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## Real Estate

Southern California  
loan modification  
'boiler room' alleged.

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# REAL ESTATE

CONSTRUCTION

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The Daily Transcript

Monday, August 3, 2009 / Section B



### Real Estate Briefs

By Thor Kamban Biberman

## Escondido warehouse sells

A 19,775-square-foot warehouse building on one acre at 501 South Andreasen Drive in Escondido, 92029, has been sold for \$2.2 million.

The buyer was **1011 Andreasen LLC** with offices at 2650 Jonquil Drive in San Diego.

The sellers (assessor's parcel No. 232-423-31) were Paul and Cecilia Ostrowiecki, of San Clemente.

SourceCode: 20090731tra

A three-unit apartment property at 4985 Narragansett Ave. in the Ocean Beach area of San Diego, 92107, has been sold for \$537,000.

The buyer was **Feeling Beachy LLC** in c/o Andy Taubman, of San Diego. The seller (assessor's parcel 448-172-30) was Robert Brennan.

SourceCode: 20090731trb

A 6.29-acre portion of an avocado orchard along Camino del Rey in Bonsall, 92003, has been sold for

## Retail property transactions down 75 percent

By THOR KAMBAN BIBERMAN  
*The Daily Transcript*

SAN DIEGO — Countywide retail property transaction volume is off by 75 percent from a year ago, a major Australian real estate investment trust has sold its interest in U.S. shopping centers including three here, and the retail market isn't expected to recover until 2013, according to a report.

"The recession is causing many retail tenants to go out of business and leaving us far fewer replacements to fill the empty storefronts," CDC Commercial wrote.

CDC reported the 75 percent drop in transaction volume has translated into a bump up in the retail vacancy from 4 percent as of June 30 of last year to 5.5 percent as of the end of June 2009.

The North County average is higher — running at about 7.5 percent.

"This still isn't bad by most standards but that doesn't matter if you're the one with the vacancy," the CDC report continued.

The discomfort of higher vacancies as led to some divestitures, including a pending \$1.3 billion transaction

indication that the retail market has a long way to go before it is healthy.

Nearly 1 million square feet (974,386 square feet) was given back to the market during the first half of the year.

The North County accounted for nearly half (49 percent) of this space.

This was followed by the South County (27 percent), which has been hit especially hard as evidenced by all the residential foreclosure activity in Chula Vista. The Central County accounted for 19 percent of the returned space and the East County just 4 percent.

In the first half of 2009, neighborhood centers accounted for 43 percent of the 974,386 SF returned to the market, power centers accounted for 24 percent and strip centers for 9 percent of the returned space.

By G&E|BRE's accounting, the countywide retail vacancy stood at 5.6 percent as of the end of the second quarter.

The direct retail vacancy rate in the North County increased 300 basis points year-over-year to finish at 7.3 percent.

South County equaled the 5.6 percent countywide vacancy



## Health center steel tops out

SAN DIEGO — The steel topping is complete at the La Maestra Community Health Center building, located at 4060 Fairmount Ave., San Diego. The three-story, approximately 75,500-square-foot moment frame medical office building includes two levels of subterranean parking totaling approximately 22,000 square feet with 104 vehicle spaces. The project is being developed by *La Maestra Community Health Centers* and is anticipated to be complete by mid 2010. *Richard Yen & Associates* is the project architect. The general contractor is *Consolidated Contracting Services*. Engineering consultants for the project include *Hope Engineering*, structural engineer; *Walsh Engineers*, mechanical engineer; *Tanner Engineering*, electrical engineer and *Stevens Cresto Engineering*, civil engineer. The land

and Roberta Berns, as trustees of a family trust.

The seller (assessor's parcel 127-090-35) was Earl Huffstutler as trustee of a revocable trust.

SourceCode: 20090731trc

A 2,800-square-foot-square-foot retail building at 1645 47th St., in San Diego, 92102, has been sold for \$320,000.

The buyer was Eve Yang Wu, of San Diego.

The seller (assessor's parcel 541-310-13) was Coleen Darrow as trustee of a family trust with an undivided 54.65 percent interest.

The tenants in the build-

See RE Briefs on 2B

60 percent stake in 86 U.S. retail centers including three in San Diego County, back to the CalPERS pension fund and First Washington Realty.

The centers here — part of a U.S. retail property shopping spree four years ago — include the 212,774-square-foot Point Loma Plaza, anchored by Von's and roughly 47 other tenants; the 153,255-square-foot Rancho San Diego Village, also anchored by a Von's with roughly 45 other stores; and the 148,237-square-foot Campus Marketplace Shopping Center adjacent to the California State University, San Marcos that is anchored by a Ralphs and has 30 other tenants.

