2,883 square feet located at 500 North Rainbow Boulevard, 1st Floor, Las Vegas, NV with a value of \$629,462.62.

Mike Dunn, CCIM, SIOR of Commerce CRG, represented JP Morgan Chase, in an office lease of 2,883 square feet located at 500 North Rainbow Boulevard, 2nd Floor, Las Vegas, NV with a value of \$125,791.06.

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**TO MAKE A DEALMAKERS' SUBMISSION:**  
\*Publications are limited to designees who are Chapter and Institute members in good standing. Announcements are for publication in The Perspective, but submissions may also appear on the website. All parties are aware that space is limited and are accepted and published by largest dollar volume within each submission session.  
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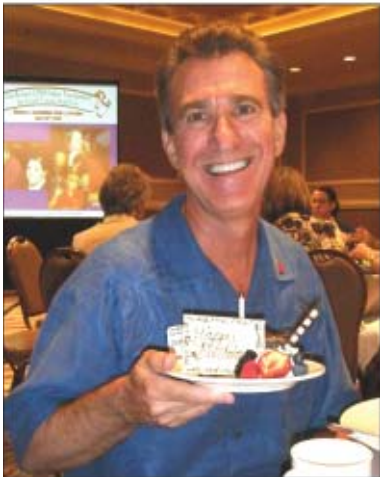
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“Position the Chapter as the premier commercial real estate organization for Southern Nevada by enhancing the value of the CCIM designation and increasing the number designees and candidates through professionalism and educational excellence.”

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### CCIM PHOTO GALLERY

#### HAPPY BIRTHDAY CHARLIE!



Birthday wishes went to  
Charlies Mack, CCIM at the  
August 2009 Luncheon.  
(His age was not disclosed.)

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#### 13TH ANNUAL WINE SOIREE & SILENT AUCTION



More photos on pages 6-7.