

### THIS WEEK

**Son of Chalk Garden founders to open new Main St. Store**

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## Leading business brokerage firm enters Utah market

By **Barbara Rattle**

*The Enterprise*

Murphy Business & Financial Corp., a Florida-based firm that bills itself as North America's leading full-service business brokerage firm, with more than 140 offices, has entered the Utah market.

Kevin Hawkins, a seasoned business owner, entrepreneur and real estate developer, and Marvin Slovacek, who has launched and operated multiple service and investment companies, have opened Murphy offices in Salt Lake City and Provo and, as regional developers, plan to open as many as 10 locations in Utah, either on their own or through franchising.

Slovacek operates the Salt Lake City office, at 358 S. Rio Grande St., Suite 200, while Hawkins runs the Provo office, located at 2696 N. University Ave., Suite 102. They are the sole



Murphy Business & Financial Corporation

brokers at the two offices at this point, but Slovacek said it is anticipated that additional experienced brokers will be brought on board in the near term.

"We are filling a huge void in the state for business owners, management teams, and budding entrepreneurs who need a team they can count on during the deal-making process," said Hawkins, an Orem resident and the former president for Amsource Development, a Salt Lake-based real estate development company. "Marvin and I are using our 32 years of experience in business investments and operations to help our clients obtain the greatest value from their business ventures, both on the buy and sell side of deals."

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## ACLU: beware of unintended consequences of Sharia law ban

By **Brice Wallace**

*The Enterprise*

Business owners undoubtedly are aware of how the laws of supply and demand affect their companies. But they might not know how Sharia law might soon do the same.

Several state legislatures across the country are attempting to thwart Sharia law's impact on the state judicial system, and that represents a potential problem for companies, according to Daniel Mach, director of the American Civil Liberties Union's Program on Freedom of Religion and Belief.

Speaking last week during the Rotary Club of Salt Lake City's weekly luncheon, Mach said laws considered by some legislatures are designed to prohibit state courts from considering foreign, international or religious laws when making their decisions.

But the unintended consequences could reach into international business contracts.

"One thing we've seen is a wave of legislation that has been proposed in a variety of states across the country to stop Sharia law, the Sharia threat, the threat of Islamic law or Sharia law," Mach said. "Now, this is something where there is almost nothing that has occurred in this country that suggests there is a problem in any way with this area, but it has been viewed as a pre-emptive strike."

Proponents have hailed such bills as an attempt to stop courts from applying Sharia law, "notwithstanding the fact that courts are not, in this country, applying Sharia law," Mach said. "And one unintended consequence of that is the harm to business. And it is a real threat. It threatens global busi-

see ACLU page 2

## JOBS Act loosens restrictions on investors in start-up companies

Last week, the President signed the JOBS Act. As this bill made its way through Congress and to the President's desk, thousands of business owners — and aspiring business owners — from all across the country watched the votes and posturing closer than their March Madness brackets.

Passing the JOBS Act loosens the restrictions on investors and puts more capital into the market for start-ups to take hold and for businesses to expand and create jobs.

Donald Tarinelli and Chris Bybee are two young business owners paying close attention to process. In 2009, fresh out of college, they took their first shot at starting a business. They opened a Belgian waffle shop in their local mall, then closed less than a year later when the economy went south and they learned the hard way the vast majority of Americans think

of waffles as a breakfast food, not a dessert.

"To put it nicely, it was a real learning experience," said Tarinelli. "We learned a lot of lessons — especially how important capital is to a new business and how challenging it can be to raise it."

Back in the game, Tarinelli and Bybee are now starting a new business, AngelFunder, a venture helping businesses and other groups raise capital of their own. It's a challenge made much more manageable with the passage of the JOBS Act because AngelFunder, and thousands of start-ups like it, can now raise money by selling equity with fewer regulations and without going public.

The keyword is crowdfunding.

Crowdfunding provisions of the JOBS Act allow small business

see ACT page 4

## Schiff Nutrition buys Airborne Inc. for \$150 million



Schiff's acquisition had revenues of \$70 million.

Salt Lake City-based Schiff Nutrition International Inc. has acquired Airborne Inc., a leading provider of immune support products, for \$150 million in cash.

Airborne develops and sells innovative dietary supplements throughout the United States and Canada, as well as online. Its Airborne health formula is designed to support customers' immune systems through a combination of vitamins, nutrients

and a proprietary blend of herbal extracts. Its immune support products include iconic effervescent tablets, new chewable tablets and on-the-go packets, all in a variety of flavors. The firm is based in Minneapolis.

"Schiff is focused on building premium brands and leading innovation," said Tarang Amin, president and chief executive

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## ACLU

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ness agreements, it undermines our national standing and impairs our foreign relations.”

Mach cited as a rhetorical example a Utah company doing business with a German company, and their agreement states that any disputes be resolved by German law. “It’s possible that these bills that are now being proposed could prevent a court from validating that contract. And, again, that’s something that’s one of the unintended consequences, but I think it should illustrate the problem with going out of our way to single out any faith for disfavored treatment. ... I think it’s something we should all be concerned about.”

In January, a federal appeals court upheld a ruling blocking an Oklahoma state constitutional amendment. Approved by Oklahoma voters, the amendment specifically said that courts “shall not look to the legal precepts of other nations or cultures” and

## Dale Carnegie Training eyes return to Utah

Dale Carnegie Training, a New York City-based international leader in performance improvement training and solutions, is seeking franchisees in the Utah market, in which it has not operated for several years.

“We previously had a franchisee in Utah, but after three years’ time away from the state we recognized that it is an incredibly important and rapidly expanding area for businesses, company spokesperson Emily Forrest said in an e-mail. “We want to once again establish our presence in

“shall not consider international law or Sharia law.” The amendment, the appeals court concluded, likely violates the Establishment Clause of the First Amendment because it could expose Muslims in Oklahoma to unfavorable treatment in state courts.

Issues over the rights of Muslims is “one of the great challenges that the country faces right now,” Mach said. “And this is basically, in my view, the latest in a long line of religious minorities that have had bumps in the road along the way to acceptance in this country.”

In addition to the potential business ramifications, the Sharia law-related bills damage constitutional principles and religious liberty, “and if one group can’t exercise its faith, then I think every group’s faith is threatened,” he said.

While Mach listed many more examples of the ACLU taking stances on issues involving religion, he stressed how fortunate Americans are. “Although the rhetoric about religious liberty in this

Utah in order to form new partnerships with both local and national businesses. We feel that our company is integral to helping others succeed.”

Forrest said the franchise fee is \$20,000 plus an ongoing royalty of 12 percent until a royalty threshold is hit in any given year, at which point it drops to 7 percent on additional revenue.

She said Dale Carnegie Training has offered business training to 80 percent of the world’s leading companies, including middle market and large

country, as we all know, can get quite heated on all sides, I want to make sure we place the law in this country in the larger context, the global context. ... We are among the most religious, and religiously diverse, countries in the world, and I think we have so much religious liberty in this country precisely because the government can’t tell us when, where, how or whether to pray. That’s left to each and every one of us.”

But he also noted that cases focused on government and religion won’t be going away anytime soon. Many issues will spring from health-care reform, especially when they are focused on requiring individuals to act in ways that people may believe are against their faith.

“They’re thorny issues, to be sure,” Mach said. “But I want to remind us all as we think about these issues, that we should take a step back and recognize that notwithstanding our differences, we are uniquely lucky to live in a country like this that has such protection for religious liberty.”

corporations as well as organizations. To produce measurable results, courses focus on improving essential management and leadership skills and are available in 30 languages throughout the world, reaching the entire United States and more than 85 countries. The 100-year-old company is a top 25 franchise as rated by the *Wall Street Journal*. More than five millions people have attended Dale Carnegie programs. The firm has some 3,000 consultants and trainers.

## MURPHY

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Both Hawkins and Slovacek are Brigham Young University graduates. Hawkins is a certified public accountant and was a real estate developer for 25-plus years. He developed more than a 100 projects with a total market value of more than \$800 million. Slovacek earned a Masters of Business Administration from Harvard. He has previously held top management positions with leading investment real estate brokerage firms such as Marcus & Millichap, where he oversaw transactions totaling more than \$750 million.

“I think after the last couple of years when the economy has been down and earnings have been down and people have just kind of pulled their horns in a little bit, lending has been harder to come by, that there’s just been a little bit less [mergers and acquisitions] activity, Slovacek said. “But now I think everybody’s seeing good things on the horizon, and particularly Utah. It’s such a strong economic climate here that those who have an interest in selling, it’s now a much better market for them because a buyer can get financing and there’s a brighter future. People that have been on the sidelines see good things happening going forward and they’re thinking now is the time to jump in. It’s a good time and Utah is a great, nurturing type of situation. You’ve got a great pro-business governmental situation, a good

economic climate, we’ve not suffered quite the slings and arrows that many parts of the country have suffered. It’s got such a good, educated labor force, there is a lot of labor that’s still at a reasonable price and there’s an entrepreneurial spirit here in the state of Utah. That’s one of the things that’s very intriguing for us; there are a lot of people that want to control their destiny. They want to have their own business.”

Slovacek said while there are a number of good individual business brokers in the state, “there’s really not a company such as Murphy that’s got a national presence and all the strength that brings. We bring that different slant to the marketplace. We’re happy to work with other brokers who are doing business in a professional and legitimate fashion and we’re excited to share our dealings with them.

“We feel comfortable dealing in large transactions. When we do something here in Utah we share it with every broker throughout the U.S. so we really access a lot more acquisition capital. If we have people looking to buy things we can look at potential acquisitions anywhere in the U.S. and Canada.

Slovacek said that business brokerage transactions carry a typical fee of 10 to 12 percent.

“Obviously it’s going to be different if the transaction is \$500,000 as opposed to \$25 million,” he said. “That’s kind of the range we work in; we work on some very sizable transactions as well as some of the smaller ones. It’s negotiable.”

Based in Clearwater, Murphy maintains it closes deals at a higher ratio than the business brokerage industry average. Several accolades have been bestowed upon the company, including appearing as one of the “Top New Franchises” in *Entrepreneur’s* 2011 rankings (No. 9, No. 219 in the *Entrepreneur* “Franchise 500”), and as a “Top 50 Franchise” according to *Franchise Business Review*.

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## Son of Chalk Garden founders to open new Main St. store

By Barbara Rattle  
The Enterprise

One of the owners of the JMR Chalk Garden and Lola Bella Boutique stores in downtown Salt Lake City and Murray is planning an August opening of Chalk Garden Co-Op, a retailer of men's and women's fashions that also will include a jewelry vendor, hair salon and the first Utah location of a national denim retailer.

To be located at 78 S. Main in Salt Lake City — in a spot where See's Candy was located prior to the redevelopment of downtown — Chalk Garden Co-Op will be similar to the popular Chalk Garden store that Lanny and Jack Barnard owned and operated at Trolley Square for many years before retiring in 2000. Their sons Jeff and Richard own the JMR Chalk Garden and Lola Bella stores at The Gateway and at Fashion Place Mall. Jeff Barnard will own Chalk Garden Co-Op.

"We're going to try and incorporate some of the special things that the Chalk Garden had, but at the same time we're going to try to update it for the next generation," Jeff Barnard said. "One big factor is that the space is so much bigger than [our existing] stores that we had to come up with a concept to fill it up."

Negotiations are under way with a hair salon to take space in the Main Street location, and

### Digital Technology names Paulus president

Digital Technology International, Springville, has promoted Dan Paulus to president.

Paulus, who previously served as the vice president of sales, Americas, now assumes an expanded executive leadership role and reports to Don Oldham, the company's founder and chief executive officer.

Paulus joined Digital Technology in 2007 when the company acquired Publishing Business Systems, where he served as vice president of sales. Paulus arrived at Publishing Business Systems via FirstLogic, a data-quality software company later acquired by Business Objects and SAP. During his eight years at FirstLogic, he served in variety of management roles, the last being vice president of software business development.

Digital Technology International delivers digital audience engagement, digital revenue expansion and digital cost performance for the global news media industry. On-site or via DTI Cloud, Digital Technology software helps more than 2,000 publishers around the world compete and win across all channels. DTIHealth, the company's health-

Barnard's parents' Park City jewelry boutique, Lanny Barnard Gallery, will have a presence there. In addition, AG Jeans, a South Gate, Calif.-based denim retailer, will have a shop within the co-op.

"My parents were the ones who made the Chalk Garden special for so many decades, and we want people to know that they're going to be heavily involved in this store and their experience and their style and their enthusiasm will be all over it," Barnard said, noting the co-op will be open on Sunday.

"One part of the store that we're excited about is the men's part," he said. "I hear weekly from people in Salt Lake City and in the industry that we need more men's stores in this market, so that's going to be an important aspect of this store," which will offer men's sportswear and footwear.

Barnard noted that business has been excellent at his existing locations.

"We've had JMR for 28 years and it's at almost the best it's ever been in our history," he said. "Since City Creek opened, so far we've had no decrease in business, nothing negative. For whatever reasons, our business at Gateway has not declined at all. We'll have to measure it in a year or two to really know, but as of right now that's our report."

care IT business, builds on these strengths to empower patients, physicians, and communities with solutions that manage electronic health records, including personal health records, clinical information and instrument data. The firm has offices in Australia, Brazil, Canada, Denmark, Finland, France, Germany, Panama, the United Kingdom and the United States.