A Grubb & Ellis/BRE Commercial report was another

# IRS eyeing homebuyer tax credit claims

## Agency reports first fraud conviction involving incentive

Inman News

The Internal Revenue Service says a Jacksonville, Fla.-based tax preparer is the first to be convicted of fraud related to the federal first-time homebuyer tax credit.

James Otto Price III, 47, pleaded guilty on July 23 to falsely claiming the first-time homebuyer credit on a client's federal tax return, the IRS said.

He faces up to three years in jail and a fine of up to \$250,000 when he is sentenced.

Price was indicted in May on 35 tax-fraud counts, including 15 involving the

first-time homebuyer tax credit, *The Florida Times-Union* reported.

Most of Price's clients were unaware he was claiming the credit on their behalf and paying himself a \$1,000 fee from their electronic refunds, a prosecutor told the paper.

In announcing Price's conviction, the IRS claimed to have "a number of sophisticated computer screening tools" to identify tax returns that may contain fraudulent claims for the tax credit.

The IRS says it has executed seven search warrants and currently has 24 open criminal investigations of potential instances of fraud involving the credit.

"We will vigorously pursue anyone who falsely tries to claim this or any other tax

credit or deduction," said Eileen Mayer, chief of the IRS' criminal investigations. "The penalties for tax fraud are steep. Taxpayers should be wary of anyone who promises to get them a big refund."

Congress has allocated \$13.6 billion for the first time homebuyer tax credit program in the hopes of generating 2 million home purchases by Nov. 30.

Preliminary numbers from the IRS showed about 1.4 million taxpayers were expected to claim the credit on their 2008 tax returns, and that nearly 100,000 claims would be rejected because the applicants were not first-time homebuyers.

According to a report by the Treasury Inspector General for Tax Administration, the

IRS was having some difficulties processing claims for the credit because Congress raised the cap on the program from \$7,500 for homes purchased in 2008 to \$8,000 for homes purchased this year.

The IRS was forced to reprogram software to identify the date of purchase on claims forms filed electronically to identify the date of purchase in order to make sure it was not improperly rejecting claims exceeding \$7,500. Paper returns were being manually reviewed to identify those requiring separate processing, the report said.

The Federal Housing Administration in May issued guidelines allowing first-time homebuyers to "monetize" the

See IRS on 3B



## COMMERCIAL SALES

Additional commercial sales data is available online at [www.sddf.com/databases/commercialsales](http://www.sddf.com/databases/commercialsales)

### THE TOP COMMERCIAL SALES OF THE DAY

1. The 7 Unit, multi-residential at 505-17 D Ave, Coronado, 92118, was sold by Ricardo V. Diesta and Elenita F. Diesta to Osman Tatar and Norma Lillian Tatar on 07/16/2009. Tax Value \$1,600,000.

2. The industrial condo at 6700, 6700 #05 Gateway Park Dr #04, San Diego, 92154, was sold by Gateway, LLC. to Francisco Jose Borquez Burboa, trustee on 07/21/2009. Tax Value \$1,400,000.

3. The restaurant at 3780 Park Blvd, San Diego, 92103, was sold by KPNTME, LLC. to

Donny Duenas on 07/20/2009. Tax Value \$1,300,000.

4. The commercial building at 7808, 7808 #25, 7808 #30, 7808 #14 El Cajon Blvd #24, La Mesa, 91941, was sold by Comerica Bank to Japh Properties of La Mesa, LLC on 07/10/2009. Tax Value \$925,000.

5. The industrial at 8991 Crestman Pts, San Diego, 92121, was sold by Robert Walter Berenschot and Patricia Berenschot to Sherman A. Gregory on 07/21/2009. Tax Value \$732,500.

## HOME SALES

Additional home sales data is available online at [www.sddf.com/databases/homesales](http://www.sddf.com/databases/homesales)

### THE TOP FIVE HOME SALES OF THE DAY

1. The house at 17610 Los Morros, Rancho Santa Fe, 92067, was sold by Teresa Lagner, successor trustee, to Francis A. Cassou and Gabrielle M. Cassou on 07/24/2009. Tax Value \$3,300,000.

2. The house at 3315 Cerros Redondos, Rancho Santa Fe, 92067, was sold by Richard A. Murphy and Elaine A. Murphy, successor trustees, to Paul Pancritius on 07/27/2009. Tax Value \$2,850,000.

3. The house at 1869 Horseman Ln, Rancho Santa Fe, 92091, was sold by Shane Kading and Gladi

Kading to Jonathna Taub and Pam Taub on 07/24/2009. Tax Value \$1,612,500.

