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OFFICIAL
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OF THE ALFN
VOL. 12 ISSUE 1

LEADERS *by* LAW

DISCOVER HOW TIMELESS PRINCIPALS
ARE EMPOWERING MODERN LEADERS



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Letter from the Editors

Welcome to the Winter 2025 edition of the ALFN ANGLE. As we embark on a new year, we are excited to bring you a collection of insightful articles that reflect the dynamic landscape of the legal and financial industries.

In this issue, we explore the timeless principles that empower modern leaders. Our feature article delves into the journey of leadership and the profound impact of genuine care and integrity in fostering loyalty and trust within an organization. Another article offers a holistic approach to leadership by blending emotional intelligence, stoic philosophy, and situational leadership to inspire and guide teams effectively.

We provide a forward-looking perspective on the mortgage servicing industry in 2025, highlighting potential trends and changes that may shape the industry in the coming year. Additionally, we emphasize the importance of transparency, data protection, and risk management for servicers and law firms.

We also bring you important updates on legislative changes and their implications. One article discusses the transformative impact of Illinois SB2919 on foreclosure auctions, ensuring fairness and transparency in the process. Another article provides valuable insights for navigating the updated appellate landscape in Nevada.

Furthermore, we address the critical compliance requirements for default letters, underscoring the importance of adhering to regulatory standards to avoid legal pitfalls.

As always, we are committed to providing you with the latest industry insights and practical guidance to help you navigate the complexities of the default mortgage servicing industry. We hope you find this issue informative and thought-provoking.

Thank you for your continued support and engagement. We look forward to bringing you more valuable content in the year ahead.



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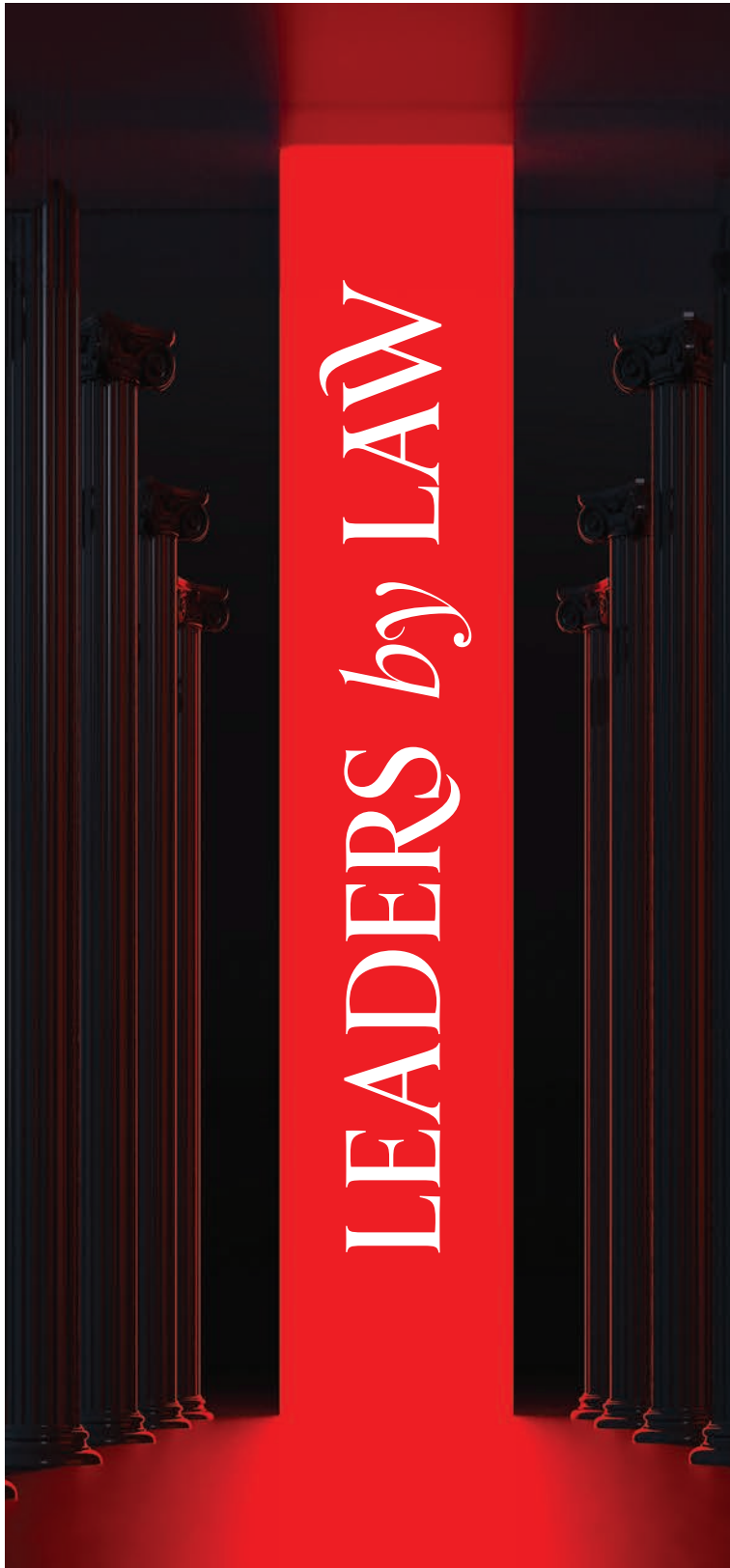


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EQUITY & AWARENESS "IDEA" SUMMIT

APRIL 23-24, 2025

OMNI PGA FRISCO RESORT,
FRISCO, TX

ANSWERS 2025

ALFN 23RD ANNUAL CONFERENCE

JULY 20-23, 2025

EVERLINE RESORT & SPA,
LAKE TAHOE (OLYMPIC VALLEY), CA

INTERSECT 2025

ALFN 14TH ANNUAL FORECLOSURE
& BANKRUPTCY CONFERENCE

NOVEMBER 19, 2025

THE STATLER,
DALLAS, TX

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Check the complete industry calendar for ALFN and other events online at alfn.org for even more details and registration info.



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PRACTICE BUILDING SERIES

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HOT TOPIC LEGAL UPDATES

Industry hot topics and litigation updates.



STATE SPOTLIGHT

Focusing on those state specific issues.



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to speak at ALFN events, and we are looking for the best educators and presenters out there to get involved. To be considered, everyone in your company that wants to speak on a panel must complete a speaker form.



