

THE UTAH BANKER

**New SBA 504 Refinancing
Program Benefits Small
Businesses and Banks**
page 6

**Guidelines for Writing an
Effective Bank Policy**
page 8

**The 10 Commandments of
Kick-Butt Profitable Growth**
page 11

**Updating Utah's
Mechanic's Lien Statutory
Scheme**
page 18



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Contents

Viewpoints

The Bottom Line.....	4
ABA's Message.....	5

Features

New SBA 504 Refinancing Program Benefits Small Businesses and Banks	6
Guidelines for Writing an Effective Bank Policy.....	8
The 10 Commandments of Kick-Butt Profitable Growth	11
Updating Utah's Mechanic's Lien Statutory Scheme.....	18

People

Bank Kudos	13
Education Corner.....	15
Bankers on the Move.....	16

UBA Products and Services

UBA Associate Members.....	21
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The Credit Unions have Opened a Big Can of Worms

The Bottom Line
by **HOWARD HEADLEE**

UBA President

The credit unions have opened a big can of worms. Their recent push to get people to leave their bank and switch to a credit union has raised all kinds of questions I don't think they wanted to discuss right now.

First, many people are taking a hard look at the interest rates and fees and finding that their bank is very competitive or even better. How could this be if credit unions have a 40% price advantage thanks to their tax-exempt status?

Any organization with a tax exemption must be able to make the case that what they do with that benefit is more important than what the money would be used for if they were to pay taxes like everyone else.

The answer isn't something credit unions want to discuss. It has to do with massive financial losses no one is talking about in the credit union industry. Their insurance fund was wiped out by aggressive investments in mortgage-backed securities. They were forced to take a real "bailout" from the US Treasury (even though they have never paid a penny into the Treasury

in taxes) and now the premiums they have to pay to replenish their insurance fund are much higher than the premiums being paid by banks. This, in combination with their operational inefficiencies, wipes out most of the pricing advantage they usually enjoy from their tax-exemption.

Second, slowly but surely people are starting to understand when they move their accounts from a bank to a credit union

they are hurting their local school, eroding funding for our troops abroad, and even in some cases reducing funding for important local government services like police and fire protection. It shouldn't be this way.

The choice of where people keep their money should be no different than where they shop for groceries but it's not that simple because of the outdated credit union tax exemption. Choices made by consumers between banks and credit unions have a financial impact on state, federal and local governments, and given the current budget pressures and massive federal deficits, this isn't something credit unions want to draw a lot of attention to. Here's why.

Any organization with a tax exemption must be able to make the case that what they do with that subsidy is more important than what the money would be used for if they were to pay taxes like everyone else. In Utah, every penny of income tax goes into Utah's Uniform School Fund; the State Constitution requires it. Not even the Legislature can divert that revenue. Therefore, credit unions are forced to make the case that what they are doing with their tax benefit is more important than educating kids.

This leads many people to ask, "So why were credit unions allowed to retain profits tax free in the first place?" Once again, the answer is not something they want to discuss. The 1934 Credit Union Act is clear, credit unions were established to help poor people get loans they couldn't otherwise get. This was so important to the economy during the depression era that they were granted tax-exempt status.

Needless to say, times have changed

■ The Bottom Line - continued on page 9

Washington Update: Fighting for

We're urging bankers to write their representatives and ask them to co-sponsor the bipartisan examination relief bill introduced by House Financial Services Financial Institutions Subcommittee Chairman Shelley Moore Capito (R-W.Va.) and Ranking Member Carolyn Maloney (D-N.Y.)

The Financial Institutions Examination Fairness and Reform Act (H.R. 3461) would take a major step toward a more **balanced and transparent approach** regarding how, and on what basis, decisions are made by the regulatory agencies in the examination process.

The bill would also address some examiner decisions that have effectively and unnecessarily reduced the amount of capital available for increased lending—particularly to small businesses.