4. The house at 5009 Zimmer Cv, San Diego, 92130, was sold by Dean E. Roper and Carol R. Berry, trustees, to Steven D. Solomon and Esther C.L. Solomon on 07/27/2009. Tax Value \$1,500,000.

5. The house at 520 Glorietta Blvd, Coronado, 92118, was sold by JPMorgan Chase Bank, N.A. to Irina Belov and Vladimir Belov on 07/22/2009. Tax Value \$1,025,000.

See Home Sales on 4B

# Mortgage effort can't ignore Treasuries, analyst says

By JODY SHENN

Bloomberg News

The U.S. government's effort to push home-loan rates down shouldn't ignore Treasury yields because, even if it results in 4 percent mortgages, the \$5 trillion market for so-called agency mortgage bonds may be irreparably disrupted, according to Credit Suisse Group.

The Federal Reserve's program to lower homeowner financing costs, by buying as much as \$1.25 trillion of Fannie Mae, Freddie Mac and Ginnie Mae mortgage-backed securities, pushed the average rate on typical new 30-year fixed-rate debt down to a record low of 4.61 percent in March from 6.47 percent in October. The average rate for such loans was up to 5.36 percent in the latest week, the Mortgage Bankers Association said Friday, in part because Treasury bond yields have been rising.

"It's an idea that sounds very good on paper, but it has the potential to create a very terri-

ble reality," New York-based Credit Suisse analyst Mahesh Swaminathan said in an interview last week, after his report on the issue. "It has the potential to break the one market that is working very well — agency MBS — for benefits that would be very minimal."

Swaminathan said that he wrote a report about the idea of "off-market" mortgage rates because while "I don't think it's being formally considered by anybody," investors bring it up as a possibility.

### Low yields

The Fed could push rates down further by purchasing mortgage bonds at set yields, which would be even lower than Treasury yields of comparable maturities. By doing so, the central bank may end up owning \$2 trillion to \$3 trillion of mortgage-backed debt guaranteed by Fannie Mae, Freddie Mac and Ginnie Mae, Swaminathan said.

Government purchases would limit opportunities for traditional investors such as banks and insurers to buy the

bonds, and would reduce trading profits for dealers, he said. The result in the future may be home-loan rates at times as much as 1 percentage point to 1.5 percentage points higher than they would be otherwise because of a permanent loss of liquidity in the mortgage-bond market, Swaminathan said.

"It's taken 25 years to get where we are" in the market for agency mortgage securities, which rivals the \$6.6 trillion market for U.S. Treasuries, he said. "It's been a very liquid market, even in the most trying times. That liquidity comes from you knowing what you're dealing with. If you take that away, it's very hard to get it back."

### Hedging problems

Other consequences of a program to create off-market rates could include greater difficulty among mortgage servicers in hedging against changes in the value of their contracts with mortgage bonds and a potential jump in interest-rate volatility as they

turn to swaps and other markets for hedging, according to his report. Many mortgage bonds would lose value because of increases in prepayment speeds for existing loans, he said.

Washington-based Fannie Mae and Freddie Mac of McLean, Va., are government-supported companies seized by regulators in September that own residential mortgage debt and guarantee related securities. Ginnie Mae, a federal agency, backs mortgage bonds.

Innovations in the agency mortgage bond market since the 1970s include the so-called TBA market, where offers to buy or sell securities may be filled with debt with a range of characteristics, and collateralized mortgage obligations, into which Wall Street firms package standard securities to create extra demand by splitting the debt into classes with varying estimated lives and sensitivities to changes in interest rates.

Source Code: 20090729fbb

stopped." As rain pounded the Brooklyn boardwalk on Wednesday, city officials struggled to hammer out a deal with Sitt. The developer has said he still wants to play a role in the future of his childhood turf.

"I'm the stakeholder. I'm the guy who controls this — it's my sandbox," the 45-year-old landowner said this month.

Sitt purchased property under the old Astroland in 2006 for \$93 million and leased it to the Albert family, which has operated the rides since the 1930s. After failing to reach a lease agreement with Thor, the family dismantled Astroland last year, leaving behind a desolate swath of land.

On another 20 acres just blocks from the beach, the city's Coney Island Development Corp. foresees 4,500 new housing units and a park for area residents.

Ron Stewart, a 56-year-old parole officer who's lived in the neighborhood for a half century, says there have always been two Coney Islands: "the amusement area and the residents."

"People would laugh at me when I said I live in Coney Island," he said. "They'd say, 'You live under the Cyclone? You live in the spook house?'"