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THE
LEGACY
OF
A LEADER



BY STEPHANIE PFLUGNER
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IN 2009, at the height of the foreclosure boom, I started my career at LOGS Legal Group—then known as Shapiro & Fishman—fresh out of college with a degree in Public Communications. At the time, the job market was bleak, and I had no intrinsic desire to work in the legal field. But with limited options, I applied for anything I could find. When the opportunity came through for an entry-level legal assistant role, I took it, despite my reservations.

Little did I know that this decision would be the beginning of a journey that would shape not only my professional future but my understanding of leadership.


Despite my initial uncertainty, I quickly realized that my work ethic set me apart. I kept my head down and absorbed everything I could along the way. The company was growing rapidly, and within a year, I had moved through various departments, becoming one of the top performers. During this period, I found out I was pregnant with my first son, but that didn't slow me down. I remained determined to learn, grow, and rise through the ranks.

It was at this point that David S. Kreisman, one of the founders of LOGS Legal Group, began noticing my efforts. He started sharing not

just advice but stories of leadership, of hard work, and most importantly, stories of his genuine care for his employees.

Over the years, David—often called "Dave"—shared not just his knowledge of business but his life experiences. These stories shaped him into the man he had become—a successful entrepreneur and leader. But perhaps more importantly, Dave showed me that he believed in me. With every conversation, I felt a growing sense that he wanted me to succeed. He didn't just care about my performance at work; he cared about me as a person.

There were, of course, tough conversations—moments where I was challenged to meet higher standards, to do better, to push further. Yet, at the heart of those conver-



I learned that when leaders truly believe in their people, it creates a ripple effect across the organization. People who feel valued and supported are more likely to extend that same care to others, creating a culture of trust, collaboration, and mutual respect.

sations, I always knew that Dave wouldn't have taken the time to coach me if he didn't believe in my capability and my potential. Those moments of tough love weren't about critique—they were about belief.

From 2009 to 2017, I grew in my career, learning leadership skills, and embracing the challenges that came my way. While I evolved into a data-driven, solution-oriented operator, I came to realize that my deep job satisfaction wasn't solely tied to the operational success I had created. What mattered most was that for eight years was that I had the privilege of working for a man of integrity, someone who invested in me personally. It wasn't just about corporate objectives or profits; it was about mutual trust and genuine connection. David made me feel

like I was part of something much bigger than myself, and that gave me a deep sense of loyalty—not to the company, but to him as a leader.

In 2018, I uprooted my family to move to Oklahoma City to serve as the Office/Operations Manager. Even then, David made the effort to visit and show the team that he believed in me. His visit wasn't just a gesture; it was a statement that resonated deeply with the team and helped my new team believe they could trust me, as David did. When leaders invest in their people, that belief becomes a foundation for trust and respect.

By 2021, I had moved again, this time to Charlotte, NC, where I now serve as the Senior Director of Operations for the Non-Judicial Foreclosure division. As I reflect on my



journey, one thing is clear: David didn't just build a company—he built relationships.

David's leadership wasn't about titles or achievements. His authenticity, his deep care for those around him, inspired loyalty not just to a company, but to him as a person. What I learned from him transcended the business world—it was a lesson about how to lead with heart.

I learned that when leaders truly believe in their people, it creates a ripple effect across the organization. People who feel valued and supported are more likely to extend that same care to others, creating a culture of trust, collaboration, and mutual respect. In return, those people that feel valued and supported will

give you all they have to support you and work tirelessly to meet your metrics and standard of success.

True leadership is about being human. It's about being willing to build personal relationships, to invest in people's growth, and to show authentic care. That's the kind of leadership that creates loyalty—not a loyalty tied to paychecks or corporate perks, but a loyalty that is built on genuine care and respect.

David Kreisman showed me that when a leader believes in their team—not just their work, but who they are as individuals—it creates a loyalty that goes far beyond the paycheck. This kind of leadership doesn't just drive business success; it transforms lives. **a**

ANCIENT WISDOM, MODERN LEADERSHIP

A PRACTICAL GUIDE



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LEADERSHIP is more than just a title or a position, it is a mindset, a skillset, and a commitment to personal and professional growth. By blending ancient philosophy with modern leadership strategies, leaders can develop a holistic approach that enables them to inspire, motivate, and guide their teams with empathy, wisdom, and adaptability.

This article explores three dimensions of effective leadership:

- **EMOTIONAL INTELLIGENCE:** Understanding and managing one's own emotions, as well as empathizing with others, is crucial for building strong relationships and fostering a positive work environment.
- **STOIC PHILOSOPHY:** By embracing Stoic virtues such as wisdom, courage, justice, and temperance, leaders can develop resilience, make sound decisions, and navigate challenges with a calm and rational mindset.
- **SITUATIONAL LEADERSHIP:** Adapting leadership style to the specific needs of individuals and situations is essential for maximizing team performance and fostering growth.

By combining these three dimensions, leaders can become more effective, empathetic, and resilient. This holistic approach empowers leaders to navigate complex challenges, make sound decisions, and inspire their teams to achieve extraordinary results.



Traditional leadership models obsessed over IQ, believing raw intellectual horsepower determined success. Modern research tells a different story. Unlike fixed intelligence, emotional intelligence is a learnable skill that can be systematically developed.



EMOTIONAL INTELLIGENCE: THE FOUNDATION

Traditional leadership models obsessed over IQ, believing raw intellectual horsepower determined success. Modern research tells a different story. Unlike fixed intelligence, emotional intelligence is a learnable skill that can be systematically developed. Emotional intelligence (EI), as popularized by Daniel Goleman¹, provides the foundation for effective leadership by enabling leaders to understand and manage their own emotions (self-awareness & self-regulation), as well as recognizing the emotions of others by enhancing their social skills.

- **SELF-AWARENESS:** Recognizing and understanding one's own emotions is the first step towards effective leadership. A self-aware leader can identify their strengths and weaknesses and adapt their behavior to different situations. For example, a leader might recognize that they tend to become impatient under pressure. By understanding this tendency, they can take steps to
- **SELF-REGULATION:** The ability to manage one's own emotions is crucial for effective leadership. By practicing self-regulation, leaders can avoid impulsive decisions and maintain a calm and composed demeanor, even in stressful situations. For instance, a leader might consciously change their perspective on a stressful situation to make it seem less threatening seeing it in a more positive way.
- **SOCIAL SKILLS:** Strong social skills enable leaders to build rapport, communicate effectively, and resolve conflicts. By developing empathy and active listening skills, leaders can create a positive and supportive work environment. A leader with strong social skills can effectively motivate and inspire their team members, leading to increased productivity and job satisfaction.

¹ Goleman, D. (1995). *Emotional Intelligence: Why It Can Matter More Than IQ*. Bantam Books.