ABA worked closely with bankers and the Utah Bankers Association in raising issues that the Capito-Maloney bill would resolve as well as offering recommendations for the future.

You've told us that the reasons for certain decisions regulators make during the examination process have not been clear. You've also reported that some examiner decisions have effectively and unnecessarily reduced the amount of capital available for increased lending—particularly to small businesses. This hurts your banks' abilities to help local businesses grow and create jobs.

The Capito-Maloney bill would address these concerns by requiring, among other things, more timely examination re-

EXAMINATION Relief

**ABA's Message
by FRANK KEATING**

President and CEO
American Banking Association



ports; more information about the facts the agency relied upon to make its exam decisions; and more precise, consistent and understandable classification standards for commercial loans.

The legislation also would create a new, independent inter-agency ombudsman within the Federal Financial Institutions Examination Council to ensure the consistency and quality of all exams, and it would institute an expedited process for banks to appeal examination decisions without fear of reprisal.

Working together, bankers, state associations and ABA have identified the problems and recommended a workable, practical solution. This is how we do things. We focus on legislation that is passable, is backed by solid, credible arguments, and will make a real difference for the industry. The Capito-Maloney bill certainly meets those tests. Now, we have to fight for it. (Feels good to be fighting for something, doesn't it?)

Write to your representatives (click on the "Action Alert" icon on ABA's home page at www.aba.com) and urge them to co-sponsor the bill. And don't forget to join us in Washington for ABA's GR Summit March 19-21, where we will continue to advance our industry's advocacy goals and priorities. —

The Financial Institutions Examination Fairness and Reform Act (H.R. 3461) would take a major step toward a more balanced and transparent approach regarding how, and on what basis, decisions are made by the regulatory agencies in the examination process.

New SBA 504 Refinancing Program Benefits Small Businesses and Banks

by **BARBARA VOHRZEK**
Executive Director of California Statewide
Certified Development

Commercial real estate lenders have been watching their loan-to-value ratios increase as appraisals on collateral have declined during the recent recession. Recent revisions to the Small Business Administration's (SBA) 504 refinancing program create a unique and time-driven opportunity to bring a lender's owner-occupied commercial real estate portfolio back into regulatory compliance, reduce overall commercial real estate portfolio concentrations, and provide an additional tool for lenders to offer their small business clients.

There are virtually no restrictions on the bank's loan with respect to structure or pricing.

This program allows small businesses to take advantage of long term, fixed rate loans to refinance their high interest or maturing real estate debt or existing debt on capital assets. Loans under the 504 Program are funded by the sale of ten-year and twenty-year bonds guaranteed by the SBA. Thus, a borrower is able to obtain attractive 20 year fixed interest rates, as low as 5.04% based on the January pricing.

A strong supporter, John DiMichele, President and CEO of Community Business Bank in West Sacramento, California recently stated, "With an SBA 504 refinance loan, the bank has another tool to help maintain its relationship with a current client, as well as be able to offer financing solutions for potential new clients. This refi-

nancing program is important to community banks because it provides us the opportunity to improve our ability to service our customers, while at the same time reducing the risk of the overall relationship." Retaining your clients and making their financial position - and that of your bank - stronger is a win-win situation. This is a particularly valuable benefit in these difficult economic times.

SBA's regulations for the 504 refinancing program allow the loans to be structured like traditional 504 loans. With a traditional 504 loan, a bank provides up to 50% of the project cost and holds the first lien position. A Certified Development Company (CDC) provides up to 40% of the project cost and takes a secondary position to the bank loan. The small business borrower must either have at least 10% existing equity in the property or must inject equity of at least 10%. The amount of the bank loan must be at least as much as the 504 loan.