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## Struggling life sciences company sold for \$8 million

World Heart Corp., a Salt Lake City-based company beset by troubles getting federal government approval for one of its heart pump devices, has entered into an agreement to be acquired by HeartWare International Inc., based in Framingham, Mass., for \$8 million.

World Heart, already down to six employees after having as many as 75 a year ago, will see the headcount drop to three after the acquisition closes.

Founded in 1996, World Heart is based at 4750 Wiley Post Way and has developed left ventricular assist devices designed to help a failing heart in pumping blood.

Morgan Brown, World Heart executive vice president and chief financial officer, said the remaining employees will continue to conduct research and development on its MiFlow device. "They'll be charged with moving forward the program we're currently working on as a company but at a much slower pace," Brown said. "HeartWare is acquiring the com-

### Coldwell Banker office No. 1 again

Coldwell Banker Commercial corporate has named the Coldwell Banker Commercial NRT office in Utah as No. 1 among 200 offices for the entire Coldwell Banker Commercial brand in North America.

This is the 10th consecutive year that the local office has received the recognition. In addition, out of 3,000 CBC professionals nationally, CBC NRT agent Brandon Fugal was honored as top agent in North America in

pany more for intellectual property we have across a wide spectrum in that space."

World Heart and HeartWare were once competitors. But while HeartWare has had a ventricular assist device (VAD) approved and selling in Europe and is involved in U.S. clinical trials, World Heart had been involved mostly in research and development in recent years, trying to get U.S. government approval of its Levacor device. Clinical trials were paused when issues arose with some patients, and the trials were suspended when it became clear that addressing those issues would take some time. The company turned away from trying to commercialize the Levacor technology and instead focused on developing and commercializing MiFlow. As a result, the company restructured last July, reducing its employee count from 75 to 26. In late February, the figure shrank to six.

The transaction is expected to close within about 90 days. The \$8 million will be paid in shares


of HeartWare common stock or cash at HeartWare's choosing. The boards of directors of both companies have approved the transaction, which is subject to the approval of World Heart's stockholders and other customary closing conditions. HeartWare stockholder approval is not required.

"World Heart has been an important participant in the development of ventricular assist therapies for many years and has amassed over 100 patents and patent applications," Doug Godshall, president and CEO of HeartWare, said when the acquisition agreement was announced. "In line with our goal to be a leader in the VAD market for years to come, we believe that bolstering our patent portfolio and adding World Heart's technologies broadens our options for the future." He added that HeartWare is looking forward to "integrating World Heart's technologies and members of its talented team into our research efforts."

the leasing and office categories while Stuart Thain was named top agent in the retail category.

Coldwell Banker Commercial NRT in Utah is based in Salt Lake City and is one of four offices in the western region of the United States. Operating as part of the Coldwell Banker Commercial NRT brand, Coldwell Banker Commercial NRT (Utah) employs more than 90 licensed brokers.

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**THE BUSINESS PERFORMANCE GROUP, INCORPORATED**

**ACT***from page 1*

to solicit modest investments from a larger group of people. Before the JOBS Act was signed into law, private companies could not solicit the sale of their equity. There were also limits to the amount of private shareholders a business could have (fewer than 500).

The new law will allow existing businesses and startups to raise up to \$1 million, and existing businesses with two years of audited financials can raise up to \$2 million. The more significant change raises the investor cap from 500 to 2,000.

By eliminating the cap on the number of private investors, a business can solicit smaller amounts of money from a larger pool of potential investors, injecting money that was sitting on the sidelines in smaller amounts (\$50, \$100 or \$500 compared to \$10,000, \$20,000 or \$50,000). A business that needs to raise \$100,000 could do it with 2,000 investments of just \$50.

“Small businesses power the U.S. economy,” said Todd

Bremmer, CEO of RedMetal, a Boston-based group that serves as a business incubator. “For companies like ours, the JOBS Act provides a much needed shot in the arm.”

The changes will make a big difference for Robert Vanech. He’s working to start the Woodstock School of Music, a two-year education program for college-age students.

“The ability to tell our fan base that we are raising capital and let them be contributors to the process is amazing,” said Vanech. “We have very passionate followers and this allows us to let them have a piece of the business that they love.”

Under the old law, generating capital via crowdsourcing was both impractical and illegal.

Changes in the way people and businesses communicate made the JOBS Act more necessary and beneficial. The ability to solicit investment through mass e-mails, blogs, Facebook, Twitter and YouTube, changes the game.

The changes in regulations also benefit venture capitalists. As more people can invest modest amounts of money to launch

and grow businesses, the pool of potential businesses looking for professional venture capital will ultimately increase.

“There is a lot of capital on the sidelines in the hands of everyday Americans,” said David Drake, founder of LDJ Capital in New York City and co-founder of TSLCC (The Soho Loft Capital Creation Events). “Social media now allows us to reach these newly entitled investors instantly. Crowd-investing has the potential to flood our small businesses with investment opportunities.”

Opening the gates to this new form of crowd-investing is ideal for small business and startups which are the heart-beat of our economy. Facebook’s first round of capital investment was \$500,000. There weren’t a lot of people who could chip in the kind of cash needed to launch what eventually became one of the most successful IPOs ever. Facebook is now valued between \$80 billion and \$100 billion.

Changes in the crowdfunding regulations could increase the number of startups by 10 percent, according to a recent study by Regional Economic Models Inc.

(REMI). More available capital means more startups get to battle the marketplace without the government tying one hand behind their backs.

*Originally published on www.FreeEnterprise.com.*

**SCHIFF***from page 1*

officer. “We are excited about the Airborne acquisition, which fits well with our strategy and establishes Schiff as a leader in the immune support segment. Airborne is a strong brand and will make an excellent addition to Schiff’s portfolio, and we plan to leverage our science, innovation, marketing and sales capabilities to further its growth.”

Amin said Schiff intends to couple Airborne’s leading brand and product portfolio with Schiff’s strong capabilities in science and innovation.

Airborne, Inc. generated net revenue of approximately \$70 million for the 12 months ended Feb. 29.

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# • Industry Briefs •

## ARTS/ENTERTAINMENT

• Layton-based **My Bead Therapy**, in association with **The Artisan Group**, was recently selected to send the “Family Nest Bracelet” in an exclusive collaborative gift bag prepared specially for celebrity **Tom Cruise** and family. Designer Heidi Kingman made the entire piece using sterling and copper wire and sterling sheet metal, without any commercial store-bought components. The bracelet integrates the initials of parents Tom Cruise and Katie Holmes on the bird nest clasp, and their daughter Suri’s name on the tag. My Bead Therapy designs can be found online and at area art fairs.

• The **Andy Warhol Foundation for the Visual Arts** has given \$120,000 to the **Utah Museum of Contemporary Art (UMOCA)**, the largest two-year program support grant given by the Warhol Foundation to any arts organization in the country in 2011. According to its website, the Warhol Foundation is the “pre-eminent national funder of innovative contemporary art.” UMOCA has enjoyed a string of recent successes, with its audience growing from 19,000 in 2009 to 101,000 in 2011. Volunteer support from the community has also grown exponentially, with the museum’s annual volunteer hours increasing from approximately 150 in 2009 to 6,000 in 2011.

## BANKING

• **Bank of American Fork** president and CEO Richard Beard presented a check March 30 for \$21,000 to the **Saratoga Springs Library**. The money will be used to help with the year-old library’s expansion. At the library’s grand opening in March 2011, Bank of American Fork presented a check for \$30,000 to the library, matching donations raised by the community. This most recent donation comes in time for the library’s one-year birthday.

• Employees of Ogden-based **TAB Bank** is in its third year of providing financial assistance and other resources to **St. Anne’s Center** in Ogden, which meets the basic food, clothing, and shelter needs of the poor, the transient and the needy. The current facility was built in 1994 with the help of generous donations from the community. The facility contains a 100-bed homeless shelter and a soup kitchen which is open daily for lunch to anyone in need. In addition to providing financial assistance, TAB Bank employees recently participated in a diaper donation drive on behalf of St. Anne’s Center. TAB employees donated a total of 3,423 diapers and 3,934 baby wipes.

• **America First Credit Union**, Riverdale, has created a new employee volunteer service program called **The Greater Good** with the mission of providing more projects for the specific benefit of the many communities where it operates and its employees live. America First employees are organized within 11 geographic community service areas and directed by the volunteer program administrator. Each employee team is led by a service area captain and assisted by task leaders for quarterly projects to benefit the community. Projects each quarter have been assigned a theme. During the first quarter of 2012, employee volunteer teams have been focusing on the health and human services of their communities. For the remaining three quarters, The Greater Good will work on community beautification (April-June), education (July-September) and the firm’s Warm the Soles shoe donation drive (October-December).

• **Bank of American Fork** was named the **Innovative Community Bank of the Year** in its size category by the Western Independent Bankers Association (WIB) and BDO, a financial consulting firm. Utah’s largest community bank was honored for its new AccountSmart Tools for Seniors product, which helps senior citizens avoid financial exploitation.

• **Security Service Federal Credit Union** will host a **shred day** from 9 a.m. to noon on April 14 at two Utah locations — 2655 W. 4700 S. in Taylorsville and 175 E. 200 S. in Orem. The event is designed to assist residents with the safe and free disposal of unwanted, personal documents. People can drive up and drop off bags and boxes. Volunteers from Security Service FCU will help with unloading, and all documents will be shredded on site. For more information, visit online at <https://bit.ly/ssfcueventsutah>.

• **J. Michael Jensen** has been

promoted to vice president and controller at **Brighton Bank**, Salt Lake City. In addition to his new responsibilities he will continue functioning as the bank’s accounting information officer/systems manager. He has been with the bank since 2001.

## COMMUNICATIONS

• Mobile broadband site **MobilityTechZone** recently honored the 4G LTE 700 signal booster from St. George-based **Wilson Electronics**, manufacturer of North America’s top-selling line of cellular signal boosters, with its LTE Visionary Award. The 4G LTE 700, designed to improve the performance of any LTE device operating on Verizon Wireless’ 700 MHz 4G network, was among 20 products recognized by MobilityTechZone for contributions to advancing the future of mobile broadband.

## COMPUTERS/SOFTWARE

• Lindon-based **Domo**, a new software-as-a-service (SaaS) venture started by Omniture co-founder and former CEO Josh James to redefine the business intelligence market, has appointed **Heather Deason Zynczak** as chief marketing officer. With close to 20 years of industry experience, Zynczak has held executive marketing and product management positions at some of the world’s largest enterprise technology companies. She spent the last six years at SAP, where she most recently

served as global vice president of marketing. In that role, she was responsible for marketing SAP’s business suite of products, representing more than \$3 billion in annual revenue. Prior to SAP, she spent five years at Oracle as senior director of product strategy, setting the strategic direction for more than 30 high-revenue products.

• **Solera Networks**, a South Jordan-based provider of advanced security intelligence and analytics services, has appointed **John Vecchi** vice president of marketing. Vecchi brings more than 16 years of experience delivering new security and technology products to market. He joins Solera from

Zscaler, where he was vice president of global marketing. Prior to Zscaler, he was head of global product marketing for Check Point Software. He has also worked for Symantec Corp. and McAfee.

• Salt Lake-based **ChartLogic Inc.**, an electronic health records provider that helps physicians offer better patient care through advanced technology, has chosen Arizona-based **Telesphere** as its cloud-based Unified Communications as a Service (UCaaS) provider. Telesphere provides a business communications experience by integrating a range of real-time communication ser-

*continued on next page*



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from previous page

vices such as hosted VoIP, SMS, instant messaging, presence, video conferencing, Web collaboration and data sharing – including electronic whiteboards – with non-real-time services such as voice-mail, e-mail and fax.

## CONSTRUCTION

• The **Utah Heritage Foundation** has recognized the **Keyser Building** renovation with a statewide award. The structure, located at 320 W. 200 S., Salt Lake City, was built in the early 1900s. It was recently purchased and renovated by U.S. Translation Co., which was honored by the foundation in the Stabilization, Renovation or Restoration Project category. U.S. Translation Co. will occupy the third floor of the Keyser Building, while the Peruvian Consulate in Utah will make its new home on the lower level. The first and second floors (both 8,000-plus feet) are currently open for lease and have the



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same urban industrial feel as the finished third floor.

• **Mike Holland** was recently named vice president of the federal division at **R&O Construction**, Ogden. He has been with R&O since 1998. Previously he worked as the senior estimator and project manager for R&O's Federal Group. He graduated from Weber State University in construction management, and is a LEED green associate. R&O is actively working on several federal projects located on three U.S. borders. Holland will oversee the project selection, estimating and operations of R&O's federal projects as a business unit. In addition, **Mike Phillips** was recently hired by R&O Construction as vice president of project development. He brings 35 years of construction experience to the company.

## ECONOMIC DEVELOPMENT

• **Four economic development entities have moved to a single location** in downtown Salt Lake City. The Governor's Office of Economic Development (GOED), World Trade Center Utah (WTC Utah), the Utah Science Technology and Research Initiative (USTAR) and the Utah Office of Energy Development (OED) have moved to 60 E. South Temple, third floor. The building will be rebranded as the World Trade Center at City Creek. It is at the intersection of State Street and South Temple, near the Eagle Gate. In announcing the moves to the new site, representatives of each organization praised the new arrangement.

## EDUCATION/TRAINING

• **Stevens-Henager College** donated 20 HP620 laptops to **Springville High School** on April 6. The computers replace those destroyed in a fire last month. The high school will use the computers for a new mobile computer lab to serve multiple classrooms.