These days, the amusement area at night is home to prostitutes and drug addicts, residents say.

"They kind of fill the gaps under the boardwalk," says Aida Leon, who runs the nonprofit Amethyst Women's Project, which helps people cope with domestic violence, addiction and HIV/AIDS.

Leon says HIV infection rates on Coney Island are three times that of the city's, while the neighborhood has one of the nation's highest unemployment rates — 20 percent.

Six people were murdered in six weeks earlier this year.

The city plan would make 35 percent of the new housing affordable, with contractors hiring unionized workers from nearby and paying them living wages.

For now, Sitt has set up mobile rides and other spectacles on the scruffy, vacant acre once occupied by Go-Karts and batting cages. On weekends, there's Flea by the Sea, a few

tents where vendors hawk everything from purses and CDs to pickles and plants.

And the Barnum & Bailey Circus erected its tents on Coney Island for the first time this summer.

The Wonder Wheel ride, built in 1918, has survived, landmarked like the Cyclone and the Parachute Jump.

On a weekday afternoon in July, a salty breeze blew across the boardwalk and endless stretch of sand.

Michael Burns, an ex-Marine, paid \$3 to play Shoot the Freak, firing paintballs at a shirtless teenager protected by a helmet and shield, standing in a trash-strewn lot facing rifles.

Burns told his wife, a first-time visitor, that "this used to be the place to come" when in New York. But "it's declined a little bit," he added.

Coney Island fans say modernization could ruin its nostalgic allure with a wall of high-rises right where visitors step off the subway to an open view of the rides and Atlantic Ocean.

If there's one man who captures the spirit of the Brooklyn beachfront, it's David Adamovich, a Christian minister also called The Great Throwdini for his knife-throwing act at Zigun's sideshow.

"Every time I think that Harry Houdini performed in a place where I'm performing," says Adamovich, "it's just wonderful. It's keeping that heritage alive."

Coney Island, he said, "is a charm in my heart."

*Associated Press writers Sara Kugler and Suzanne Ma contributed to this report.*

**Source Code: 20090730fz**

## IRS

*Continued from Page 1B*

credit, applying it toward the purchase of a home with an FHA-backed mortgage without waiting for a refund check from the IRS.

Although HUD ruled the tax credit can't be used to meet the FHA's 3.5 percent minimum down-payment requirement, it can be used as an additional down payment and for other closing costs, which can help borrowers obtain a lower interest rate.

**Source Code: 20090730tdd**

**By MATT CARTER**  
*Inman News*

A loan-modification company based in Southern California allegedly spent \$70,000 a week on radio and television advertising for its sales force to generate 500 calls a day from desperate homeowners facing foreclosure around the country.

Employees reportedly manned 44 office cubicles, working staggered shifts in "a well-appointed telephone boiler room" to generate about \$6.2 million in revenue for Anaheim, Calif.-based **H.E. Servicing Inc.** and related businesses, but helping only about one in 10 of the nearly 3,000 borrowers who paid up-front fees of \$1,000 or more.

Those are among the preliminary findings in a report by a court-appointed receiver assigned to take over H.E. Servicing on July 9, after the company and dozens of others were shut down by state and federal officials this month.

The U.S. Federal Trade Commission said its coordinated effort with 23 state attorneys general targeting mortgage-rescue scams resulted in lawsuits against 178 companies accused of deceptive marketing of foreclosure-rescue and loan-modification services.

H.E. Servicing Inc. was one of the aliases used by **U.S. Foreclosure Relief Corp.**, according to a lawsuit filed against the company by the FTC and the states of California

## Property

*Continued from Page 1B*

struction activity should help San Diego's retail market deal with the recession.

Only 93,423 square feet is under construction county-wide — all of which is in South County.

But consumers still have to open their wallets if landlords are to reverse the negative absorption trend.

The National Retail Federation reported that retail industry sales in June (excluding gasoline, automobiles and restaurants) decreased 3.8 percent in June compared to the like month a year earlier.

The U.S. Commerce Department, whose statistics do include the previously omitted gas stations, automobiles

and Missouri.

The case against H.E. Servicing sheds light on how one company's attempt to avoid California's restrictions on charging up-front fees for providing loan-modification services led to charges that it employed deceptive marketing practices.

Thomas McNamara, the receiver appointed to examine the operations and finances of H.E. Servicing and other businesses connected to US Foreclosure Relief Corp., said he found "multiple examples of zealous sales techniques, which, by any standard, crossed the line into express consumer deception."

California has imposed restrictions on the collection of advance fees for providing loan-modification services — only licensed real estate brokers with preapproval letters may engage in the practice — but those restrictions do not apply to lawyers or law firms.