There are virtually no restrictions on the bank's loan with respect to structure or pricing. The bank's first lien position, at a lowered-low to-value ratio, makes partnering with a CDC on a 504 refinance loan a wise choice. The bank's

Here is an example of refinancing an existing \$1,080,000 note

EXAMPLE OF REFINANCING AN EXISTING \$1,080,000 NOTE

Current Appraised Value of Property	\$1,200,000
New Maximum Outstanding Balance of Debt	\$1,080,000
90% Loan to Value (LTV)	

LOAN STRUCTURE:

ENTITY	LOAN AMOUNT	% OF LOAN	SECURITY
■ New Bank First Trust Loan	\$600,000	50%	1st Lien
■ New CDC/SBA 504 Loan	\$480,000	40%	2nd Lien
■ Borrower Contribution (equity in property)	\$120,000	10%	

Appraised Value of Property: **\$1,200,000**

rates can be fixed or floating. **The only stipulation is that the first lienholder loan must be for at least 10 years for a commercial real estate loan and at least 7 years for a 10-year equipment or machinery loan.** The bank utilizes its own underwriting standards and sets its own terms, interest rates and fees.

While there is no maximum project size for a 504 loan, the 504 loan is limited to \$5 million in most refinance projects just as with the traditional 504 loan. The upper 504 loan limit increases to \$5.5 million for eligible manufacturing projects and projects that incorporate energy saving technologies.

The following are some of the primary requirements of the SBA 504 Refinance Loan Program:

- **The small business must be for-profit and have a tangible net worth of less than \$15 million and an after tax profit of less than \$5 million for the previous two years.**
- **The small business must occupy at least 51% of the property at the time of the refinance application.**
- **The property must have been acquired at least two years ago with commercial debt.**
- **The project structure must be based on the current appraised value of the collateral.**
- **Up to 90% of the current appraised property value may be refinanced.**
- **Existing government-guaranteed loans are not eligible to be refinanced.**
- **Expansion projects are not eligible to be refinanced (there is an option for refinancing under a modified version of 504).**

Like the traditional 504 Loan Program, the borrower may use its existing equity in the property for its 10% equity injection. The borrower is thus able to retain working capital in the business.

Should there be excess equity in the property, the small business can refinance existing qualified debt or may use the excess equity (meaning, equity beyond the 10% minimum contribution) to obtain working capital for payment of recent or projected eligible business expenses. These expenses can include items such as rent, utilities, inventory and other business obligations. This significantly improves cash flow for the borrower and could provide a new source of working capital.

Multiple refinancings of the original note will not disqualify the project. Borrowers must demonstrate that their loan is current and that they have successfully made all re-

quired payments under original or modified bank terms for the past twelve months. Such modifications of terms must have been entered into prior to October 12, 2011.

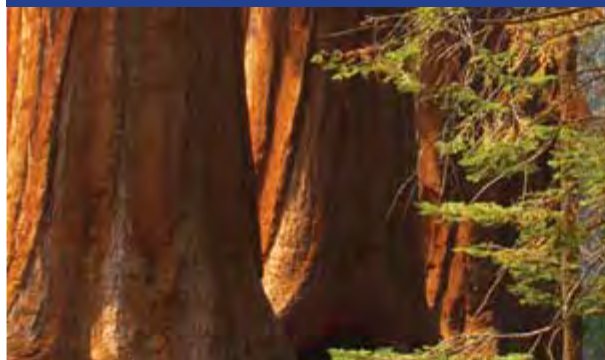
As with the regular 504 Loan Program, 504 refinance loans are processed through CDCs, who manage the SBA portion of the transaction for the bank and their client. The National Association of Development Companies (NADCO), the trade association representing the nation's CDCs, is actively working with SBA to promote the 504 refinance program.

NADCO President, Chris Crawford, noted, "We've seen first-hand the impact of the recession on the small business community. This new program offers a powerful tool to both the banker and the small business owner. Bankers can capitalize on the opportunity to service their trusted clients while reducing risk and small businesses can improve their cash flow and extend existing debt, while fueling growth in their local communities."