• **Hui Xu**, a visiting professor of international business and marketing from Nankai University in China, is **Utah Valley University's** first Fulbright scholar-in-residence. Along with Prof. Hui's expertise and UVU's Chinese initiative, UVU is providing greater opportunities to students and the local community for engagement with government, higher education, business and cultural organizations in China.

## ENVIRONMENT

• With the support and partnership of Utah Clean Cities Coalition and PetroCard, **Waste Management** has opened a new, public **compressed natural gas (CNG) fueling station** at 8652 S. 4000 W., West Jordan. CNG is a domestically available, economical clean burning alternative fuel for vehicles. CNG reduces smog-causing emissions, enables vehicles to run quieter and costs one-third less than diesel or gasoline. Waste Management is expanding the use of CNG in the Salt Lake City metro area by investing in CNG waste and recycling collection trucks and by opening a public CNG fueling station for other fleet operators.

## FINANCE

• **Sorenson Capital**, Salt Lake

City, recently added **David Dame** as a managing director to its senior management team. Additionally, four senior team members have been promoted: **LeGrand Lewis** to principal, **Tommy Macdonald** and **Peter Sturgeon** to vice president and **Tom Pierce** to director of tax. Dame's career has included functional leadership roles in sales, marketing, R&D and services. This led to numerous P&L executive positions ranging from small \$20 million enterprises to large billion dollar entities. His investing career has spanned 12 years and has primarily been focused in the technology sector. Most recently, he worked as a managing director at Huntsman Gay Global Capital. Lewis has been with Sorenson Capital since 2008. Prior to joining Sorenson Capital he worked for Bain & Co. as a consultant and case team leader. Macdonald joined Sorenson Capital in 2006 and has worked on a number of the firm's investments. Prior to joining Sorenson Capital, he was an associate consultant with the Dallas office of Bain & Co., where he served clients in the private equity, construction, airline, consumer products and health care industries. Prior to joining Sorenson Capital in 2006, Sturgeon was an associate with the Boston Consulting Group (BCG). While at BCG, he worked in the oil and gas, transportation, and power generation industries.

## HEALTH CARE

• **Regence BlueCross BlueShield** affiliated health insurance plans are now offering West Jordan-based **TruHearing's** MemberPlus discount hearing services program to members in Idaho, Oregon and Utah. Regence is also the first health plan to offer TruHearing's new Per Employee Per Month (PEPM) program pricing for large employer groups, which can lower the per-employee cost even further.

• **Rocky Mountain Women's Health Center**, which has locations in Layton and West Point, has expanded its services to include primary care for women. **Catherine Coles, M.D.**, an internal medicine specialist, will provide comprehensive primary care management including preventative medicine; diet, nutrition, exercise and weight loss; diabetes and gestational diabetes; headaches/migraines; thyroid disorders and hormone treatments; cancer screenings; heart care; pain management; cholesterol disorders; osteoporosis care; and immunizations.

• The **LASIK Vision Institute** has signed a seven-year lease for 3,400 square feet of office space at Creek Road Place, at 7440 S. Creek Road, Sandy. It is slated to open this month. The firm leased its new space with the assistance of CBRE Group Inc.

• **Promise Healthcare**, a national long-term acute care hospital company, has promoted **Linda Hook** to vice president of its new Mountain Region. In a dual role, she will continue to serve in her current position as chief executive officer of its Promise Hospital of Salt Lake facility that serves patients who live and work along the Wasatch Front and throughout the state of Utah, and nearby communities in the neighboring states of Nevada, Wyoming and Idaho.

## HOSPITALITY

• The 100-room **Courtyard by Marriott** located at 1600 N. Freedom Blvd. in Provo has begun a **major renovation** that will include a brand new lobby as well as extensive upgrades to guest rooms and meeting space. The hotel will feature the brand's new Refreshing Business Lobby concept, designed to give travelers the flexibility to work and socialize however they choose while on the road. A signature element of the new lobby is the exclusive GoBoard technology, a 52-inch LCD touch screen offering local information, maps, weather, news, business and sports headlines. Guests will be able to navigate using the touch screen to find restaurants, local attractions and directions. The Courtyard's 2,800 square feet of meeting space will also be redesigned and will offer new high tech audio-visual equipment.

## LAW

• **Holland & Hart** attorney **James Holtkamp** was named one of the first senior fellows of the **Wallace Stegner Center** at the University of Utah. The Wallace Stegner Center for Land, Resources and the Environment represents a concrete manifestation of the University of Utah S.J. Quinney College of Law's commitment to the multidisciplinary study of natural resources and environmental law and policy. As a senior fellow, Holtkamp will be researching, lecturing and publishing in the areas of air pollution control and climate change.

• The **Hatch & Associates** law firm, the boutique law firm in West Jordan, has hired **Tammy Evans** and **Dean L. Offret**. Evans joins the firm as marketing and corporate development director after working for over 19 years with several national companies. Offret joins the firm as law clerk and new client strategist, with 15 years experience in business assisting companies as they strategize and create marketing plans for new-market entry.

• **John Beckstead**, a senior partner of the law firm **Holland & Hart**, has been selected as a Fellow of the **American College**

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# Legal Matters

## Employers and social media: navigating the changing landscape

It is trite to say that social media has revolutionized the world, but it has certainly changed the boundaries between work life and private life. With the explosion of social media outlets and followers, employers are grappling with how to manage these changing boundaries. The latest controversy to hit the media is whether employers can request or require employees or applicants to disclose their Facebook passwords in connection with their employment. Employee rights groups, social media outlets and lawmakers have reacted with outrage. Employer groups have wisely advised caution.

Facebook, Twitter, LinkedIn and the like can offer employers a wealth of information about their employees and potential employees. It can be very tempting for a recruiter, HR professional or supervisor to access social media to learn more about applicants

and employees. But before giving in to temptation, employers should know the risks associated with using social media to make employment decisions.

Perhaps the biggest risk is that employers can obtain information they will wish they did not have. In contrast to a carefully drafted application form, a Facebook page may yield information about an applicant's or employee's protected status like their age, religious affiliation, race or ethnic background. This is information an employer cannot "unlearn," and it could expose the employer to discrimination claims from subsequent adverse employment actions.

Employers might also learn about protected activities. For example, the National Labor Relations Board (NLRB), which oversees laws governing employees' rights to engage in collec-

tive action and union activity, has taken a relatively aggressive position against employers who discipline or discharge employees for complaining about their jobs in social media. According to the NLRB, complaining about the terms and conditions of the workplace with others, especially coworkers, might constitute collective activity protected by law. As a result, disciplining an employee who complains about long hours, low pay, poor working conditions or an obnoxious supervisor might land an employer in hot water. The NLRB's position is evolving, but employers should beware.

Although Utah is not among them, some states have laws that protect employees from discharge or other adverse employment actions for engaging in lawful activities or using lawful products (like alcohol or tobacco) while off duty. In those states, learning about an employee's off-duty activities might also expose employers to liability.

To make matters worse, not

all social media risks arise from employers accessing employee information online. Employers also face a risk for knowing things their employees say and do on their blogs, Facebook pages and Twitter feeds. An employee venting about workplace issues might be annoying, but it can also have an impact on the company's reputation. Employees can also disclose confidential information about the company or its customers online. Besides posing a serious business risk, this might also expose the company to liability for securities law or other violations. The Federal Trade Commission has taken the position that employees who comment online about their employer's goods or services might expose the company to liability for false advertising — even if the employee's comments were not authorized by the employer.

So, how do you deal with these rapidly changing issues? Employers can take three steps to address social media in the workplace: (1) develop a social

media policy; (2) effectively communicate the policy to employees and supervisors; and (3) monitor their company's presence in social media.

### Develop a Policy

Develop and implement a social media policy now, before any problem or crisis arises. The terms of the policy will vary depending upon the size, nature and culture of your company. Also, consider appointing a "social media officer" who will be responsible for monitoring, communicating and enforcing the policy. And be sure to review the policy often to adapt to legal and technological developments.

The policy should address topics such as:

- Use of company equipment and resources (including company-issued laptops and cell phones) to access social media. Make it clear that the company may monitor any transmitted information.

- Use and disclosure of company logos, trademarks or other *see MEDIA page 20*



**Matt Durham**

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# 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.

see APPRAISALS page 19

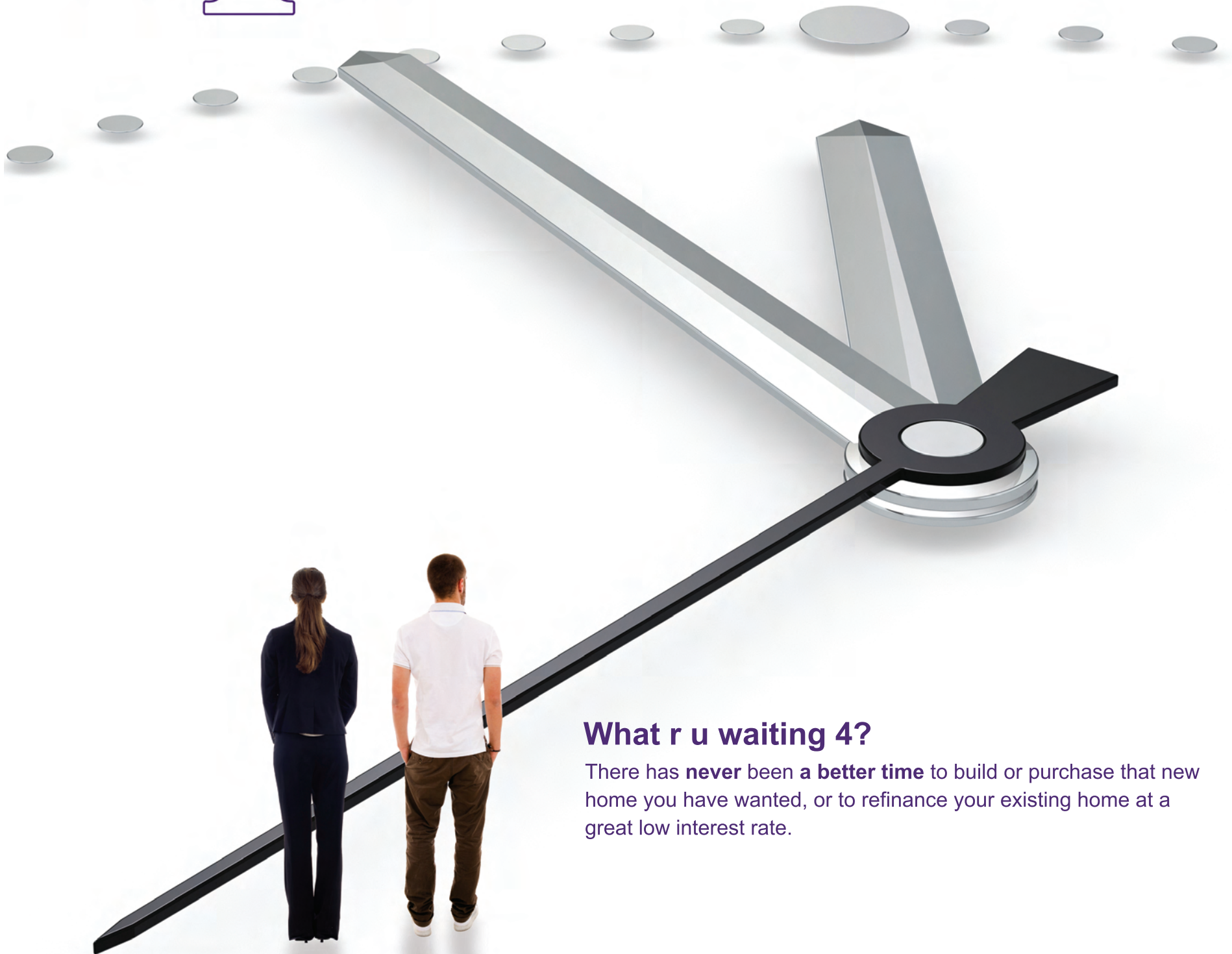


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# Low interest rates, expanded SBA lending guidelines allowing more businesses to become owner/users

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

see OWNER/USER page 14



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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

see *DILIGENCE* page 17



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<b>NAI West Property Management</b> 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
<b>CBRE</b> 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
<b>Cushman &amp; Wakefield/Commerce</b> 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
<b>Coldwell Banker Commercial NRT</b> 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
<b>Cottonwood Management Services</b> 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
<b>Asset Management Services</b> 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
<b>Capstone Property Management L.C.</b> 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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# Top Commercial Real Estate Firms in Utah

*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
<b>NAI West commercial Real Estate</b> 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
<b>CBRE, Inc.</b> 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
<b>Coldwell Banker Commercial NRT</b> 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
<b>Knight Realty Co.</b> 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
<b>Capsone Property Management L.C.</b> 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
<b>Chapman-Richards &amp; Associates</b> 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
<b>Cushman &amp; Wakefeild/Commerce</b> 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
<b>InterNet Properties, Inc.</b> 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

DND= Did Not Disclose N/A= Not Available

Please note that some firms chose not to respond, or failed to respond in time to our inquiries.