STOIC WISDOM FOR MODERN LEADERS

Throughout history, leaders like Roman Emperor Marcus Aurelius and modern figures such as Nelson Mandela and Martin Luther King Jr. have drawn inspiration from Stoic philosophy. This ancient philosophy offers a timeless framework for effective leadership in today's complex business world. By embracing understanding and applying the Stoic virtues of Wisdom, Courage, Justice and Temperance, leaders may be better prepared to navigate challenges, make sound decisions, and inspire their teams².

- **WISDOM:** Stoic wisdom empowers leaders to make informed decisions, even in uncertainty. By cultivating critical thinking and seeking diverse perspectives, leaders can weigh options, consider long-term impacts, anticipate potential challenges, and develop innovative solutions/make choices aligned with their values. For instance, a Stoic leader might use a SWOT analysis to assess a situation.
- **COURAGE:** Courage is essential for leaders who must often take risks and make tough decisions. By developing resilience, growth mindset or by leveraging design thinking and experimentation, leaders will better adapt to changing circumstance. A courageous leader might embrace challenging projects or make unpopular decisions for the long-term benefit of the organization.
- **JUSTICE:** Stoic philosophy emphasizes treating others with fairness and equity. By fostering a culture of fairness and respect, leaders can build strong trusting relationships. A just leader might implement policies promoting diversity, equity, and inclusion, and create a safe and inclusive work environment.
- **TEMPERANCE:** Temperance is the virtue of self-control and moderation. By practicing moderation and avoiding extremes, leaders can make balanced decisions, even in emotional situations. A temperate leader might prioritize well-being by setting boundaries, taking breaks, and practicing mindfulness.

² Ryan Holiday. (2018). *The Obstacle Is the Way: The Timeless Art of Turning Trials into Triumph*



SITUATIONAL LEADERSHIP: THE PRACTICAL APPLICATION

According to Paul Hersey and Ken Blanchard's Situational Leadership theory, effective leaders must be adaptable³. There's no one-size-fits-all approach to leadership. Instead, leaders should tailor their style to the specific needs of their team members and the challenges they face.

The four strategies or main leadership styles which enable a leader to meet the team members needs are the core premise of situational leadership:

- **DIRECTING:** This style is characterized by high levels of task-oriented behavior and low levels of relationship-oriented behavior. It is most appropriate when team members are inexperienced or lack the skills and knowledge to complete a task independently.
- **COACHING:** This style involves high levels of both task-oriented and relationship-oriented behavior. It is most effective when team members have some experience but need guidance and support to develop their skills and abilities.
- **SUPPORTING:** This style is characterized by high levels of relationship-oriented behavior and low levels of task-oriented behavior. It is most appropriate when team members are experienced and skilled but may lack motivation or confidence.
- **DELEGATING:** This style involves low levels of both task-oriented and relationship-oriented behavior. It is most appropriate when team members are highly skilled and motivated and can work independently with minimal supervision.

³ Hersey, P., & Blanchard, K. H. (2013). *Management of Organizational Behavior: Leading Human Resources*.

A PRACTICAL GUIDE TO TRANSFORMING YOUR LEADERSHIP

By blending Emotional Intelligence, Stoic virtues, and Situational Leadership, leaders can navigate complex challenges with adaptability, empathy, and wisdom. This Integrated Leadership approach is intended to empower individuals to become more virtuous leaders. By understanding your own emotions and the needs of your team, and by adjusting your leadership style to create a positive and productive work environment, you can drive both individual and organizational success.

The following are actionable steps to cultivate a holistic approach to leadership. By integrating Emotional Intelligence, Stoic philosophy, and Situational Leadership, you will become a more effective and inspiring leader.

SELF-AWARENESS AND EMOTIONAL INTELLIGENCE

- **Know Yourself:** Regularly reflect on your emotions and behaviors.
- **Manage Your Emotions:** Practice mindfulness and stress management techniques.
- **Empathize with Others:** Actively listen and show genuine care.

EMBRACE STOIC WISDOM

- **Seek Knowledge:** Continuously learn and grow.
- **Cultivate Courage:** Face challenges head-on.
- **Practice Fairness:** Treat everyone with respect.
- **Maintain Balance:** Prioritize well-being.

ADAPT YOUR LEADERSHIP STYLE

- **Assess the Situation:** Evaluate your team's needs

and the task at hand.

- **Tailor Your Approach:** Use a mix of directing, coaching, supporting, and delegating.

CONTINUOUS LEARNING AND GROWTH

- **Seek Feedback:** Listen to others' perspectives.
- **Reflect on Your Actions:** Learn from your experiences.
- **Stay Updated:** Attend workshops and conferences.
- **Find a Mentor:** Seek guidance from experienced leaders.
- **Practice Mindfulness:** Enhance your self-awareness and focus.

FINAL INSIGHT: LEADERSHIP AS A HUMAN JOURNEY

Leadership is not about perfection. It is about connection, growth, and continuous learning – it is a daily commitment you make. Every great personal transformation begins with a single decision, a moment of courage where you choose to show up differently. This is not about becoming a perfect leader, but about becoming a more human leader.

Your most powerful leadership tool is your ability to see, understand, and inspire the humans around you. What specific actions can you take to become a more effective and inspiring leader? Your leadership transformation starts now. One conversation, one moment of genuine connection at a time.

Note: While this approach offers a powerful framework for leadership development, it is important to recognize that it requires time, effort, and self-reflection. ■

THE MORTGAGE SERVICING INDUSTRY IN 2025

POSSIBLE TRENDS
AND CHANGES





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THE MORTGAGE SERVICING INDUSTRY can expect changes in the upcoming new year and possible trends that may impact servicers' day-to-day operations. Although this author lacks a crystal ball to accurately predict what next year may bring to our industry, one thing is likely for certain; the industry will not be static in 2025. Changes, some that may quickly take the industry by surprise, could be on the horizon. Although only time will tell, the following five trends and changes are worth watching and tracking in the new year:

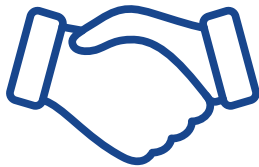
FEDERAL ADMINISTRATION CHANGE

The change in federal administration in January 2025 may alter the federal government's regulatory landscape. The CFPB's post-pandemic servicing rule concerning streamlining loss mitigation processes and assisting borrowers avoid foreclosure will challenge servicers and their processes. Whether the new administration will try to and/or succeed in turning back the clock on such new processes remains to be seen. If one thing can be expected on this point, is that servicers should expect the unexpected. Servicers may have to pivot quickly in the event the CFPB and its servicing rules undergo changes.