Do you have borrowers who could benefit from the new 504 Refinance Loan Program or instances where this program would benefit the bank? If yes, you can contact your local CDC for more information. To find a member CDC (they serve every State, as well as Puerto Rico and U.S. territories in the South Pacific), visit the NADCO website at www.nadco.org and navigate to the "Find a Member" button on the top of the navigation bar.

It's important to remember to act fast; the program expires September 27, 2012, unless Congress acts to extend it.

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Guidelines for Writing an Effective Bank Policy

The ABA Compliance Library is a resource to help an institution prepare its own policies, but it does not substitute for the individual judgments that each institution must make

when establishing those policies. All bank policies should meet a number of key criteria to help ensure their clarity and effectiveness. The policy, form or checklist you devise should be:

Unique to your individual bank

Tailor the policy for your bank and ground it in actual bank processes. A policy writ-

ten for another institution, even one of comparable size and located in a similar market, might not be appropriate for your community bank. Organizational structure, the bank's business strategies, risk tolerance and market environment, experience of personnel, institutional culture and regulatory expectations are among the factors you should consider when developing a suitable compliance policy.

Comprehensive and complete

Good policies assist and direct personnel in handling both everyday and out-of-the-ordinary situations without describing every potential event. Further, your policy should be more than a statement of general bank philosophy toward the subject matter covered. It should articulate your approach to the compliance

subject in question in a manner that easily integrates with a comprehensive compliance management program that establishes systems to ensure transactions are executed correctly, monitors operations to enforce conformity with bank policies, conducts periodic audits of performance, holds responsible staff accountable, remedies program deficiencies and provides up-to-date training.

Timely and current

Laws and regulations, standard practice, the regulatory climate and the bank's environment are constantly changing—your policy should evolve with them. Like any other bank policy, a compliance policy is a living document that the BOD should review and evaluate regularly to ensure that it is in step with the bank's operations and activities and with the requirements of appropriate laws, regulations and ethical codes. The policy should establish clear routines for monitoring changes in the bank's operating environment and updating the policy.

Fully documented and accessible by bank personnel

Compliance is a fundamental component of your enterprise's risk management. To assure that policies are fully implemented, appropriate personnel—any employee whose duties and responsibilities involve banking risk—should understand and have access to copies of the policy. Institute a process for distributing policy updates and training employees concerning changes.

Simple and easy to understand

Although your policy will inevitably contain some technical terms and references, an effective compliance policy recognizes that bank employees have differing responsibilities and experience, particularly with regard to compliance processes. Your compliance policies should consider the full range of departments and personnel it covers and explain all technical terms.

Clear in delineating responsibility and accountability

To guarantee adherence with regulatory requirements, the policy must include a clearly defined method for determining who is responsible for overseeing compliance risk management. The policy should list by title the bank staff primarily accountable for the compliance activity addressed. The



policy should delineate how assessment of bank performance under the policy will be evaluated, reported and made accountable to the board. ➤

About the American Bankers Association

Founded in 1875, the American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees.

ABA marshals the talent, energy and perspectives of its members to bring about positive change. Through an effective collaboration between ABA members and staff, we combine experience and insights, in-depth expertise, unmatched resources and extensive products and resources to make our members more successful. When banks are strong and healthy, their communities and customers thrive.

The majority of ABA's members are banks with less than \$165 million in assets.

■ The Bottom Line - continued from page 4

and so have the credit unions. Study after study reveals that banks, not credit unions are more focused on serving the poor. In response, credit union lobbyists now argue that they are tax-exempt because they are cooperative in structure. Unfortunately, this argument is contradicted by the thousands of cooperatively owned businesses in the U.S., including some banks, which all pay taxes on the profits they make and retain to grow their business.

There are those in the credit union industry that understand this is a risky time to be drawing a lot of attention to the credit union tax subsidy.