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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-

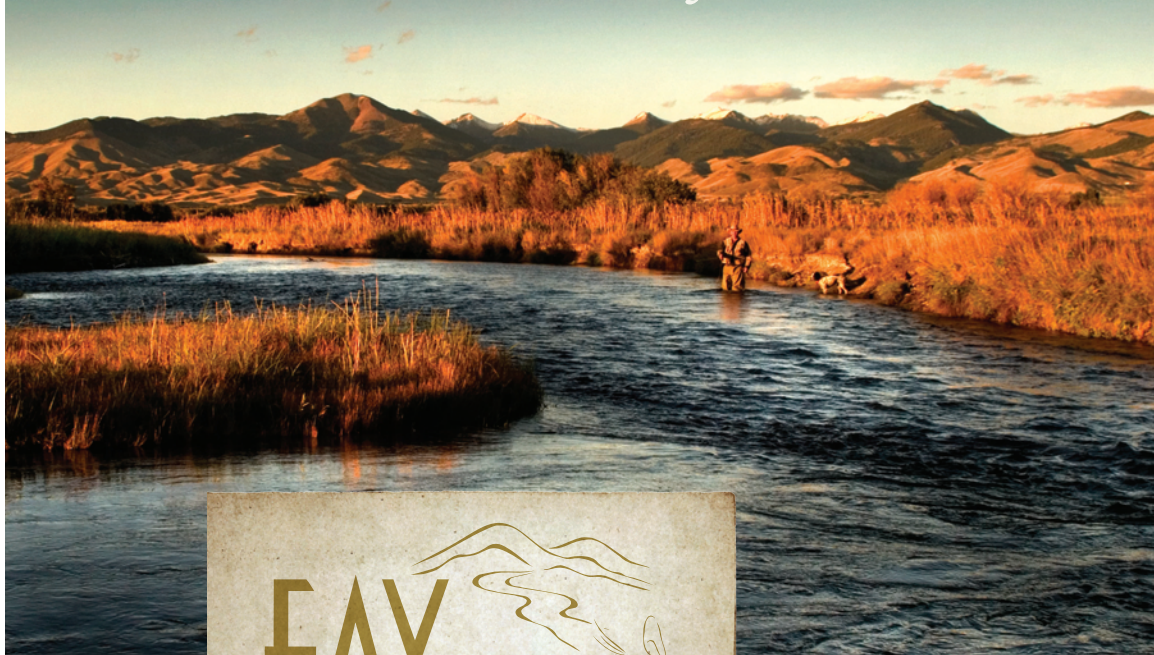
closure, it must do so in accordance with the procedure set forth in the Utah Trust Deed Act.

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

from page 11

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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# 2012

## APPRAISALS

from page 8

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 AMC’s 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 AMC’s 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 black-balled 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 re-issuing loans to loan holders paying \$80,000 to \$100,000 a year in interest because they don’t like the conditions of the loan.”

## Transportation in Utah



### House passes 90-day extension of surface transportation programs and fuel related taxes

On March 29, just two days before the current extension of SAFETEA-LU expired, the U.S. House voted to pass a 90-day extension of the surface transportation programs and fuel and related taxes until June 30. The vote was 266 to 158, with all of Utah's representatives voting yes. The Senate then accepted the extension by unanimous consent followed by the president quickly signing it into action. This is the ninth temporary extension since the expiration of SAFETEA-LU in 2009. The bill is "clean," meaning it does not include any policy or funding changes from current law.

When the House and Senate return to session on April 16, after their Easter recess, they will continue to try to pass a longer term bill. The Senate has already passed a two-year bill, approximately \$109 billion, which would hold funding levels flat and make significant policy changes including consolidating programs and streamlining project approvals. House Transportation and Infrastructure chairman John Mica (R-Fla.) continues to press for his five-year, \$260 billion bill, H.R.7, which has been modified to restore funding for mass transit under the Highway Trust Fund, as well as other minor tweaks. House Speaker John Boehner must decide which of these two options is best or forge his own bill, one that will almost certainly include his favored provisions — expanding oil and gas exploration and production to increase revenues into the Highway Trust Fund.

June 30 is likely the last date prior to the November elections that Congress can realistically

complete a multi-year bill. After that point, the various summer recesses begin, followed by an early adjournment to campaign for the November elections. If no multi-year bill is passed, further short-term extensions would be needed through the elections. The longer the extensions last without any addition of new revenue into the Highway Trust Fund, the larger the deficit in the fund keeps getting. The fund is now expected to exhaust its balances by mid-2013.

Without a multi-year bill, UTA and UDOT can't plan critically needed repairs and upgrades just as the summer construction season arrives. These agencies are working extension to extension to put projects out on the street. The uncertainty is unnerving and detrimental to the overall condition of roads and transit in Utah.

The gas tax, 18.4 cents per gallon, has not been changed since 1993 and does not reflect inflation, so the buying power of those 18.4 cents has decreased over the past 19 years. Of course, a move to increase it would be politically unpopular.

Congressional Democrats and Republicans now have 90 more days to hammer out legislation that will fund highway and transportation expenditures before the fund runs out of gas.

Abby Albrecht is the Utah business development and public affairs manager for Granite Construction Co., one of the nation's largest diversified heavy civil contractors and construction materials producers. Albrecht currently chairs the Transportation Task Force Committee through the Salt Lake Chamber.



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## MEDIA

from page 7

intellectual property.

- Disclosure of confidential or sensitive company information.

- Use of discriminatory, offensive or harassing conduct toward coworkers.

- Requirement that employees identify their connection with the company when commenting on company products or services online.

- Statement that the company may monitor comments made about it on the Internet.

### Communicate the Policy

A policy works only if employees and supervisors know about it. Disseminate it broadly and include or refer to it in the employee handbook. Train employees about the company's expectations regarding social media. Provide supervisors with special training to make sure they understand employee rights and responsibilities with respect to social media activities. Refer to the policy often, especially when social media "situations" arise.

### Monitor Your Company's Online Presence

Monitoring online activity, especially employee activity, regarding your company takes time and effort and can impact employee morale. You will need to decide how much monitoring makes sense for your company. You can take steps to monitor online activity by employees during work hours or while using company resources — just make

sure employees understand that you may do this. In addition, there are products and services that allow companies to track their online presence and reputation. Depending upon your company's culture, resources and industry, such monitoring might make sense.

Social media is here to stay. It is no longer (only) a trivial pastime. It has become an important medium through which people communicate. The ease of use and access to social media has made it available to almost everyone, and has blurred traditional lines between private life and the workplace. Employers can adapt to this rapidly evolving trend by adopting a social media policy, communicating the policy to its employees and managers and monitoring the company's presence and reputation online. Careful monitoring and enforcement of a well-drafted policy can help employers avoid a host of legal and business issues.

Matthew Durham is a partner of Stoel Rives' Litigation and Employment Law practice groups. He represents clients in state and federal courts and administrative agencies in matters relating to employment discrimination, harassment, wrongful termination, wage and hour, drug testing, leave, benefits and labor/occupational safety issues. He routinely advises clients on developing and implementing personnel policies and complying with state and federal employment laws. Matthew also represents clients in general civil litigation matters and has mediated employment disputes.



# Quack!

It's daffy to say sportsmen don't help wildlife. Conservation investments by hunters are why the wood duck is now the most common breeding waterfowl in the eastern United States.

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# Focus

## EMERGENCY PREPAREDNESS

Pages 21-25

### By Joe Dougherty

The 2008 earthquake in Wells, Nev., struck at 6:15 a.m. Many employees had already begun their work day when the magnitude 6.0 shaker happened. Few people were injured in the quake, and nearly all of the town's businesses were closed for the day. Employees got to work cleaning up and some businesses were open after a few days. Nearly all businesses were open within two weeks. But that's Wells, a small rural town.

A magnitude 7.0 earthquake in Utah would cause \$35 billion in building damages. Water and electricity could be off for days, weeks or longer. Roads would become impassible, bringing commerce to a halt. Businesses that shut their doors for two weeks may find it difficult or impossible to reopen.

The earthquake in Wells is a fortunate reminder that businesses in the Beehive State have had time to prepare employees, establish contingency and continuity of operations plans and buy insurance. Let's not forget that Utah is earthquake country, with about 800 earthquakes measured here each year. Most of them aren't felt, but if a major earthquake were to strike the Wasatch Front, it could mean devastation and a ruined economy.

That is the reality of earthquakes. They strike without warning, without prediction. The best information we have are the statistics: A major earthquake strikes the Wasatch Fault every 350 to 400 years. The last one? About 350 years ago.

When an earthquake strikes, will you and your employees know what to do?

When addressing the business community, Lt. Gov. Greg Bell is fond of saying that businesses can't afford not to prepare for disaster.

"Emergency preparedness is a cost of doing business," he says.

The Utah Division of Emergency Management is urging businesses to prepare for disaster by participating in the Great Utah ShakeOut, the state's largest earthquake drill ever. More than 800,000 Utahns, including the Salt Lake Chamber of Commerce, are planning to participate by holding a drop, cover and hold on drill on April 17 at 10:15 a.m.

Businesses can sign up to participate in the ShakeOut by going to [ShakeOut.org/Utah](http://ShakeOut.org/Utah). The website is loaded with resources, including drill manuals for businesses, a drill broadcast to play for employees, posters to print and Web banners to show participation.

Signing up not only lets businesses be counted in the ShakeOut participants, but also allows business owners to receive preparedness information in the lead-up to the drill.

One of the essential parts of a company's emergency plan is to identify how employees can evacuate a building and whether they can shelter there for an extended period of time. Remember, roads may be impassible, and employees may not be able to just drive home.

"Take some time to think through what it would mean if employees had to make themselves at home in the office," said Ryan Longman, manager of the Be Ready Utah program. "That means that the necessities need to be at work, too."

Here are some things to keep in mind as you begin to prepare for workers to shelter at work:

- Keep a copy of an emergency contact list of employees and key customers and clients including all phone numbers.
- Keep a copy of essential policies, emergency procedures, and your business continuity plan.

# The Great Utah Shake Out April 17th

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see SHAKEOUT page 23

## Don't fall prey to the many myths about disaster preparedness

Disaster planning as a property management methodology has long been shrouded in a fog of complexity and misinformation. Part of this rests in the very notion of what disaster planning is or should be.

There are many buzzwords that are used in the fields of disaster planning and business continuity that contribute to the confusion. For the purpose of this discussion, we will consider disaster planning to be a broad approach to protecting people, property and processes against the consequences of various emergency scenarios. It presents a comprehensive view of risk, strategy development and response procedures. Having said that, let's clarify what disaster planning is not, or need not be. It need not be rocket science. It need not require a Ph.D. or 50-page process diagram.

There is no reason that disaster planning cannot occur at a manageable scale for any business. By clearing up some of the major misconceptions related to planning, we can help business owners and property managers overcome their concerns and begin the planning process.

**Myth #1: Disaster — it won't happen.** Much of the pervasive aversion to planning can be attributed to denial and its four stages. One: It won't happen. Two: If it does happen, it won't happen to me. Three: If it does happen to me, it won't be that bad. And four: If it happens to me and it is that bad there's nothing I can do to stop it anyway. There may be a certain comfort in this rationalization for doing nothing, but

the fact is, disasters large and small impact businesses every day. Not all will make the evening news, yet loss of power or Internet service, sprinkler breaks and leaking pipes all result in some type of disruption with an associated cost to the business.

**Myth #2: Planning takes too much time and costs too much money.** This reflects the notion that there is only one plan, that it is the size of a doctoral thesis, that it will require a cadre of outside experts and that to be worthwhile it will take months to build and cost a small fortune. Many in the planning business have sustained this image to enhance the value of our niche. While there is a time and place for undertakings of such magnitude, it is our challenge to bring planning to the market with options inclusive of all sizes of businesses.

We must recognize the particular needs and resources of small-business owners and managers. By sharing information and providing educational opportunities, we can prove our case: that any planning effort is better than none at all — that even the most basic plan that organizes communication, identifies hazards and documents procedures will move the business, its staff and clients to a better place.

**Myth #3: One size fits all.** As in the prior segment, there is no single model or format for absolute effectiveness. There are certain core elements that the business should strive to address, but working in an

see MYTHS page 25

## A nightmare scenario that could become very, very real

Families living in the Salt Lake Valley are the best prepared in the world to survive and recover from a major disaster.

Is the same true for the Salt Lake Valley business community? Based upon my informal survey, the answer is a definitive NO.

We all picture ourselves at home, protecting loved ones if disaster strikes. Yet there is a good chance that you could be at your place of business.

On April 17 at 10:15 a.m., Utah is staging the largest disaster drill ever undertaken in the Intermountain West. This event, The Great Utah ShakeOut, sponsored by Homeland Security, will give families, businesses and schools a chance to practice their response to a mock 7.0 earthquake striking the Salt Lake segment of the Wasatch Fault.

Granted, this date and time is a practice drill, but it could be real. To make this point, just a few weeks earlier, on March 20, Mexico was set to practice an earthquake drill. As unbelievable as it seems, they experienced an actual quake on that date, at near the magnitude set for the drill.

Geologists tell us that Utah experiences a major quake every 350 to 400 years. The geologic clock is currently ticking at 350 years since the last quake of magnitude. Granted, we were not here to measure

or experience it, but our geological record reports the story.

To help readers prepare for the ShakeOut drill, I have mocked-up a scenario that could take place in a Salt Lake Valley small business if April 17 were to bring us an actual quake.

Here is an imagined scenario:

It's the morning of April 17; you're on the job as you are every day. You own a small call center and the single story building that it occupies. Your space is divided into a large phone room with half-wall soft cubicle dividers, your private office, a kitchen and break room. No customers are ever on the premises. Fifteen of your employees are at work today; one is home sick.