INCREASED USE OF TECHNOLOGY, INCLUDING GENERATIVE AI

Artificial intelligence (AI) may enable servicers to predict the behavior of borrowers, more accurately assess risks, and improve servicer's operations. AI can, and in many cases already is, further improving customer and client experience. Servicers may incorporate AI into their customer-facing technology, including voicebots and online chatbots, after performing beta testing. Additionally, AI may reduce the need for manual interventions. Such technological innovations should certainly reduce the cost of servicing. However, servicers should expect that AI's adoption may bring increased regulatory oversight. AI is a potential "win, win"; for the servicer and the borrower.



THE GRACEFUL EXIT

Servicers should expect to continue and likely increase helping certain borrowers with a graceful exit in the event such borrowers exhaust loss mitigation options. The industry will likely continue its shift away from many of the protections enacted during the COVID pandemic. Servicers may have or already be training their teams to discuss home sale options with borrowers in the event a borrower is no longer in a position to afford their home and no other loss mitigation options are available. Being prepared to provide borrowers support in such instances will be an important goal for servicers in 2025.



STRONG CUSTOMER SERVICE AND BORROWER SUPPORT

Continuing to focus on customer and borrower support in the coming year will likely be a critical goal and trend, including educating and encouraging homeowners on how best to research and purchase homeowners' insurance to assist them in keeping homeownership costs affordable.

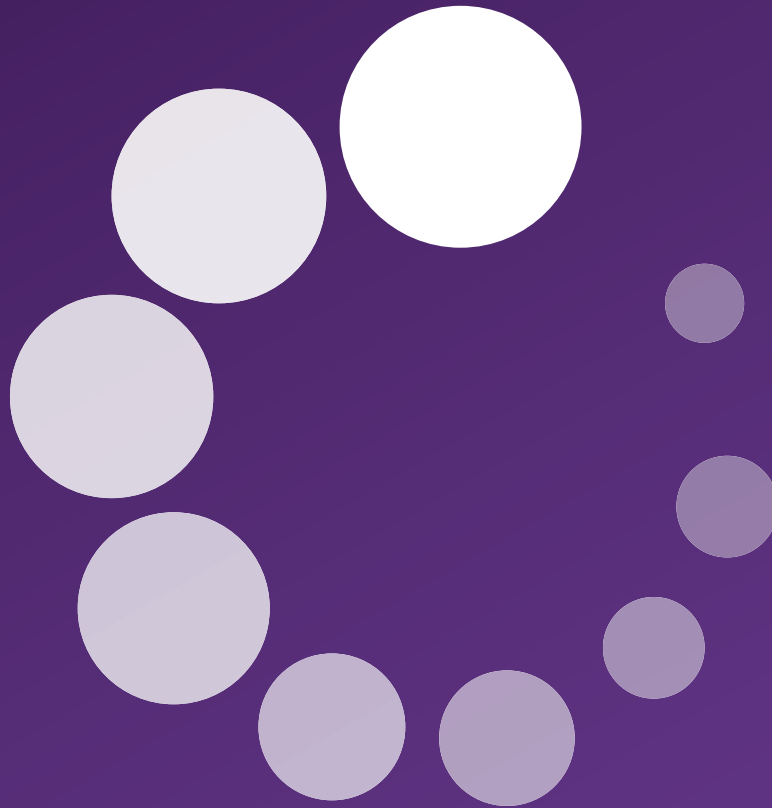


TRACKING FHA DELINQUENCY TRENDS AND OTHER RELEVANT METRICS

Credit card balances are high. Changes in FHA delinquency rates may be a metric that servicers track in 2025 to provide servicers additional data to help gauge delinquency rates as a whole. Freddie Mac recently reported that as measured by the Employment Cost Index, compensation costs for civilian workers increased 3.9% in Q3 2024. This is a decrease from the second quarters' increase of 4.1% and is the lowest since late 2021. This decrease further shows wage growth moderating amid a softening labor market. Freddie Mac expects a moderation in economic growth in 2025 due to a further cooling of the labor market and a potential decrease in consumer spending. For 2025, Freddie Mac expects anticipated declines in interest rates to boost refinance origination volumes. An expected increase in purchase originations due to a modest growth in home sales and home prices, says Freddie Mac, should modestly improve the mortgage market in 2025. ■

OCC UPDATES UDAAP GUIDANCE

WHAT SERVICERS & LAW FIRMS NEED TO KNOW



UPDATING



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ON DECEMBER 3, 2024,

the Office of the Comptroller of the Currency (“OCC”) updated its “Unfair or Deceptive Acts or Practices and Unfair, Deceptive, or Abusive Acts or Practices,” (“UDAAP”)¹ booklet, providing enhanced guidance for the banks it regulates and their downstream vendors.² This revision, version 1.1, introduces key updates addressing transparency in borrower communications, data protection, and risk indicators. It also clarifies its definitions and incorporates recent guidance from other regulators.

The booklet emphasizes incorporating controls to manage third parties that support the bank’s workout and foreclosure processes. For mortgage servicers and law firms in this space, the impact will be felt in heightened oversight and expectations of enhanced risk management. The guidance emphasizes clear disclosure of payment policies, robust data security measures, and proactive monitoring of servicing and loss mitigation practices to mitigate regulatory risks. The updated booklet underscores the importance of maintaining fairness and compliance in all borrower interactions and offers practical tools to identify and address potential UDAAP concerns. Servicers and law firms should review their related policies and pro-

cedures to ensure they mirror what the OCC’s regulated entity expects to see.

The goal of this article is not only to provide an update on the nuts and bolts of the specific changes, but to suggest a trend that is likely to be felt throughout the landscape. Beyond the specific areas included in this update, the scope of the OCC’s supervisory and enforcement authority includes installment lending, sections 1031 and 1036 of Dodd-Frank, other real estate owned assets, and model risk management (models for underwriting, loss mitigation, write-offs, etc.). It follows that OCC-regulated banks are likely to update their compliance management plans more broadly in ways its downstream vendors should anticipate and prepare for.

The booklet emphasizes incorporating controls to manage third parties that support the bank’s workout and foreclosure processes. For mortgage servicers and law firms in this space, the impact will be felt in heightened oversight and expectations of enhanced risk management.

¹ While there are differences between Unfair or Deceptive Acts or Practices (UDAP) and Unfair, Deceptive, or Abusive Acts or Practices (UDAAP), for clarity, this article uses “UDAAP” as an inclusive acronym encompassing both. The Federal Trade Commission Act of 1914 first addressed “unfair or deceptive acts or practices” (“UDAP”) in commerce. Over time, this mandate expanded to include financial institutions. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act further strengthened these protections by adding the term “abusive” and introducing UDAAP to the Consumer Financial Protection Bureau’s (“CFPB”) regulatory framework.