Congress is under tremendous pressure to address the deficit and close outdated tax loopholes. So you might ask yourself, why are the large bank-like credit unions are pushing legislation in Congress to dramatically increase their authority to make more tax-subsidized businesses loans?

Well your guess is as good as mine, but I welcome the discussion, it's about time. ➤

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Howard Headlee
President of the Utah Bankers Association



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The 10 Commandments of Kick-Butt Profitable Growth

... the Path to the Promised Land

by ROXANNE EMMERICH
CSP,CMC

1 Thou Shalt Never See Marketing as a Department

Marketing is a mindset and everybody, everybody, everybody in your organization must own this mindset. Every employee must understand why customers should come to you and not your competitors and which customers and prospects you are targeting. Every function, from how the re-

ceptionist answers the phone to how the back office handles a customer that just had an overdraft, must know that every customer contact is an opportunity to expand and solidify the relationship—and each function must know how.

2 Thou Shalt Differentiate

There is no reason for a customer to pay you any pricing but the lowest UNLESS there is a good reason to pay you more. And there must be. If there's no story to tell, there's no reason to come to your party—and there certainly isn't any reason to pay

up. Every product must have a Unique Selling Proposition that spells out its dramatic difference defined as an overt benefit and said in such a way that it compels prospects to turn away from your competition's alternatives.

3 Thou Shalt Not Cut Marketing Investments During Tough Years

McGraw-Hill researched 600 companies' marketing spending patterns from 1980–1985. They observed that companies that maintained their marketing investing during the 1981–1982 recession boasted an average sales increase of 275 percent

over the next 5 years. Those companies that cut their advertising saw paltry sales growth over the next 5 years of just 19 percent. As my economics professor repeated incessantly, “Always invest your most important dollars in marketing first.”

4 Thou Shalt Understand That Marketing Is NOT Advertising

The best return on your marketing dollars comes from investing in your employees' learning and then incentives followed by investing in mar-

keting to your best customers. Prospecting high-potential clients follows. Advertising to the masses offers the worst return on investment.

5 Thou Shalt Be a Giver—Not a Taker

Your relationship with clients, prospects, and centers of influence should be based on giving. They should hear from you every 90 days—lest they forget you and acquaint themselves with your competition. No, sending a statement DOES NOT count. Information mailings like a “Top 10 Tips for Preparing for the Tax Season” sheet and free

tickets or coupons from one of your retail clients are great ways to add value to the correspondence. As opposed to a “taker” approach—sending “buy me,” four-color, glossy brochures—that will create almost no response. Givers always get better results than takers.

6 Thou Shalt Love Your Top 100 List—and Let Them Know It

While 80 percent of profits come from the top 20 percent of clients, why wouldn't you create a rock-solid “contact every month” plan for your top 100 prospects and clients? Not only will those clients appreciate your constant information sharing, small gifts, and special invitations, they will buy

more from you, “sneeze” about you to others, and become evangelists with their friends. What better way to bring in more profitable accounts than to recruit your profitable accounts to be on your “sales team?”

■ 10 COMMANDMENTS - continued from page 11

7 Thou Shalt Hire the Best and Free Up the Future of Those Who Aren't

It is far more important to hire those who have the right emotional intelligence than those who have the pedigree or credentials. This is the number one hiring mistake in banking. With the ZERORISK Hiring tool, a 15-minute Internet test reveals if a candidate is at high risk for the position—which incidentally benchmarks to have only a 10 percent chance of being in that position 1 year later. Contrast

that to a low-risk candidate who has a 90 percent chance of being in that position with productive results. With embezzlement opportunities, work-ethic issues, and over 30 percent of people falsifying their resumes, who can afford to hire without an emotional intelligence test that can predict work ethic, ability to sell, likelihood to steal, ability to work with others, as well as many other things?