As 10:15 a.m. strikes, the shaking starts and so does confusion. You've never had so much as a chat with your employees about being prepared to survive and respond to a disaster from your place of business.

All but two employees have never experienced a major quake. There is screaming and terror. Some try to exit the building and are knocked to the floor by the shaking; a few make it to the exit but quickly move back in because the exterior façade is crumbling and falling, along with a power pole. A few sensibly duck under

see SCENARIO next page



Linda Milne



### Taking Command In Times Of Chaos

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UTAH 2011

## SCENARIO

from page 22

their desks.

Overhead some lights shake loose and hit the floor, acoustic tiles fall, computers crash to the wood floor, a few lightweight ones are airborne. File cabinets rock, some drawers disconnect and spew folders; one file cabinet topples.

The kitchen and break room is a scene of glass falling from cupboards and shattering. Refrigerator contents are heading for the floor, mixing with water spurting from under the sink where a pipe has broken.

Your office walls are cracking right in front of your eyes. Books are falling from the shelves, and several have hit you, creating painful lacerations. You try to save your new computer instead of ducking under your desk. Your efforts get you a smashed foot. The glass partition that separates you from the call center has shattered and is flying in your direction. Your move to get under your sturdy desk did not happen quickly enough to avoid cuts. You're bleeding.

Is it your imagination, or is the floor moving out from under you? It's cracking along outer walls and it's sagging.

It's 31 seconds into what will seem an endless 62-second nightmare. Flying debris has hit a few of your employees. Injuries are accumulating. You haven't prayed this hard since ... well, never. Life as you know it is shattering right in front of you.

What is happening to your family? How quickly can you get across the valley to them? They will need you.

Those on your staff who are not frozen with terror are trying to call out on their cell phones. The only two calls that are connecting are being placed to parents in St Louis and a boyfriend vacationing in Florida.

## SHAKEOUT

from page 21

- Have a voice mailbox number and remote password information and instructions so you can change messages as needed providing information to employees so they can call in for instructions.

- Talk to employees about which emergency supplies, if any, the company will provide in the shelter location and which supplies individuals might consider.

- Encourage employees to have an emergency kit at the office and one in the car.

- Identify two exits in case of evacuation. Are those exits clearly marked?

- Identify a schedule for testing a warning system and sheltering procedures each year.

- Teach employees to drop to the ground, take cover under a sturdy desk or table and hold on to it during an earthquake. Most people are injured from falling or flying items in a quake.

- Create procedures to account for non-employees/suppliers/customers/clients.

What you do now to prepare determines how well you will recover from an earthquake. Utahns are in this together.

Be Ready Utah offers a 12-step course on business continuity planning, in which CEOs and risk managers can learn how to protect their businesses in case of disaster. More information on the course is available by calling Be Ready Utah at (801) 538-3400.

Local calls — nothing. Someone yells out, "Text. Texts will get out, I remember reading about it."

Instincts are ruling. Some are persisting to exit, heading out to go home. The parking lot is full of debris and there are a few pretty deep cracks, even a few shallow crevices where the driveway joins the road. No cars will be getting out. The staff live everywhere from Tooele to Millcreek, from Bluffdale to Centerville.

You're located west of the I-15, off of the 201. What you don't yet know is that the 201, the I-15 and I-80 are damaged. In some spots it will be hard to imagine there will ever be traffic moving on them again.

Your newest employee rides his bike to work. No one is laughing about that now. He may be the only one to get out of here on wheels.

You've got some extra water and food stored at home on the east bench. But you're 30 minutes from there on a normal day. Normal day. Thank God your children are at school. They have a 72-hour kit there. They'll be safe until you get there. Or so you think. You are not remembering their brick, two-story school is over 45 years old.

The shaking stops. It is too surreal to grasp. Your cyclist is preparing to leave for home. You understand his intense, unstoppable urge to try to get there. A few talk about walking — for some it is more than 30 miles.

You've got to step up and take some control and provide some direction and hope. It's your call. You're the boss.

What will you do?

Because this is a drill, you get a second chance. You have time to prepare. What exactly are you preparing for? The possibility that you and at least some of your

You don't need to do everything at once. Start by convening an emergency preparedness committee or just thinking through emergency procedures. Employee involvement will help create buy-in from the staff.

Communication with employees is of utmost importance, especially having alternate means of communicating.

Then, start with the basics: Know what disasters could happen, make a plan and start building those emergency kits.

More information, including a list of emergency kit supplies, is available at [BeReadyUtah.gov](http://BeReadyUtah.gov).



Joe Dougherty is a preparedness expert and spokesperson for the Utah Division of Emergency Management, the State of Utah's lead agency for disaster coordination and emergency preparedness. The division assists cities and counties with emergency planning, training and exercises, and interfaces with the private sector to involve the whole community in emergency preparedness and response.

employees will have to shelter-in-place in the event of a disaster.

**Step One:** A mandatory, company-wide meeting of all employees. Tell them you are instituting an Emergency Prepare Plan for your business and will require their participation and know-how. Ask for volunteers to form an Emergency Prepare Committee. If you don't get people stepping forward, appoint the committee. Their job is to get educated, then make a plan, including an escape route and meet-up spot. Pass out index cards and get everyone's out-of-state contact information: phone number, e-mail and physical address.

**Step Two:** Get a business continuity plan in place. What would it take to get your business up and running as soon as possible if this were a real disaster? Off-site computer records, or paper records if your company is not digital. How long will the phone lines be down? In the case of a 7.0 earthquake it will be weeks, into months. Even an especially bad winter storm could take you down for a week. Who insures your building? Where is your policy? What about your financial records? Do you operate with inventory? Where will that come from in a disaster? How will you contact your customer base?

**Step Three:** Begin this immediately; don't wait for the completion of Steps One and Two. Get a water drum onto your premises and fill it with water with a water-safe hose from an RV supply store. Get siphons while you're there. You'll want enough for a minimum of one gallon of water per person, per day, for each employee. If you have a customer-present business, you'd want to store for them too. A three-day supply is your absolute minimum, along with some dry chlorine dioxide for purification, and with some water storage know-how.

**Step Four:** Acquire some dry, easy to store rations — something simple like protein bars or packages of concentrated emergency food bars, or maybe some Meals Ready to Eat (MREs).

**Step Five:** A large, business-sized first aid kit. As you can see from our scenario, you may need more than disinfectant and Band-Aids. Splints. A gurney. Blankets.

**Step Six:** Sanitation. That will probably be heavy duty bags and appropriate chemicals that can be found at any store specializing in emergency products. Better yet, a port-a-potty and chemicals from an RV supply store.

**Step Seven:** Heavy-duty tools are a must, as you can see, you may have to dig and shovel. You will need hammers and nails.

**Step Eight:** Certified Early Response Team training (CERT) for as many of your employees as possible. It will benefit them personally and their families and would be a huge help if your staff had to shelter-in-place at work.

**Step Nine:** Communication. Get some employees ham radio trained.

Stay on top of the Emergency Planning Committee to produce a plan for your company. Practice that plan. Teach a little something about disaster response at your regular staff meetings.

Require your employees to have a 72-hour kit in their car or at their desk.

Linda Milne is a senior living in the Canyon Rim area of Millcreek Township, where she serves on both Community Councils. She is a volunteer member of the Canyon Rim Stake Emergency Preparedness Committee that recently presented the Canyon Rim Stake Prepare Fair and will continue to present monthly educational meetings that are open to the public.

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# Preparing your business for the Utah earthquake

In February 2008, a 6.0 magnitude earthquake hit near Wells, Nev. Fortunately, this large earthquake didn't take any lives. Instead, the quake damaged half of the non-residential buildings in the town.

The disaster cost the city more than \$9 million and steered businesses off track for months after the event.

For decades, we have been warned about the probability of a large earthquake in the state of Utah.

"Geological evidence shows that movement on the Wasatch fault and other faults in Utah can cause earthquakes of magnitude 6.5 to 7.5, with potentially catastrophic effects," according to the Utah Seismic Safety Commission.

## Your Responsibility to Prepare Your Business

If you are preparing your family for an emergency, why should your business be any different?

In fact, many businesses across the state will be participating in the Utah Shake Out on April 17. The Shake Out is a statewide drill where business, universities, homes, schools and other organizations will be holding a drill on the same day, all at 10:15 a.m.

When you think about it, an earthquake might not strike while you and your family are at home. Instead, it's probable that you'll be at your desk (or perhaps on the golf course if you're lucky)! You have a responsibility to prepare your business and your employees to know what to do in case of an emergency.

There are a few things that you can do to prepare before a quake: train your employees on what to do during a quake, and keep your business financially stable after an earthquake.

### Prepare Your Location

The first thing you'll want to do is assess how ready your business location is for an earthquake. This will help you develop a plan for your business.

**Identify potential hazards.** Does your office have a lot of pictures hanging on the wall? Is there more than one escape route out of the building? You should assess what concerns your location presents while you create a plan.

Also consider your business' utilities. Is your water heater properly installed so that it won't fall over in a quake? Are fire alarms and extinguishers in proper working order?

**Your building.** There are many factors to take into account to ensure that your building is ready for an earthquake. Even things like design, furnishings and when the building was constructed can have an effect.

The soil underneath a building can also have a major effect on its sustainability during a quake. Soft, clay-like soils tend to absorb the motion of an earthquake better than a rocky soil.

**Emergency materials.** If you and your employees were trapped inside of the building, would you have the supplies to survive? You should consider purchasing or creating emergency kits for your business. Include things like flashlights, collapsible shovels, first-aid materials, water and some

snacks. Be sure to make a few extra kits for customers or guests who might be at your building that day.

These kits should be accessible and easy to grab if you need to exit the building.

### Prepare Your Employees

The next step in preparing your business is to prepare your employees to know what to do during the earthquake.



Brandon Garrett

**Establish an emergency coordinator.** Depending on the size of your business, you may want to establish one of your employees as the emergency coordinator. They can head up projects that deal with emergency planning and conducting drills.

Also consider providing incentives to employees who become CPR certified or take time to teach your customers and the community around you about emergency preparedness.

**Under the desk.** The best thing that you and your employees can do during an earthquake is get underneath a desk or some sturdy structure and hold on. You might have heard in the past that getting under a door frame is the best idea. However, Steve Bowman, project manager for Utah Geological Hazards, sets the record straight.

"Getting to a door frame might be harder than you think," Bowman said. "There might be a lot of falling objects around the room. We recommend getting under a desk and holding on — the 'Drop, Cover and Hold On' technique."

**Escape plan.** Be sure to have a plan in place and practice it periodically with your employees. They should all know their escape route from the building. You should practice this plan at least once a quarter.

**Establish a meeting location.** Once the earthquake stops, you and your employees need to know where to meet. Have a location where your business can check in to make sure everyone is OK. This location should be outdoors and easy to access if emergency responders need to help you.

An emergency coordinator will have the responsibility of taking roll and making sure everyone is safe.

**Communication.** After you've made sure that everyone is accounted for, have plans in place to ensure that your employees can reach their family members. While many times, phone lines are jammed after an emergency, the Federal Communications Commission recommends that you send text messages to ensure family members that you are safe. Many times text messages will go through the system easier than a phone call.

**Prepare for the Effects on Your Business**  
There are many smaller business that don't make it out of an earthquake financially.

"Many times, the impact of being closed for a few days or having their utilities or shipping interrupted for a few days can devastate a business," Bowman said. Remember that your mortgages and bills will not wait because of an earthquake.

**Earthquake insurance.** Would insurance see *EARTHQUAKE* next page

# The heart of emergency preparedness

By Jeff Midgley

As we go about our everyday lives, our time is spent doing our prioritized activities, without thought of much else. We go to work to earn a living, spend time with our friends and families, squeeze in enough time for our favorite hobby or pastime. We spend time planning our next vacation or night out. We plan for our children's college, retirement, weddings and other important life events.

However, sometimes in our busy lives with so much to do, we forget to plan for emergency situations. We all deal with daily medical emergencies, such as cuts, burns, sprains, fractures and other small injuries. How well are we prepared to handle those daily emergencies? What about the preparedness for more serious disasters which impact our local communities, cities and even our state?

I think this question scares most of us for several reasons, or we meet the problem with apathy, with ideas such as "it won't happen here. It only happens overseas, or in other parts of the country." We procrastinate, thinking that it is not going to happen tomorrow or next week, so we have time to prepare another day. If we continue to put off the preparation, this major event will come and it will be too late.

For most of us, living in the great state of Utah means we are constantly reminded to prepare our families and our homes. The emphasis tends to be on food storage, candles, generators and even solar power. Those things are great and a definite necessity, however the most overlooked item can be the most important when it comes to preparedness. Emergency first-aid will be the very first thing we look for after the dust has settled from a disaster such as an earthquake. We will begin by treating the injured around us and doing what we can to make life-saving rescues involving our family, friends and neighbors. None of us will be thinking about our next meal at this point in time. What do we have on hand for medical supplies, medicine, etc.?

Here are the important questions to ask as we do prepare for medical emergencies in the time of a disaster:

- Do we know how to treat the types of injuries that may occur?
- Do we have the necessary supplies to treat the number of people we will be responsible for?
- Are we mentally prepared and have we trained and practiced our first-aid skills?
- Do we know CPR?
- Do we have meeting places and gathering points established with our family?
- Do we have prescription medications on hand, where we can get to them if our home is not left standing?