² Office of the Comptroller of the Currency, *Unfair or Deceptive Acts or Practices and Unfair, Deceptive, or Abusive Acts or Practices* (Dec. 2024), <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/unfair-deceptive-act/pub-ch-udap-udaap.pdf>.



Servicers should consult in-house or outside counsel to review loss mitigation letters, offers, scripts, and contracts, to ensure that disclosures comply with state and federal requirements with regard to font size, clarity, and consistency.

KEY UPDATES IN VERSION 1.1

COMMUNICATION AND TRANSPARENCY:

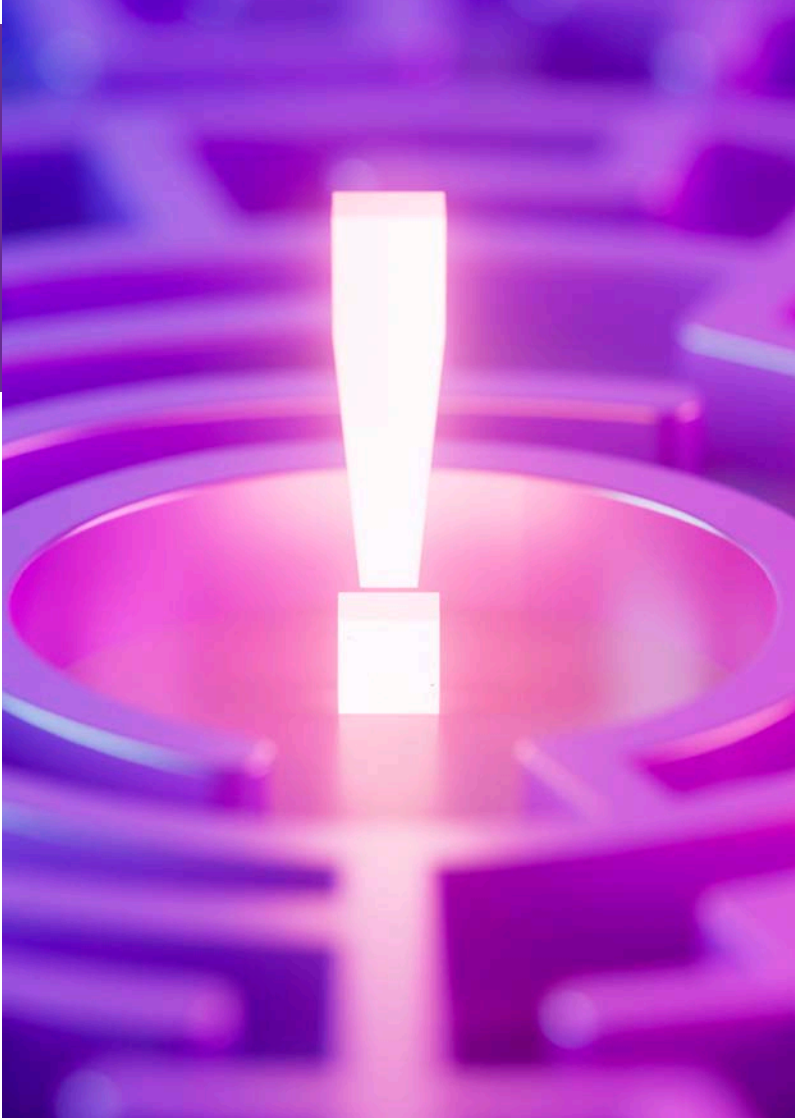
The updated booklet explicitly addresses overdraft services related to depository institutions. For mortgage servicers and their legal partners, though, the overarching principles of transparency and fairness are indications of the collective expectation of consumer financial regulators with regard to communication of fees and setting consumer expectations. Clear and conspicuous disclosure of payment policies, fee structures, and the consequences of late payments are critical to ensuring borrowers understand their obligations

and options. A specific area of concern is communication of terms related to refinancing or modification of subsidized mortgages that result in the loss of beneficial loan terms.

Servicers should consult in-house or outside counsel to review loss mitigation letters, offers, scripts, and contracts, to ensure that disclosures comply with state and federal requirements with regard to font size, clarity, and consistency. Call center employee procedures should include detailed contemporaneous notes as to what was explained and how the consumer responded to rebut any potential claims of inconsistency or misinformation. Correspondence to borrowers should be coordinated across departments to ensure that foreclosure, loss mitigation, and loss draft departments make consistent statements and representations. This may mean the addition of new letter templates for when multiple departments are active with the loan or multiple internal statuses apply.

DATA PROTECTION AND PRIVACY:

The revised booklet highlights the growing importance of robust data protection measures, drawing from CFPB guidance. For mortgage servicers handling sensitive borrower information, this means implementing strong security protocols, including encryption, restricted access, and breach response plans. Given the increasing regulatory focus on data privacy, failure to adequately protect consumer information translates to heightened regulatory risk.



amination procedure as having “heightened UDAP or UDAAP risks”, requiring enhanced scrutiny as to the terms and conditions provided to borrowers. This includes evaluations of at-risk extension assessment models, short sales, short payoffs, and payment plans.

Another specific area of concern frequently seen in the mortgage space is the procedure for identifying the need for and applying hazard insurance. The OCC describes an example where it found a UDAAP violation where a bank and its vendor caused improper placement of insurance for borrowers who had adequate insurance.³

Data security is not just computer security. It encompasses physical plant, document security, and confidentiality agreements with vendors, visitors, and employees. It is important to review these procedures holistically to ensure that they are consistent and reflective of the requirements auditors are looking for.

ENHANCED RISK INDICATORS:

The revised booklet introduces updated risk indicators in the examination procedures to help identify potential UDAAP issues. These indicators can serve as a valuable diagnostic tool for evaluating servicing practices, including payment processing, customer communication, and loss mitigation efforts. Monitoring these areas can help mitigate risks of regulatory scrutiny.

Reverse Mortgages are listed in throughout the ex-

SUGGESTIONS FOR ACTION – DEFINE, IDENTIFY, COORDINATE, REVISE, AND REVIEW:

Practices considered UDAAP are broad and typically managed by multiple departments, often with separate leadership drafting separate versions in a vacuum—each department unaware of the interdependent nature of the policy they must craft. Similarly, when multiple agencies and regulators use varying definitions for similar behavior, it can create a circular reference wheel, which is confusing at best. With UDAAP, conceptually, it is challenging to create an objective standard that applies broadly enough to be effective. Fortunately, the OCC clarifies this in Appendix C, setting forth the legal standard for assessing whether a practice is unfair or deceptive.