8 Thou Shalt Start All Marketing Efforts with a Goal

It is amazing how many marketing campaigns are run with NO reflection about the goal. Even if it as simple as, “We want ABC demographic to contact us about attending our estate-transfer seminar,” or “We want to target current mortgage customers to

have them take advantage of a one-time special, no-cost to set up home-equity line,” spell out the result you wish to accomplish so all efforts can align with that vision.

9 Thou Shalt Understand the Game Is about Winning Hearts


...those of your employees and your customers. No greatness has ever been accomplished with a rational presentation. ALL people buy for emotional reasons, and you must start first by winning over

the hearts of your employees. Once they believe you are the best and the ONLY choice for prospects, the prospects' hearts will quickly be won over.

10 Thou Shalt Teach Your Employees the Discipline of Winning Behaviors

Do your employees have the disciplines and skills to compete against your toughest competitors? From knowing how to flip a client from a conversation of rate to one of value to having the disciplines of how to move clients through the sales funnel process and how to target high-profit accounts, the days of bankers who wait for money to fall in the door are over. Winners of the Malcolm Baldrige

Quality Award benchmarked that for every dollar they invested in training their people, they received a 30-1 return. When one banker remarked that he didn't train his people because they might leave, he didn't think of the worse nightmare—what if they aren't trained...and they stay? Now, that's a scary thought.

The 10 Commandments of Kick-Butt Profitable Growth are not cast in stone...but they should be posted at your desk. We all know what happens when we break them. 

Roxanne Emmerich, CSP, CMC, CPAE has consulted with half of the top 5% performing banks and now helps community banks incorporate high-performance internal cultures, profit-rich marketing systems and premium-priced sales processes. Available free to bank executives is Roxanne's "Opportunity Preparedness Guide" detailing the 10 essential upgrades her top-performing clients have already made to improve their loan quality, ROE, net interest margin and more. Visit <http://EmmerichFinancial.com>.

Bank Kudos

American Express

American Express Centurion Bank, through its Center for Community Development invested \$2,287,783 to help fund Grantsville's Clark Cove Cottages. Clark Cove is a 24-unit housing complex that serves the low-to-moderate income community in Tooele County. Tooele County experienced the third highest county growth rate in Utah during the previous decade and Grantsville grew by 50% in that time. The growth, along with the economic recession, strained an already limited market of affordable housing for the low-to-moderate income community. In addition to 2- and 3-bedroom units, Clark Cove Cottages set aside one unit for domestic violence victims and another for homeless or near homeless residents in Grantsville.

Big Brothers Big Sisters of Utah recognized American Express' Center for Community Development as a "Big" Champion Partner for 2011 during the "Start Something" Luncheon. During the past two decades, American Express and its employees have contributed more than \$200,000 to Big Brothers Big Sisters of Utah. Hundreds of American Express employees have participated in the annual Bowl for Kids' Sake, served as volunteer mentors in school-based and community-based programs, and provided support for fundraising, scholarships and recruitment. In addition to the volunteer and financial support, many American Express employees participate as "Bigs."

Bank of American Fork Donates Dictionaries to Third-Graders

In December 2011, Bank of American Fork presented third-grade students at Highland Elementary School with 125 dictionaries. The donation was made through the American Fork Rotary Club to support

its literacy program that encourages children to read and write at an early age. This was the fourth time in as many years that Bank of American Fork has covered the cost of the dictionaries for local students.

Town & Country Bank Hailed in Trade Journal

Town & Country Bank is featured in the January 2012 issue of *Independent Banker*, the monthly magazine published by the Independent Community Bankers of America (ICBA). The four-page article entitled "Upscale Upstart," appears as the publication's monthly "Banks to Watch" entry. Town & Country reports that it is profitable and well capitalized, and it will release earnings later this month.