If you cannot answer yes to all of these questions, then we have some work to do in our first-aid preparedness. If we have the mind-set that someone else will take care of us, or give us their medical supplies, we are being very naive and ignorant in our thinking. Not many people will give up their life-saving supplies and let their own family go without. If we think we will have immediate help from our traditional emergency services we are mistaken. If you were to take a community like Salt Lake County and the great emergency services their fire departments, police departments and hospitals have to offer on a daily basis and then figure 100,000 injured people, there are not nearly enough services to take care of all of those in need.

The 911 system will most likely be down or so overloaded that it will take days to get assistance from the traditional services we are used to. If you are able to drive to our local hospitals, you will be among thousands of others with the same needs. Everyone will be heading to those locations to get emergency help. There will not be enough physicians, nurses, EMTs, paramedics or other staff members to treat everyone who shows up at the hospital. We need to be prepared to take care of ourselves for up to 72 hours. What you have on hand, the training you have stayed current on and the plans you have put into place, are going to be vital to your survival.

This is not meant to scare you. This is meant to be motivation to you and your family to get prepared now. Even if you prepare a little at a time, those preparations will give you and your family a better outcome.

The new technologies and trainings in first-aid are a great place to start your preparedness. You are capable of so much more than you think you are when it comes to treatment of injuries. Did you know there are products available that will stop an arterial bleed in as little as five minutes without the use of a tourniquet and the potential loss of life or limb? There are other products that can instantly stop nose bleeds and bleeding from multiple lacerations, preventing infection and dehydration from blood loss. Other new products on the market today can cool a burn so rapidly that you can minimize the damage, pain and risk of infection if you use the product immediately.

Like advances in technology such as cell phones, televisions, iPods and other devices that make daily life more efficient and convenient, new technology is also available in first-aid supplies and training. Having the right products and training can save your family money on medical bills in our everyday lives as well as make you better prepared for disasters. Dan Brown wrote that only 15 percent of the benefit of a product comes from the product itself. The remaining 85 percent of the benefit of that same product comes from the training on how to use it properly.

Make the time with your family to learn first-aid, CPR and other life-saving skills. Talk about what will happen in the event of a disaster so that everyone knows and can mentally prepare for an emergency. Review your families' plans for evacuation and meeting places. Discuss all of your options. Give your children the chance to add their input so they feel they have a say in the well-being of the family.

You can find many classes offered in your community on first-aid and CPR that will help you and your family prepare. Check your city websites and recreation centers for information on these classes. Become an activist for first-aid preparedness within your community and neighborhood. By taking immediate action of preparation now, before the storms come, you will be in a position of service to yourself, family and community.

Jeff Midgley is a firefighter/EMT-Intermediate with 20 years of emergency management experience. He is on the faculty of the American Heart Association Training Center and is also a SFI National incident response instructor.



# 10 business recovery considerations after a disaster

Numerous articles have been printed about being personally prepared in case of a disaster. This article focuses on 10 questions to consider in preparing your business to survive a disaster.

**1. Emergency Company Contact List.** Keep an updated phone list of your employees, the building owner, facility manager, computer and equipment specialists, customers, vendors and others whom you may need to contact. This list should be on a thumb drive so it can easily be accessible on any computer. It is also recommended to have several printed copies just in case you do not have access to a computer.

**2. Phone System.** If your phones are down, customers and employees cannot contact you. Make sure you can access your phone system from an off-site location. Provide call forwarding so customers and employees can contact your business.

It is wise to leave a recorded message stating that your business will be open soon so your clients don't need to worry or go elsewhere for service. This will give your customers peace of mind instead of getting a busy signal, or worse yet, a message saying that the number they have reached is no longer in service.

**3. Computer Back Up.** Are your business data and records backed up and safe? Schedule daily backups of all important electronic data. Set up off-site storage for all important data. Consider investing in cloud-based software. Cloud-based software has become increasingly popular because it enables employees to securely access data and programs from nearly any location and/or device.

**4. Company Inventory.** Take inventory of all your company's assets. Make

an inventory list with photos of equipment, furniture, computers and vehicles, etc. Keep a list of the costs and receipts when possible.

**5. Stock/Supplies/Cash.** Do you have enough stock or supplies to keep you going if your suppliers or resources are interrupted for a time? Consider stocking up on items you know you will be in need of. Make sure that you have emergency cash or credit available to handle any financial needs that may arise. Develop relationships with alternate suppliers in case primary vendors are unavailable.

**6. Business Insurance.** Review your policy. Chances are you are under-insured. Besides covering the physical assets of the company, do you have adequate business interruption insurance? How long can your company survive? Consider business interruption and extra expense insurance. Understand your insurance policy and deductible so you know exactly what is covered.

**7. Off-Site Work Location.** What if your business is closed because it is badly damaged or you cannot get to your business if the streets are closed? Can your business operate from another location? Explore having an alternative work location available before something happens and you cannot get access to your business.

**8. Employee Needs.** Have your employees contact their families and make sure they are safe and taken care of. This will give your employees peace of mind so they can focus on running your business instead of worrying about what's going on at home.

Make sure your employees have what

business, you have a responsibility to your local community and customers. You can include plans to be able to help people in your local community clean up after the mess.

Your business would have to make plans to have access to tools, food, water, extra clothing and more to help the community. Besides fulfilling your duty to the local community, this will also establish a long-lasting relationship with customers and potential customers.

## You'll Be Prepared!

Once you've established a plan and ensured that your business will keep going, you'll be ready to face an earthquake.

There are lots of resources out there, including videos, brochures and reading material on [ussc.utah.gov](http://ussc.utah.gov). You can also learn more and sign up to participate in the Utah Shake Out on April 17 at [shakeout.org/utah](http://shakeout.org/utah).

We would encourage you to prepare for an earthquake by making plans now!

Brandon Garrett is the public outreach coordinator at The Ready Store, one of the nation's largest emergency preparedness and food storage companies, helping businesses prepare all across the nation since 2003.



Linn Griffith

they need to do their jobs well, including the proper equipment, personal protective gear and adequate work environment. Don't forget that proper food, nutrition and breaks are necessary in order to get the most productive work from your employees.

**9. Good Communication.** Stay in contact with your employees, customers, vendors, insurance companies and key people who are important to your business success. Designate a media spokesperson to handle questions and give updates. Everyone will feel better if they are kept in the communications loop.

**10. Emergency Response Contacts.** After the disaster, have a pre-determined list of emergency agencies such as the police, fire department, Red Cross and local hospitals, etc. Another key contact to have

in place is a restoration contractor. After a loss is not the time to do an Internet search or thumb through the yellow pages to find one. Take the time before disaster strikes to find a reputable company who can take care of all your needs from start to finish.

This just scratches the surface of things to consider should your business suffer a disaster. Take these 10 suggestions and customize and expand them to fit your workplace. Having a plan in place will save you time, money and headaches down the road.

Linn Griffith is the Utah marketing director for BELFOR Property Restoration, the world leader in disaster recovery and property restoration, with 110 offices across North America. He can be reached at [linn.griffith@us.belfor.com](mailto:linn.griffith@us.belfor.com) or [linn.griffith@us.belfor.com](mailto:linn.griffith@us.belfor.com).

## MYTHS

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organized way toward a comprehensive plan is an achievement in itself.

Often we see an organization that has adopted a disaster plan for, say, a 25-story urban office tower, attempt to transfer that plan to a flex-use building in a suburban office park. While certain elements of a plan may overlap across multiple properties owned or managed by a single entity, simply changing the title on the plan cover is not a reasonable solution. The most obvious example of this is British Petroleum's disaster plan for deep well development in the Gulf of Mexico. Citing otters and sea lions in its pages, this highlights the problems that come with such an approach.

Each situation, property, campus and shop on Main Street has unique characteristics that require different solutions to the plan's development and execution. These may be determined by location, property use, tenant or client profile, building design, construction, etc. These elements and more require a consideration of the particular issues that surround any business.

**Myth #4: One and done.** For those who have ever written a plan, this may be the most egregious sin. This myth reflects the belief that disaster planning is a project with a finite end point. It also is reflected in the BP example — check the box, submit the paperwork and we're done.

Writing a disaster plan for a business, regardless of whether it is six or 600 pages, is only the start. Exercising the plan, whether it involves bringing employees to a full-blown virtual safe space or simply a tabletop discussion in the conference room is requisite. Placing the plan in a three-ring binder in the trunk of your car is not a solution.

Maintaining the plan is also a challenge for most organizations. Who is responsible for updating information regarding contacts, equipment, business systems or insurance information? To maintain the value of any plan, change management is essential. Today this task has been made easier by computer applications that make updating and distributing the plan much less time consuming.

**Myth #5: If it can't be perfect, why try?** We must disabuse the business owner

that perfection is the only acceptable outcome. In a culture that strives for perfection, the intent is admirable; however, it could be a roadblock to producing even the most basic plan. A life-preserver thrown to a drowning man is a reasonable option when a life raft isn't available.

Making the investment of time and energy to prepare is a visible commitment to the health and safety of your employees, as well as a statement to your clients regarding the viability of your business. Providing essential information about evacuation, hazardous materials and utility shutoffs may seem elementary, yet they can have a huge impact on the severity and costs of an incident, in terms of personal injury/death as well as financially. A framework that limits these and can speed recovery is valuable — period.

**Myth #6: I'm insured, why worry?** The danger of being lulled into a state of false security is tremendous. Managers who have never taken the time to diligently consider their risk exposures and potential costs of business interruption are inadvertently laying the groundwork for a disaster. Far too often, business leaders only discover their true exposures after the fact — when coverage or values are deemed inadequate. A close consideration of coverages as to property values, business interruption, contingent business interruption, code and ordinance coverage, and environmental issues are critical for any size business. This is an essential part of any business plan or disaster plan.

In today's economy it is more important than ever. With credit lines so limited for small business, and average receivable times being extended, any unforeseen strain on finances may portend doom. Realizing, post-disaster, the inadequacy of your insurance coverage, is too late.

David Mistick is president of Circumspex LLC, which offers cutting edge Web-based applications and consulting services for disaster planning. He has more than 30 years experience in property management, construction, historic restoration and disaster recovery. Mistick is a Certified Property Manager and a Certified Business Resilience Manager. He is the co-author of the Institute of Real Estate Management's textbook *Before Disaster Strikes: "Developing the Emergency Procedures Manual"*. Utah Disaster Kleenup is partner, authorized dealer and consultant of Circumspex.

## EARTHQUAKE

from previous page

ance cover your business location in case of an earthquake? Not all insurance policies do! Check out your insurance policy to see what kind of damage it covers. There are some types of earthquake insurance policies that can be purchased separately, which might be a good fit for your business.

**Federal assistance.** Interestingly, the majority of federal assistance money after an earthquake goes toward low-interest loans to qualified business.

FEMA assistance is only available when the government declares a federal disaster. Business can apply for loans to help against building damage, employee loss or other working capital needs. However, if a disaster is declared, your business will have to apply to FEMA or the Small Business Administration (SBA) for a loan.

**Emergency power.** If an earthquake strikes, the power grid might be knocked out. Be sure to have a contingency plan in place for electricity and power at your business. You might consider a generator or installing solar panels.

**Helping your local community.** As a

from page 6

**of Commercial Finance Lawyers (ACCFL)**, one of the premier legal associations in the nation. He is the first attorney in Utah to achieve the honor. Membership in the ACCFL is limited to commercial finance lawyers, jurists and academics who have not only achieved preeminence in the field of commercial finance law, but who also have contributed significantly to the education of others in commercial finance law through teaching, lecturing or published writings. Fewer than 250 of the nation's practicing commercial finance attorneys are ACCFL fellows.

### MANUFACTURING

• **MonaVie**, a South Jordan-based direct sales purveyor of health and wellness products, has named **Randy Schroeder** president of the company's North America market and **Jeff Graham** executive vice president of global product strategy. Schroeder adds his new responsibility to his current role as president of MonaVie's Europe market. Most recently, Graham served as president of MonaVie's North America market.

• **West Liberty Foods**, an Iowa-based co-packer, private label manufacturer and foodservice supplier of sliced and processed deli meats, has received

"landfill free" verification from the National Sanitation Foundation for successfully diverting nearly 3.5 million pounds of waste from the local landfill near its plant in Tremonton.

### MEDIA/MARKETING

• **Justin Smart** has joined **Penna Powers Brian Haynes (PPBH)**, a Salt Lake-based advertising, public relations, public involvement and interactive agency, as director of public involvement. Smart has more than a decade of experience, including posts at the Utah Department of Transportation and Office of the Governor. Most recently, Smart was a public involvement manager at The Langdon Group, where he worked on such major infrastructure projects as I-15 CORE in Utah County, Mountain View Corridor's 2100 North in Lehi and the Bangerter Highway Design-Build at 7800, 7000 and 6200 South.

### REAL ESTATE

• **Real Property Management**, Layton, has hired **Lukas Krause** as its vice president of operations. In this position, Krause will be responsible for all aspects of franchise operations and support. Krause brings a decade of experience in management, process engineering and building franchising service and

support systems for major brands to Real Property Management. Previously, he was responsible for leading Quiznos' international division. While at Quiznos, he oversaw franchise onboarding and support processes, field operations for over 2,500 locations and developed a comprehensive franchise assistance program to support and grow the company at the franchise level.