Senior Leadership should then review the ex-

³ *Id.* at 4. This example is the application of collateral protection insurance and car insurance but it follows that homeowner’s insurance procedures will meet a similar, if not higher, level of scrutiny.



For mortgage servicers and their legal partners, the revisions provide a clearer framework for navigating heightened regulatory expectations, particularly in the areas of borrower communication, data protection, and risk management.

amination procedures contained in the OCC Booklet, and the Red Flags in Appendix A, note which departments they think are impacted and compare notes. When a complete list of impacted departments is determined, identify the key leaders who will coordinate the policy review. Ask those leaders to gather in the same room (or Teams gallery) conduct an active review, and revise the document together, sharing the specific impact on their lines of business. Upon completion of the revised draft, conduct a 360 degree review, with line level employees reviewing as well as senior management. That not only creates exposure and buy-in, but it can identify issues of which management would not have otherwise been aware.

CONCLUSION:

For mortgage servicers and their legal partners, the revisions provide a clearer framework for navigating heightened regulatory expectations, particularly in the areas of borrower communica-

tion, data protection, and risk management. By incorporating these updates into their policies and procedures, servicers can better align with the OCC's standards, mitigate potential regulatory risks, and enhance borrower trust.

As the regulatory landscape continues to evolve, we must remain vigilant, proactively monitoring compliance programs and third-party relationships to ensure adherence to these updated expectations. Consulting legal counsel, conducting comprehensive audits of operational processes, and fostering cross-departmental coordination will be crucial for managing risk and demonstrating a commitment to consumer protection.

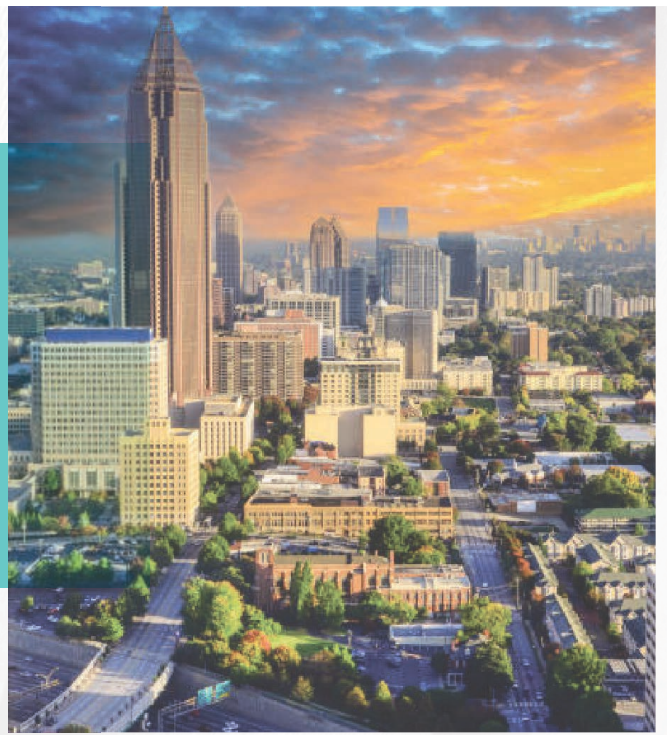
Ultimately, the OCC's updates serve as both a warning and a guidepost. The warning: non-compliance carries significant risks. The guidepost: clearer guidelines and indicators that allow servicers and their counsel to strengthen compliance frameworks and reinforce fair treatment of borrowers. **a**



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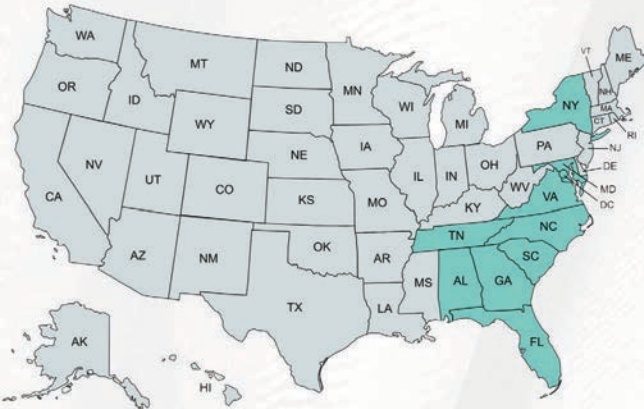
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Default Letters Must Comply With the 120-Day Rule

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ON OCTOBER 25, 2024, the federal district court in a Florida class action lawsuit¹ denied a servicer's motion to dismiss, ruling that a Notice of Default violates the federal 120-day pre-foreclosure review period² when the Notice leaves open the possibility that foreclosure could commence within 120 days of default.

THE FACTS

The servicer sent notices of default to multiple borrowers stating that the servicer “may” accelerate and foreclose if the subject loans were not brought current by a specified date—the cure date. The cure date in each letter was less than 120 days after

the date of default. A group of borrowers sued as a putative class under the federal Fair Debt Collection Practices Act (“FDCPA”) and the Florida Consumer Collection Practices Act (“FCCPA”). The servicer then moved to dismiss the case, arguing that the notices of default complied with applicable law.

¹ *Cruz v. Selene Finance LP*, United States District Court, S.D. Fla. Case No.: 23-14297-CIV 2021 WL 4578890 (S.D. Fla. Oct. 25, 2024).

² Regulation X imposes a “pre-foreclosure review period,” of 120 days from breach, during which mortgage servicers are prohibited from initiating a foreclosure proceeding. 12 C.F.R. 1024.41(f)(1). There are exceptions to the 120-day rule where foreclosure is based on a borrower's violation of the due-on-sale clause; or, if the servicer is joining the foreclosure action of a superior or subordinate lienholder. *Id.*



The court rejected the servicer’s arguments that the “threat” was “immaterial,” was protected by the servicer’s compliance with the Truth in Lending Act, and was qualified by the use of words like “if” and “may.”

THE RULING

The court effectively found the servicer’s assertion about impending acceleration and foreclosure erroneous *as a matter of law* because 12 C.F.R. § 1024.41 prohibits foreclosure less than 120 days after a breach, and misleading *as a matter of fact* because, giving the servicer the benefit of the doubt, the servicer had no intent of violating that law (or its own internal policies) by initiating foreclosure before the 120 days expired.