Target Bank Donates \$30,000 in support of Guadalupe School

On November 28th 2011, Target Bank presented its annual contribution of \$30,000 to Guadalupe Schools. Target Bank has a long partnership with Guadalupe School, an independent, non-profit charter school meeting the needs of its students through a range of successful research-driven programs. Guadalupe School teaches economically disadvantaged children and non-English speaking adults the vision and skills needed to live productive, rewarding lives and provides a continuum of services from birth through 4th grade. Guadalupe staff are literally in the home with the family and new infant, preparing the family – and ultimately the child – to successfully provide education at every step until the child completes the 4th grade and setting them on the path to a more successful life. Adult English language classes are also provided to the parents and others in the community.

■ BANK KUDOS - continued on page 14

Jack Mangum, Loan Officer at Bank of American Fork, presents dictionaries to students at Highland Elementary School



On November 28th 2011, Target Bank presented its annual contribution of \$30,000 to Guadalupe Schools

Aislinn Barnes told U.S. Bank why she's "looking up" and it netted her a big gain. Steven SaLoutos, Executive Vice President, U.S. Bank, presents Barnes with a \$5,000 check during a surprise announcement



The Homeowner's Café serves as an education center where both clients and nonclients of Zions Bank can go for questions about homeownership



Utah Jazz fans can now show their support of the Jazz every time they use their new U.S. Bank Utah Jazz Visa® Check Card

U.S. Bank Surprises Bountiful, Utah Small Business Owner With \$5,000 Prize From "Look Up With Us" Challenge

Aislinn Barnes started designing cakes at home to generate income after a family job loss, and now it's a growing business in Bountiful, Utah. Barnes told U.S. Bank why she's "looking up" and it netted her a big gain—\$5,000 that arrived with fanfare during a surprise announcement on Wed., Nov. 30, 2011. Barnes thought she was going to a wedding cake consultation. Instead, she was surprised by U.S. Bank employees carrying an oversized check.

Barnes was selected among hundreds of businesses that told U.S. Bank and their Facebook friends how their businesses were "looking up"...and offered small business owners an innovative way to network with other small business owners while also giving away \$15,000 as part of the "Look Up With US" challenge. The challenge brought small businesses together through U.S. Bank's Facebook page at www.facebook.com/usbank, where participants voted for their favorite success story, learned best practices, and got to know other small business owners around the country.

New Zions Center Guides Homeowners Amid Changing Landscape

Zions Bank recently celebrated the grand opening of a new resource center dedicated to addressing important issues involving homeownership. The Homeowner's Café serves as an education center where both clients and nonclients can go for questions about homeownership.

Located at 7634 Union Park Ave. in Midvale, Utah, the Homeowner's Café is the first resource of its kind in the area and provides free materials to members of the community who can stop by for a one-on-one consultation to discuss situations in detail or use individual kiosks

to study online resources while enjoying beverages and snacks.

Whether someone wants to buy, build or remodel, the specialists at the café are available to provide guidance in all the necessary steps.

Bank of Utah Elves Donate Warm Coats and Cold Cash to Local Charities Just in time for Christmas Giving to Utahns in Need

Santa and a special group of elves from Bank of Utah assisted bank president Doug DeFries in delivering nine large barrels of warm clothing to two Utah charities before Christmas. The locally-owned bank sponsored a Warm Bodies, Warm Souls Coat Drive in December, accepting donations of coats, hats, blankets and warm clothing at all bank branches and at the bank-sponsored Jon Schmidt concerts in Ogden and Salt Lake. St. Anne's Center in Ogden and Crossroads Urban Center's thrift Store in Salt Lake City were the recipients of the coat drive. Bank of Utah also donated \$500 to Crossroads Urban Center to go toward food, household items or clothing that the non-profit may deem necessary to provide for its pantry and thrift store patrons, and the bank gave \$2,000 to the St. Anne's Center building fund.

Central Bank Holds Economic Summit Breakfast for Local Businesses

Central Bank held their second Annual Economic Summit Breakfast for local businesses in the area on January 25, 2012 at the Provo Marriott. Around 250 guests attended and were able to listen to the thoughts of Natalie Gochnour, Executive Vice President for Policy and Communication and Chief Economist at the Salt Lake Chamber. Central Bank arranged for Natalie to speak on the current economy and then she spent her time answering questions from the audience. The presen-

tation was very well received and Central Bank plans to continue making this event an annual tradition.