• **Green River Capital**, a West Valley City REO asset management and loss mitigation provider for mortgage servicers, investment firms, credit unions and banking institutions, raised more than \$100,000 for the **Wounded Warrior Project** at its recent Agent Event in Salt Lake City. The Wounded Warrior Project was created to honor and empower veterans who incurred service-connected injuries on or after Sept. 11, 2001. The organization offers a wide variety of programs to assist service men and women with any type of injury.

### RETAIL

• The **King's English Bookshop** is clearing space in its storage room for the delivery of hundreds of books that will never be shelved or sold. Instead, the special-edition paperbacks of 30 different titles, some for adults, some for children, will be distributed to agencies and individuals throughout the Salt Lake val-

ley next month as part of **World Book Night 2012** on April 23. A transatlantic celebration of reading and books, World Book Night will take place simultaneously in communities across America and in the United Kingdom and Ireland, where it was launched last year. In Spain, on April 23, the date of Cervantes' death (and of Shakespeare's birth), is celebrated by people who give one another a book and a flower.

• **See's Candies** will hold a grand opening at its **new shop in Midvale**, at The Family Center at Fort Union, on April 20 at 9:30 a.m. See's will give away free samples, See's Happy Habit hats and a spin on the prize wheel. Additionally, See's historic vehicles and famous See's drag racing vehicles will also be on display. The new store will be located at 940 Fort Union Blvd.

• **Mattress Firm Inc.**, one of the nation's leading specialty mattress retailers, has **opened a new 5,600 square foot location at 10539 S. State St., Sandy**. Mattress Firm stores feature more than 55 different models of mattresses from top manufacturers such as Sealy and Simmons. Specialty mattress and bedding products incorporating the latest sleep technology are also on display, including pressure relieving mattresses from Tempur-Pedic.

### TRAVEL/TOURISM

• The **Utah Office of Tourism**, part of the Governor's Office of Economic Development, is **launching a \$2.2 million regional television Utah Life Elevated advertising campaign** to promote Utah's state and national parks and other summer attractions. Television commercials are airing on local and cable stations in Denver, Los Angeles, Phoenix, Portland and San Francisco. Digital outdoor ads will be seen in Los Angeles, Denver, Las Vegas and San Francisco, including a San Francisco tunnel wrap. Online digital display and social media advertising and promotion will include Denver, Las Vegas, Los Angeles, Phoenix, Portland, San Francisco and Seattle.

• **Visit Salt Lake (VSL)** recently acquired its **100,000th Facebook fan** after having just 3,500 fans 15 months ago. The rapid audience growth for the tourism marketing efforts were the result of programs designed to build the buzz about Salt Lake as a vibrant destination. VSL utilized both new and existing programs, combining them with social media campaigns designed to build its Facebook fan base as well as its Twitter followers, currently at 10,460. One of the existing programs used was the recent Ski Salt Lake Shootout, whereas a "Facebook Fan Favorite" category was added to the annual photo competition, garnering more than 5,500 new fans for VSL.

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# Training is out. Education is in. Are you in or out?

There are no two companies that train alike. Some go all out. Some do little or none. From my personal observation over the past five years, training (especially sales training) is in decline. Training budgets follow the economy and corporate profits.

I wince at the word training, because I have always associated it with lions and elephants. The word *education* seems more appropriate.

Training teaches you "how." Education teaches you "why."

The person who knows HOW will always have a job. The person who knows WHY will always be his boss. (Although many people claim to be the author of this quote, it was originally written by Ralph Waldo Emerson around 1870. Emerson used "man" rather than the PC version "person.")

REALITY: Most companies provide salespeople initial (minimal) training of essential product knowledge and basic sales skills.

Big deal. Then the real world kicks in and the salesperson is expected to produce without the real skills he or she needs to "make plan" or "achieve quota" before they "get fired."

Pile on the facts that customers have situations, barriers, problems and objections not covered in training, while the boss is demanding "cold calls" and all kinds of accountability. If you combine those elements with zero attitude training, low belief system and constant rejection, it's no wonder early turnover in some companies (maybe yours) EXCEEDS 25 percent.

What to do?

Here is list of the major categories that need to be included in the training/education of your sales force in order to retain good people and achieve your sales objectives:

CAUTION: This list will require your company to make a serious investment in the education of people and salespeople

— but take heart, whatever the money involved, it pales in comparison to the cost of employee turnover.

- **Personal development skills.** Attitude comes before sales success. Positive attitude, followed by the five parts of belief, and classes on achievement and listening. Educate employees to make them better people BEFORE you throw them into the market.

- **Communication skills.** How to speak and how to write are at the fulcrum of sales success. Poor communication skills OR poor writing skills will lead to failure faster than anything other than poor attitude.

- **Buying motives.** Why people buy is almost never taught, yet it's THE most powerful concept a salesperson can possess. Teach it at your best customer's place of business.

- **Product knowledge.** It's not an option to make your salespeople experts before they hit the road or the phone. Teach it at your best customer's place of business.

- **Personal presentation**

**skills.** Getting your compelling message transferred and "bought" is an essential aspect of salesmanship.

- **Laptop and tablet (iPad) presentation skills.** If you have the tool and you're not the master of it, you will miss the marginal sale. If you don't have the tool, you'll miss a ton of sales.

- **Selling skills.** Asking engaging questions and establishing relationships — the basic science of selling. BUT the elements above need to be understood BEFORE selling skills can be learned, let alone applied.

- **Smartphone skills.** This is the communication device of the present and the near future. It must be mastered.

- **Voicemail skills.** How are you at creating one and leaving one? Two of the biggest enigmas of the modern sales era.

- **Value messaging skills.** Weekly e-mails, blog posts and tweets to existing customers and prospects to stay "top-of-mind."

- **Pipeline building.** How to build the number of qualified

and expected sales. At the end of the month, a full pipeline ensures you'll exceed plan.

- **Customer service skills.** How to be memorable enough to create word-of-mouth advertising and unsolicited referrals.

- **Loyalty actions.** Going the extra mile. Being WOW! By your actions, creating positive word of mouth advertising.

- **Customer uses of product and services skills.** How the customer uses what you sell in order to produce and profit.

- **Customer perspective skills.** How the customer views things and how the customer wants to be treated.

- **Business social media.** No longer an option. No longer possible to ignore its power. Not just for the company, also for the individual.

- **Networking and relationship building.** Getting face-to-face with customers and prospects on a regular basis. Network for sales AND relationship building.

see GITOMER next page



Jeffrey Gitomer

## MEIER'S CATERING MENU

### BAR-B-QUE CHICKEN & RIB MENU

- |  |   |
|--|---|
| Bar-B-Que Chicken<br><i>Smothered in our special bar-b-que sauce</i> | Country Style Spare Ribs  |
| Fresh Cut Fruit  | Baked Chuckwagon Beans  |
| Pasta Shrimp Salad   | Meier's Homemade Potato Salad   |
| Utah Corn on the Cob<br><i>(seasonal)</i><br><i>Cooked on site</i>   | Glazed Orange Rolls   |
| Ice Cold Lemonade  | Brownie Sundae<br><i>Brownie, vanilla ice cream, covered with deep rich chocolate sauce</i> |
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• April 10, 7:30 a.m.-1:30 p.m.: **“The Juggling Act: HR Strategy and Employment Law Compliance,”** presented by the Salt Lake Society for Human Resource Management (SHRM) and Ballard Spahr. This annual seminar will address current issues impacting HR and business leaders, including strategic HR, immigration, health care reform, social media, and ADAAA. There will also be breakout sessions. Location is the Salt Lake Marriott Downtown at City Creek, 75 S. West Temple, Salt Lake City. Cost is \$75 for SHRM members, \$115 for nonmembers. Lunch and keynote only is free for members, \$30 for nonmembers. Register at [www.slshrm.org](http://www.slshrm.org).

• April 10, 8 a.m.-4 p.m.: **Governor’s Utah Economic Summit.** The theme is “Innovation and Investment: Building Utah’s Economy.” The event is designed to provide business leaders and decision-makers from the business, government and academic communities the opportunity to learn more about strategic opportunities and challenges facing businesses today. More than 1,200 attendees are expected. Morning keynote will be by Robert Knight Jr., chief financial officer for Union Pacific. The mid-day keynote will be by Gov. Gary Herbert. Morning speeches will be by Google’s managing director of global channel sales, Todd Rowe, and Ron Pollina, president

### GITOMER

from previous page

• **Earning referrals and testimonials.** THERE IS NO BETTER WAY TO MAKE A SALE THAN A REFERRAL AND A TESTIMONIAL

• **Personal promotional skills.** How to market yourself so that others will call you first. This is a combination of corporate support and personal (online) branding.

• **Past history of company and product (even if it’s a service).** Knowing the history of your company and product or service will help put much of the prospect’s fear and unspoken risk to rest.

• **Continuing education.** Once you start, you must make a commitment to continue as long as you exist.

This list is the MINIMUM requirement for salespeople to be prepared to succeed. But my best guess is that you are not educating or being educated in most of these critical elements. WHY?

There are no good reasons other than cost of training. And

and founder of Pollina Corporate Real Estate and author of *Selling Out a Superpower: Where the U.S. Economy Went Wrong and How We Can Turn It Around*. The summit also will include presentation to three Utah recipients of *Trade & Industry Development* magazine’s Corporate Investment and Community Impact Awards and a concluding reception featuring “Utah’s Own” food grown or manufactured in the state of Utah and prepared onsite by Utah culinary students under the instruction of Grand America’s chefs. Location is Grand America Hotel, 555 S. Main St., Salt Lake City. Standard registration is \$150, which includes keynote presentations, morning and afternoon breakout panels, breakfast and lunch. Table sponsorships are available. The event begins with check-in at 7 a.m. Details and registration are at [www.UtahSummit.com](http://www.UtahSummit.com).

• April 11, 3:30 p.m.: **“How to Raise Money,”** hosted by the Wayne Brown Institute. Presenters will discuss current trends, the fund-raising process, finding the right investor and how to raise capital from an investor. The seminar will introduce the importance of a business plan, what sources of capital are right for your business, the five Fs, angels and venture capitalists, business structure and raising money legally. Presenters will include a legal investor, someone from the lending and

cost is a weak argument at best as the competition heats up their recruiting and training efforts.

And of course you’re going to want to measure the returns on your investment. Luckily in sales, ROI is the easiest part. Here’s an ROI reality: subtract last month’s sales from this month’s sales, and this month last year from this month’s sales and compare the results. You might also want to measure employee retention.

In sales all you have to do is measure reality. How’s yours?

Jeffrey Gitomer is the author of *The Sales Bible*, *Customer Satisfaction is Worthless*, *Customer Loyalty is Priceless*, *The Little Red Book of Selling*, *The Little Red Book of Sales Answers*, *The Little Black Book of Connections*, *The Little Gold Book of YES! Attitude*, *The Little Green Book of Getting Your Way*, *The Little Platinum Book of Cha-Ching*, *The Little Teal Book of Trust*, *The Little Book of Leadership*, and *Social BOOM!* His website, [www.gitomer.com](http://www.gitomer.com), will lead you to more information about training and seminars, or e-mail him personally at [salesman@gitomer.com](mailto:salesman@gitomer.com).

grants community and a serial entrepreneur. There will be an open Q&A. Location is the Miller Business Innovation Center, 9750 S. 300 W., third floor, Sandy. Free. More information is at <http://www.venturecapital.org/vc-events>.

• April 13, 8 a.m.-4 p.m.: **“Creating a Culture of Safety,”** presented by the Utah Manufacturers Association. Keynote speaker will be Chad Hymas, who was involved in a serious accident in 2001 that left him a quadriplegic. Last year he spoke at more than 220 events and traveled more than 300,000 telling his story, “How a Split Second Can Change Your Life” as well as “How Personal Responsibility is a Matter of Life and Death.” Breakout sessions will focus on safety violations, hand protection, the impact of opioid use in the workplace, occupational noise exposure, lift safety, back safety and independent contractor training. Location is the Little America Hotel, 500 S. Main St., Salt Lake City. Cost is \$75. Register at [www.umaweb.org](http://www.umaweb.org).

• April 17, 7:15- 9 a.m.: **Association for Corporate Growth Utah Breakfast Meeting.** Guest speaker will be John W. Ward, chief financial officer at Harmons Grocery Stores. In addition to finance, Ward oversees real estate/property management, represents Harmons in government affairs and has been a member of Harmons board of directors since 2001. He graduated from the University of Utah in 1982 with a BS in economics and he received his MBA from Westminster College in 1988. Location is the Little America Hotel, 500 S. Main St., Salt Lake City. Free to ACG members, nonmembers pay \$30. Register at [www.acgutah.org](http://www.acgutah.org) or by calling Linda Blake at (801) 359-8613.

• April 18, 11:30 a.m.-1:30 p.m.: **Utah Technology Council Annual Members’ Meeting.** Keyvan Esfarjani, co-CEO of IM Flash Technologies, and John Spigiel, general manager of Watson Laboratories, will jointly keynote. They will address “Solving Utah’s Talent Shortage.” UTC members will elect a slate of trustees for the coming year, and board officers will be announced. Peer awards will be given in the following areas: CEO, CFO, CTO, Emerging Exec, HR Exec, Marketing Exec and Sales Exec. Awards will also be given for Legislator of the Year and Volunteer of the Year. Location is the Grand Ballroom of the Little America Hotel, 500 S. Main St., Salt Lake City. Cost is \$50 for UTC members, \$90 for nonmembers, lunch included. Register at [www.utahtech.org](http://www.utahtech.org).