The court rejected the servicer’s arguments that the “threat” was “immaterial,” was protected by the servicer’s compliance with the Truth in Lending Act, and was qualified by the use of words like “if” and “may.” Invoking the “least sophisticated consumer” standard (an objective test whereby federal and Florida law are interpreted to protect the “gullible as well as the shrewd”), the federal court found that the language in the default notices “plausibly indicate[d]” that foreclosure or acceleration [would] be the immediate consequence of failing to pay the cure amount by the specified date.”³

The borrowers “have stated a plausible claim that the Default Notice contains ‘false,’ ‘misleading,’ ‘deceptive,’ and ‘threatening’ statements under the FDCPA,” the court wrote.

The court also found plausible the borrowers’ contention that the default notices “represent[ed] willful conduct related to debt col-

lection, which [the servicer] could reasonably expect would ‘abuse or harass’ homeowners” in violation of the FCCPA, Florida’s state law counterpart to the FDCPA.

While the ruling only denied the servicer’s motion to dismiss⁴ and therefore leaves room for the servicer to continue to defend, the grounds for the ruling are based on the undisputed content of the notices. Since the content of the notices – and the law against which they are being scrutinized – will not change, this ruling is likely to carry through the case and dictate an outcome in favor of the borrowers.

EXPANSIVE REACH

The FDCPA and its implementing regulations are sweeping, and virtually all doubts are resolved in favor of the borrower, as Congress and the CFPB plainly intended.

Recognizing the expansive reach of the FDCPA, the Florida court concluded that, while a “misleading” statement is not always “unfair or unconscionable,” the law “[does] not appear to prohibit companion ... claims” for “misleading” statements and for “unfair or unconscionable” statements at the same time under different sections of federal law⁵ ... so long as there are allegations to support each claim. In other words, while a “misleading” statement is not necessarily an “unfair or unconscionable” statement, it can be both, and it can give rise to separate counts in a single action.

³ Cruz, 2024 WL4578890, at *4.

⁴ The order denied the motion to dismiss five counts and granted the motion to dismiss the sixth count.

⁵ Cruz, 2024 WL4578890, at *5 (italics supplied), referring to 15 U.S.C.A. § 1692e and § 1692f, respectively.



TAKEAWAY

Servicers must ensure their notices of default do not state cure dates less than 120 days after the date of default. Notices of default that fail to comply may confuse borrowers, risk class action lawsuits, and invite CFPB enforcement actions.

IMPLICATIONS FOR NOTICES OF PARTIAL PAYMENT

This case has implications beyond notices of default. The same problem—suggesting that foreclosure could be initiated within the 120-day pre-foreclosure review period—arises when sending notices of partial payment following a notice of default.

When a borrower receives a notice of default and sends part of the funds required to reinstate—a partial payment—the servicer is well-advised to send a notice to the borrower acknowledging the payment and advising that it was insufficient to cure the default. Such letters often, and for good reason, state that an additional payment will be necessary to cure the default and prevent foreclosure. Must such a notice of partial payment state the cure date again?

The author is not aware of any such requirement applicable to partial payment notices, but it stands to reason that the least sophisticated consumer would be confused by a notice that says an additional payment is required without giving a due date for that payment. That borrower may believe that making the partial payment would give him or her additional time to make the additional payment, unless the notice of partial payment gives a due date.

The safest approach with notices of partial payment seems to be to state a due date for the additional payment and make that date the same as the cure date from the original notice of default.

CONCLUSION

The cure date in notices of default must be at least 120 days after the date of default. Notices of partial payment may also require a date and, if so, that date should be the same as the cure date from the original notice of default. Compliance is exacting, and the costs of non-compliance are high. **a**



The Impact of Illinois SB2919

Protecting Debtors and Elevating Auctions

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WITH SENATE BILL 2919 (SB2919), Illinois has taken a transformative step toward modernizing foreclosure auctions and ensuring that sales are fair, transparent, and accessible. Effective January 1, 2025, this landmark legislation allows foreclosure sales to occur online with procedural safeguards to enhance transparency and improve outcomes for debtors and bidders.

THE EVOLUTION OF FORECLOSURE SALES IN ILLINOIS

Traditionally, foreclosure sales in Illinois have been conducted in person, either at the courthouse or in the brick-and-mortar office of the private selling officer (PSO). While longstanding, this process has faced challenges due to lack of acces-

sibility and transparency. In-person auctions may limit participation to those physically present at specific times and locations, a barrier that reduces competition, suppresses sale prices, and disadvantages debtors by reducing potential surplus funds.

The COVID-19 pandemic further underscored the limitations of in-person foreclosure sales,



prompting temporary online auction practices under a 2020 Illinois Supreme Court order. While these emergency measures highlighted the benefits of online sales—such as broader participation and increased efficiency—they lacked a standardized framework necessary to protect the integrity of the auction. SB2919 builds on those lessons, codifying permanent procedural safeguards to ensure that online foreclosure auctions are fair, secure, and effective.

KEY PROVISIONS OF SB2919

Drawing on years of experience in the foreclosure space, interested stakeholders worked closely to craft a bill that balances the needs of debtors, lenders, and bidders. SB2919 introduces various critical changes to the foreclosure process, balancing flexibility with rigorous safeguards to ensure equity and transparency for all participants.

- 1. Flexibility in Auction Formats:** The legislation permits foreclosure sales to occur in person, online, or through a hybrid approach. This flexibility empowers sheriffs and PSOs to tailor auction methods to local needs while leveraging technology to maximize bidder participation. Hybrid and online auctions are particularly effective at broadening the bidder pool, often leading to higher sale prices. These higher prices can reduce deficiencies for debtors or generate surplus funds that benefit them directly, creating a more equitable process.
- 2. Clear Fee Cap:** Moving sales online requires the use of technology and costs of leveraging that technology. A traditional seller of real estate may agree to a wide array of fee structures associated with the sale of property ranging from a flat fee to percentage-based commissions or buyer's premiums. However, in a fore-



Remote bidding allows participants to place bids from anywhere, expanding the pool of potential buyers and fostering competition. Additionally, digital platforms offer real-time visibility into bidding activity, enhancing clarity and preventing fraudulent practices.

closure, where the sale is involuntary, debtors cannot negotiate or opt out of such fees, which can significantly erode sale proceeds. Recognizing this inequity, SB2919 explicitly caps the fee for conducting sales online at a reasonable flat amount, ensuring that hidden costs do not burden debtors.

3. Procedural Safeguards for Transparency and Security: The law introduces several procedural requirements to ensure fairness and prevent abuse in online auctions. Key safeguards include:

- **Bidder Registration and Verification:** All participants must register and verify their identity, reducing the risk of fraud and collusion.
- **Data Security Protocols:** Online auction platforms must meet stringent data security standards, ensuring the integrity of auction processes and protecting participant information.
- **Public Bidding Records:** All bids placed during an auction must be recorded and visible to the public, ensuring transparency and accountability.