In his report, McNamara said defendant George Escalante had dissolved the operations of a previous loan-modification company after being contacted by the Orange County District Attorney's Office in October 2008.

After locating a recent law-school graduate to partner with through an ad he placed on Craigslist.org, Escalante again began providing loan-modification services through H.E. Servicing, the report said.

The lawyer — and another who replaced him when Escalante's original partner "expressed a desire to withdraw from the business as he saw it as high risk" — were paid a share of the fees collected from each client, totalling about \$620,000, the report said.

But McNamara found little evidence they performed any work.

"Despite defendants' limited efforts to create the illusion, this was not a law firm ... (but) Escalante's business," McNamara's report said. "He paid the rent, hired the employees, outfitted the offices, ran the finances, and ultimately controlled the operations."

The sales staff manning the phones at H.E. Servicing were instructed to claim that the company was "attorney based," and staffed by more than 100 workers who had achieved a 90 percent success rate in negotiating more than 10,000 loan modifications, the report said.

In fact, the company had just eight loan negotiators working with lenders when it was shut down, and completed only 311 loan modifications on behalf of clients from November 2008 through July 8, the report said.

Of the the 2,960 applications for which the company collected fees of \$1,000 to \$2,500, only 11 percent had resulted in closed modifications by the time the company was closed down, the receiver said.

**Source Code: 20090731tdd**

# SAN DIEGO MORTGAGE RATES

## Fixed Rate Mortgages

To \$417,000			To \$697,500		
Rate	Points	APR	Rate	Points	APR
5.125	1.00	5.33	5.375	1.00	5.58
4.875	1.02	5.18	5.125	.791	5.33
5.00	1.75	5.28	5.25	1.75	5.47
5.125	1.375	5.36	6.625	1.25	6.84
4.875	1.00	5.08	5.00	1.00	5.20
4.875	1.00	5.08	5.00	1.00	5.20
—	—	—	6.50	1.00	6.70
5.25	1.50	5.50	—	—	—
5.875	1.00	6.18	—	—	—
4.875	2.00	5.18	5.125	2.00	5.43

## Variable Rate Loans

Fixed for 5 Years			Fixed for 7 Years		
Rate	Points	APR	Rate	Points	APR
3.75	1.00	3.88	4.375	1.00	4.34
3.75	.805	3.89	4.25	.783	4.34
5.125	1.50	5.11	5.375	1.50	5.54
4.375	1.00	4.34	4.875	1.125	4.77
3.75	1.00	3.85	4.25	1.00	4.33
3.75	1.00	3.85	4.25	1.00	4.33
6.50	1.00	6.57	—	—	—

## Commercial Property Loan Rates

Lender	Type	Rate	Points	Fixed	Margin/ Years	Comments
	Com	7.375	0	FIX	5	250k-2.5mil
Fouts Financial	Apt/Com	7.0+	0.0+	FIX	5 to 10	1.5mil+
General Bank	Apt/Com	8.75+	150+	PR	150+	500k-20mil
	Com	8.75+	125+	FIX	5	.5mil-5mil
Home Bank	Apt/Com	6.75+	0.0+	PR	1 to 10	5mil max
La Jolla Bank	Apt	4.75	1	COFI	2.75	to 10mil
	Com	6.5	125	Prime	0.5	to 20mil
Pacific Crest	Com	4.5	1	PR/LIB	30/10	to 5mil
Pacific Southwest	Apt/Com	5.875+	1	FIX	/10/30	500k+
	Apt/Com	5.55+	1	FIX	/10/30	1.5mil+
Pacific Trust	Apt	6.125	1	COFI	3.25%	500k-10mil
	Com	6.75	1	COFI	3.75%	500k-10mil
Seacoast Com. Bank	Apt/Com	6	1	Prime	7	250-3.5mil
South Coast Com BK	Apt/Com	4.99+	0	ADJ/FIX	30/10	to 7mil
Sunrise Mortgage	Com	4.25+	10+	FIX/ADJ	3 to 25	300k-100mil
	Apt	4.50+	10+	FIX/ADJ	3 to 25	500k-100mil
Trinity Invest Cap	Apt/Com	4.25+	0.0+	FIX/ADJ	to 30	500k
US Bank	Apt	7.0+	10+	FIX	5	.5 to 5mil
	Com	7.50+	10+	FIX	5	.5 to 5mil
Washington Mutual	Com	6.7	0	10	10	500k-10mil
Wells Fargo	Apt/Com	5.0+	0.0+	FIX	10+	1mil+