• April 24, 2-4 p.m.: **“Bad Global Web User Experience:**

**How to Lose Leads and Alienate Customers,”** presented by the Utah Technology Council. Adam Wooten, director of translation services at Lingotek, will be the guest speaker. The presentation will be targeted to the needs of vice presidents, directors, managers, developers and designers in marketing, product management (for Web applications) and e-commerce. Seventy-three percent of the Internet users worldwide browse the Web in a language other than English, and many say they only buy products online in their native language. Consequently, companies seeking growth and stability from international markets are expanding their web presence into other languages. Unfortunately, not all such websites are providing a positive user experience for potential international customers. The location of the event has not yet been chosen, but it will be free for UTC members and \$30 for nonmembers. To register and for more information, visit [www.utahtech.org](http://www.utahtech.org).

• April 24, 11 a.m.-2 p.m.: **Building Owners and Managers Association (BOMA Utah) 12 Point Program to Business Continuity.** The three-hour class will cover areas such as creating a planning team/continuity of authority, communications, risks and hazards, workplace evacuation and sheltering plan, vital records and more. Location is 3 Triad Center, 345 W. North Temple, Salt Lake City. Free to BOMA members, nonmembers pay \$10, lunch and parking included. Register online at [www.BOMAUtah.org](http://www.BOMAUtah.org).

• May 8, 8 a.m.-1 p.m.: **Parsons Behle & Latimer’s 24th Annual Employment Law Seminar.** Breakout sessions will include classifying workers as independent contractors, social media in the workplace, immigration compliance, health care regulations, update on employment laws, protecting trade secrets, new legislation affecting employers, sex discrimination laws, issues with co-employment and creating a total rewards package for employees. Keynote speaker will be Spencer P. Eccles Jr., executive director of the Utah Governor’s Office of Economic Development. Location is the Little America Hotel, 500 S. Main St., Salt Lake City. Cost is \$150, lunch and handbook included. Registration deadline is April 30. Register with Jeremy Jones at (801) 536-6626 or [jjones@parsonsbehle.com](mailto:jjones@parsonsbehle.com).

• May 15-17: **Ninth Annual Utah Tourism Conference.** Location is the Utah Valley Convention Center, Provo. The conference is co-sponsored by the Utah Office of Tourism and the Utah Tourism Industry Coalition. Activities include sessions on

domestic and international marketing, research trends, public relations, social media, a legislative update and other topics. Entries and nominations are being accepted for the Utah Tourism Hall of Fame Awards and the seventh annual Utah Tourism Marketing and Advertising Contest. Details on the Hall of Fame can be found at <http://travel.utah.gov>. The awards will be presented during the conference. The Marketing

and Advertising Contest is accepting entries for the best-of-industry marketing, promotion and advertising efforts. The deadline for the contest is April 19. The entry fee is \$25 for up to four entries in the categories of print, broadcast, web and special promotions. Details are at [http://travel.utah.gov/tourism\\_conference/2012UtahTourismConference.html](http://travel.utah.gov/tourism_conference/2012UtahTourismConference.html), or by contacting Rebecca Katz at the

Utah Office of Tourism at [rkatz@utah.gov](mailto:rkatz@utah.gov). Individual conference registration is \$175. Two or more representatives from the same company can register for \$150 per person. Student registration is \$50. Details and registration are at [www.utahtourism.org](http://www.utahtourism.org), by calling UTIC at (801) 505-5266 or by contacting the Utah Office of Tourism at [www.travel.utah.gov](http://www.travel.utah.gov) or (801) 538-1900.

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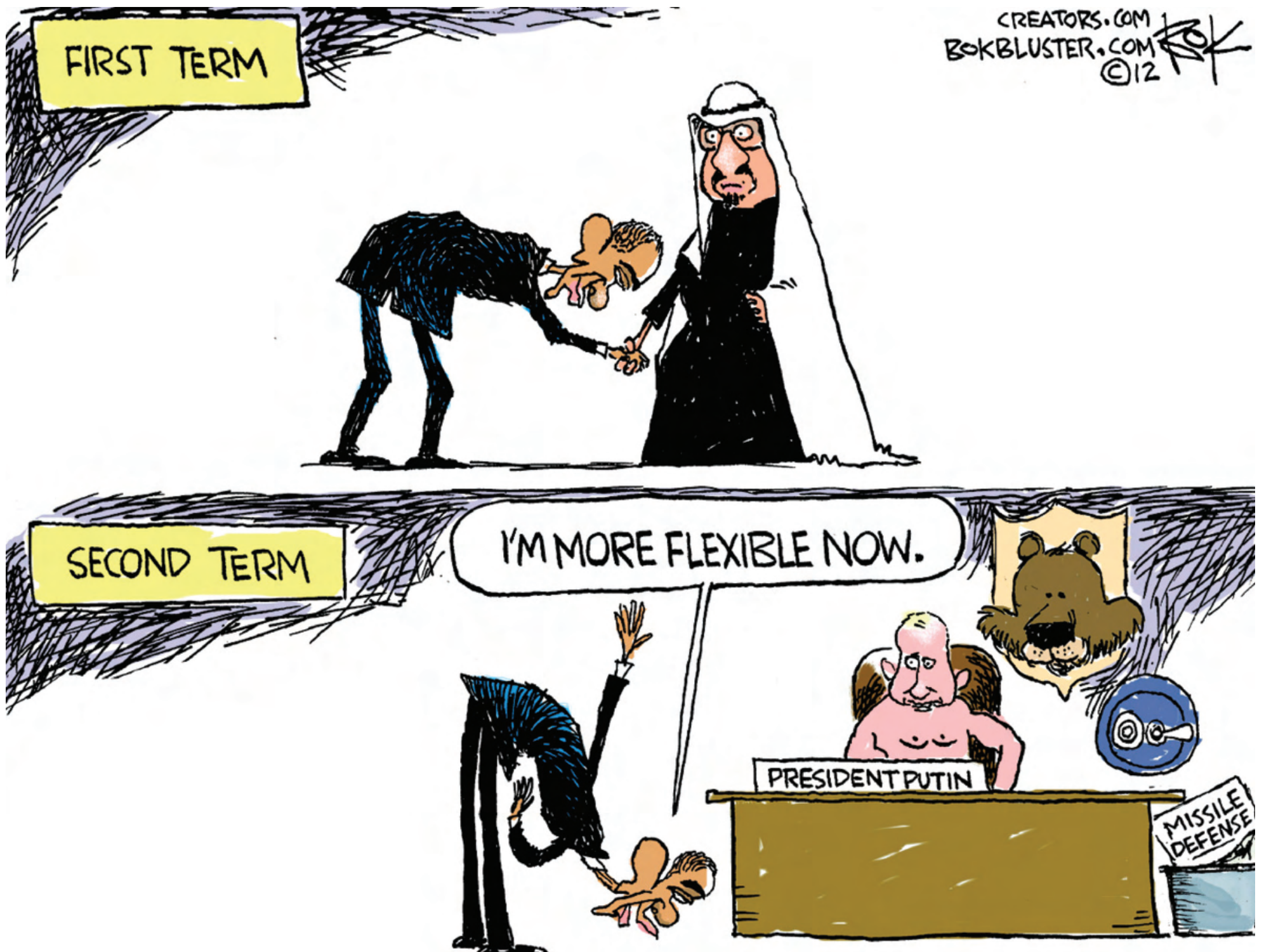
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## If Obamacare goes, will America 'let him die'?

Despite significant negative signals, the final outcome of the recent week's arguments over the Affordable Care Act will remain unknown until the Supreme Court issues a ruling in June. What is painfully obvious today, however, should have been clear enough long before any of the lawyers opened their mouths. The five Republican justices represent an ideological bloc as adamantly hostile to universal health care — no matter the cost in lost lives or squandered trillions — as in 1965, when Medicare passed.

If the high court voids the law's insurance mandate (once promoted by the same politicians and policymakers who now scorn it), we know how tea party Republicans would cope with the financial problem posed by ill and injured people who show up

at hospitals without coverage. They told us last fall during the presidential debate in Tampa, Fla., when they cheered for, "Let him die!"

Neither the Republican justices nor the lawyers challenging the law were nearly so crude in court. Indeed, Michael Carvin, the eminent attorney representing the National Federation of Independent Business, specifically rejected the notion that overturning health reform could result in denying care to the uninsured, during a crucial exchange with Justice Sonia Sotomayor.

"What percentage of the American people who took their son or daughter to an emergency room and that child was turned away because the parent didn't have insurance?" asked Sotomayor,

"... do you think there's a large percentage of the American population that would stand for the death of that child — [who] had an allergic reaction and a simple shot would have saved the child?"

In his response, Carvin scolded, "One of the more pernicious, misleading impressions that the government has made is that we are somehow advocating that people be — could get thrown out of emergency rooms, or that this alternative that they've hypothesized is going to be enforced by throwing people out of emergency rooms."

But the alternative proposed by him and Paul Clements, the attorney for the states challenging the law, was astonishingly absurd (much like their repeated claim that the health "market" is like the market for any other commodity and should be treated as such). The problem of the uninsured receiv-

ing uncompensated care paid for by everyone else could be eliminated, they argued, by requiring them to buy insurance when they need it — that is, when they show up at the hospital.

How many needless, cruel deaths such an alternative might cause is something we may yet learn if the court majority accepts the plaintiffs' callous position. Serious illness or injury doesn't magically make insurance affordable to families that could not afford it before — and only someone prepared to let people suffer would pretend that it does.

If the Affordable Care Act is voided, and Americans must start over again on a project completed decades ago in all the other advanced industrial nations, then perhaps we should look forward in the direction indicated by Carvin himself, a leading member of the right-wing Federalist Society.

"I want to understand the choices you're saying Congress has [under the Constitution]," inquired Sotomayor. "Congress can tax everybody and set up a public health system."

"Yes," replied Carvin. "I would accept that." In fact, he probably wouldn't — and certainly the Republicans wouldn't without losing an enormous struggle first — but at least now their chosen advocate is on the record suggesting that "Medicare for All" would pass constitutional standards. And considering how popular Medicare remains, even among many elderly voters who identify with the tea party, that might be the right place to begin again.

Joe Conason is the editor in chief of NationalMemo.com.

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HUFF...HUFF...  
I HAD TO STAND  
MY GROUND FOR  
HALF A MILE  
BEFORE I CAUGHT  
UP TO HIM.



## The invincible dogma

A long-standing legal charade was played out again recently, when Federal Express paid \$3 million to settle an employment discrimination case brought by the U.S. Department of Labor.

Federal Express was accused of both racial discrimination and sex discrimination. FedEx denied it.

Why then did they pay the \$3 million? Because it can cost a lot more than \$3 million to fight a discrimination case. Years ago, the

Sears department store chain spent \$20 million fighting a sex discrimination charge that took 15 years to make its way through the legal labyrinth. In the end, Sears won — if spending \$20 million and getting nothing in return can be called winning.

Federal Express was apparently not prepared to spend that kind of money and that kind of time fighting a discrimination case. The net result is that the government

and much of the media can now claim that race, sex and other discrimination are rampant, considering how many anti-discrimination cases have been “won.”

At the heart of these legal charades is the prevailing dogma that statistical disparities in employment — or mortgage lending, or anything else — show discrimination. In both the Federal Express case and the earlier Sears case, statistical differences between the mix of the workforce and the population mix were the key evidence presented to show discrimination.

In the Sears case, there was not even one woman who worked in any of the company’s 900 stores who claimed to have been discriminated against. It was all a matter of statistics — and of the arbitrary dogma that statistical disparities show discrimination.

Once statistical disparities

have been demonstrated, the burden of proof shifts to the employer to prove his innocence, contrary to centuries of legal tradition that the burden of proof is on the accuser.

No burden of proof whatever is put on those who argue as if there would be a random distribution of racial and other groups in the absence of discrimination.

Happenstances may be random but performances seldom are. Most people are right-handed but, among major league hitters with lifetime batting averages of .330 and up, there have been 15 left-handed batters and only five right-handed batters since the beginning of the 20th century. All the best-selling beers in the United States were created by people of German ancestry. Anyone who follows professional basketball knows that most of the leading stars are black.

Some years ago, a study of National Merit Scholarship finalists found that more than half were first-born children, even in five-

child families. Jews are less than one percent of the world’s population but they won 14 percent of the Nobel Prizes in literature and the sciences during the first half of the 20th century, and 29 percent during the second half.

It would be no problem at all to fill this whole column — or this entire page — with examples from around the world of gross statistical disparities in outcomes, in situations where discrimination was not involved. But those who take the opposite view — that numbers show discrimination — do not have to produce one speck of evidence to back up that sweeping conclusion.

Human beings are not random events. Individuals and groups have different histories, cultures, skills and attitudes. Why would anyone expect them to be distributed anywhere in a pattern based on statistical theories of random events? Much less make the absence of such a pattern become a basis for multimillion dollar law-

suits?

However little evidence or logic there may be behind the belief that an absence of random distribution shows discrimination, there are nevertheless strong incentives for some people to cling to that belief anyway. Those who lag behind — whether educationally, economically or otherwise — have every incentive to think of themselves as victims of those who are more successful.

Those who want their votes have every incentive to go along, or even to actively promote that idea. So do those who want to see issues as moral melodramas, starring themselves on the side of the angels against the forces of evil. The net result is an invincible dogma — and a polarized country.

Thomas Sowell is a senior fellow at the Hoover Institution, Stanford University, Stanford, CA 94305.

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