These measures protect participants and enhance confidence in the foreclosure auction process, encouraging broader participation and competitive bidding.

THE ROLE OF TECHNOLOGY IN TRANSFORMING FORECLOSURE SALES

SB2919 highlights the critical role of technology in modernizing foreclosure practices. Online auctions leverage digital tools to increase accessibility, transparency, and efficiency. Remote bidding allows participants to place bids from anywhere, expanding the pool of potential buyers and fostering competition. Additionally, digital platforms offer real-time visibility into bidding activity, enhancing clarity and preventing fraudulent practices.

The success of online foreclosure auctions in other states underscores the potential of these innovations to improve outcomes. By codifying best practices for online sales, SB2919 positions Illinois as a leader in using technology to enhance foreclosure processes while safeguarding the interests of vulnerable stakeholders.

LOOKING AHEAD: A MODEL FOR NATIONWIDE ADOPTION

The enactment of SB2919 marks a pivotal moment for foreclosure sales in Illinois, but its significance extends beyond state borders. The law is a model for other jurisdictions seeking to modernize foreclosure practices through technology and equity-driven reforms.

SB2919 is a testament to what can be achieved when industry stakeholders collaborate to create meaningful change. It sets a promising precedent for the future of foreclosure sales nationwide, demonstrating that modernization and fairness can go hand in hand. **a**



Nevada Supreme Court Adopts Significant Amendments to Appellate Rules

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THE NEVADA SUPREME COURT has enacted pivotal changes to the Nevada Rules of Appellate Procedure (NRAP) governing appeals before the Nevada Supreme Court and the Nevada Court of Appeals. While minor changes to the rules occur somewhat frequently, the recent amendments were the most significant amendments since 2015, when the Nevada Court of Appeals began hearing cases.

Anticipating the need for updated rules, the Nevada Supreme Court established a Commission on the NRAP to recommend changes, comprised of civil and criminal attorneys, judges, justices, and both large- and small-firm practitioners, as well as Nevada Supreme Court staff counsel. The Commission ultimately suggested modifications to nearly every NRAP rule, sending the proposed amended rules for public comment. The Nevada Supreme Court ultimately adopted the amendments which took effect on August 15, 2024, and apply to all pending cases

and those initiated following the date of adoption.

While nearly all rules were amended in some manner, the most significant amendments for both appellate and trial counsel to be aware of are as follows:

- 1. NRAP 3A – Appealability of Orders:** This rule expands the list of orders that can be appealed. Notably, it now expressly allows appeals from contempt orders, which underscores the importance of enforcement of court orders. Ad-



ditionally, it broadens the right to appeal from special orders issued after a final judgment. This change aims to enhance access to justice by allowing parties to challenge more types of judicial decisions.

- 2. NRAP 8 – Stay Motions:** The amended rule establishes clear timelines for filing motions to stay an order pending appeal or petitions for extraordinary writ relief. Where the district court has already granted a temporary stay, the revised rule mandates that parties take swift action to seek additional relief from the Nevada Supreme Court. This change is intended to streamline the appellate process and provide parties with a clear procedural path in managing their appeals while ensuring relevant stays are addressed in a timely manner.
- 3. NRAP 9 – Briefing Schedule Extensions:** NRAP 9 has been substantially rewritten to provide a framework for extending briefing schedules when necessary transcripts are not available. This change recognizes the logistical challenges that can arise during appeals and ensures
- 4. NRAP 16 – Mandatory Settlement Conferences:** The amendments to NRAP 16 focus on enhancing the settlement conference process. Parties are now allowed to choose their own mediators instead of defaulting to court-appointed settlement judges. Moreover, they must submit more detailed information in their confidential settlement statements to facilitate discussions. This change encourages a more tailored and effective mediation process, allowing parties greater control and potentially leading to more successful resolutions prior to costly appeals. Further, by mandating additional information to be included in confidential settlement statements.
- 5. NRAP 17 – Case Assignment:** While the changes are primarily minor, they offer needed clarity on the division of cases between the Nevada

that appellants are not unfairly disadvantaged by circumstances beyond their control. It promotes fairness by allowing sufficient time for parties to prepare their briefs based on complete records.



Anticipating the need for updated rules, the Nevada Supreme Court established a Commission on the NRAP to recommend changes, comprised of civil and criminal attorneys, judges, justices, and both large - and small-firm practitioners, as well as Nevada Supreme Court staff counsel.

Supreme Court and the Court of Appeals. By providing clearer guidelines, this rule aims to ensure that cases are appropriately assigned based on their nature and complexity, thereby streamlining the judicial process and improving the efficiency of appeals.

6. NRAP 27 and NRAP 28 – Motions and Briefs:

The amendments to these two rules introduce new word limits for motions and opening briefs, as well as specific formatting requirements such as including page numbers for exhibits submitted with motions. This adjustment is designed to promote clarity and organization in the filing of documents, making it easier for courts to review materials efficiently and adhere to standards that enhance the overall quality of submissions. This amendment will also assist appellate attorneys by offering a point of reference for each document in the record.

7. NRAP 30 – Format of the Appendix:

NRAP 30 has undergone significant revisions, including a requirement that the appendix, which serves as the official record, be prepared in a searchable PDF. This change reflects a modernization of appellate practice, making it easier for judges and attorneys to quickly locate and reference pertinent documents, thereby improving the efficiency of the appellate process.

8. NRAP 36 – Citation of Unpublished Decisions:

With the amendment allowing citation to any unpublished decision from the Nevada Court of Appeals, parties may now reference these

decisions in their arguments. This change increases the available jurisprudence that parties can draw upon, enhancing their ability to support legal arguments with relevant precedents and potentially influencing case outcomes. This change is particularly critical in Nevada, which did not have a Court of Appeals until January, 2015.

9. NRAP 40 – Rehearing Proceedings:

The revisions to NRAP 40 create a new basis for seeking rehearing after an appellate judgment where a new rule of law has been announced post-judgment. Additionally, the changes modify deadlines and remove the prohibition on including a reply brief in support of a petition for rehearing. These adjustments aim to ensure that all relevant legal developments can be considered, allowing parties to have the opportunity to address changes in law that may affect their cases.

These key revisions reflect the Nevada Supreme Court's commitment to improving the appellate process, ensuring fairness, and providing clearer guidance to attorneys and litigants navigating the appeal system. Legal practitioners should be aware of these changes as they can significantly influence appeal strategies and outcomes, and even decisions at the District Court level. Should you require more specific and accurate details regarding any of the recent amendments or their potential impact on an appellate matter, please feel free to consult with the Nevada legal professionals at ZBS Law, LLP. [a](#)