First National Bank of Layton

First National Bank of Layton recently donated \$2,500 in scholarship money to the Davis Applied Technology College. This money will be used to assist five different students with their tuition to the DATC.

For the 8th year in a row, First National Bank is sponsoring Sub-For-Santa Trees at their bank branches to benefit the Family Connection Center in Davis County. Yearly, employees and customers donate in excess of 200 gifts for area children in need.

First National Bank recently donated \$1,000 to Safe Harbor Domestic Violence Shelter in Kaysville as part of the bank's annual Christmas giving campaign.

New U.S. Bank Utah Jazz Visa Check Card Unveiled

Utah Jazz fans can now show their support of the Jazz every time they use their new U.S. Bank Utah Jazz Visa® Check Card. U.S. Bank, the proud sponsor of the Jazz and home of Jazz banking, unveiled the new card design, which features the Utah Jazz logo, to coincide with the kick-off of the Jazz season. The new check card is a safe and easy way to make purchases right from a U.S. Bank checking account. Similar to all U.S. Bank Visa Check Cards, the new Jazz check card can be used in millions of locations that accept Visa cards for transactions.

USU Student Wins Title of Ultimate Cheapster from Zions Bank

Utah State University student Lori Thompson walked away with \$10,000 after competing against nine other contestants in budgeting challenges and winning the title of ultimate Cheapster. Rob Brough, executive vice president and director of Marketing and Communications, from Zions Bank, attended a special Cheapster

finale party on Dec. 20 where he presented the cash prize to Thompson in the form of one-dollar bills.

Throughout the series, Thompson demonstrated her knack for finding the best deal for the best value. In the final episode, she was selected from among three contestants by Cheapster judges and past contestants. She looks forward to using her winnings to help her pursue a career in physical therapy.

"Cheapster was a fun, innovative way to encourage college students that pinching pennies now will pay off in the long run," said Brad Herbert, Emerging Market manager and coordinator of the Cheapster promotion.

Episodes of Cheapster can be viewed at [Facebook.com/CheapsterTV](https://www.facebook.com/CheapsterTV).

Brad Herbert and Rob Brough present \$10,000 in one-dollar bills to Cheapster reality series champion Lori Thompson and her husband, Nathan



Education Corner BECKY WILKES UBA Director of Education



One of the benefits of membership in the Utah Bankers Association is targeted educational programs for banking professionals. Our goal is to continually strive to identify and meet the educational needs of our members and develop pertinent and timely programs dedicated to banks of all sizes.

We are proud to offer a variety of conferences, live seminars and webinars addressing a wide array of relevant banking topics. Here are the UBA conferences on the horizon:

UBA Annual Convention

June 24-27, 2012
Sun Valley, Idaho

Up-to-date information on live seminars and webinars can be found on our website at www.uba.org.

Fall Compliance Conference

October 9-12, 2012
Zermatt Resort, Park City

Also, it's not too late to purchase a UBA Training Package. This is a great way to help budget and track your training dollars—and save money in the process.

Annual Director's Forum

November 2012
(date and location TBD)

Be sure to take advantage of all the educational opportunities offered by UBA ! Call us at 801-364-4303 or email to bwilkes@uba.org.

American Banker Magazine Honors Two Utah Executives as Most Powerful Women in Finance



Two outstanding banking leaders in Utah were profiled in American Banker Magazine's Top 25 Most Powerful Women in Finance in the October issue.



LeeAnne Linderman, Executive Vice President and Director of branch banking for Zions Bank

Linderman is responsible for Zions Bank's network of 133 retail branch offices in Utah and Idaho. She also directs Retail Sales Administration, Retail Branch Operations, Zions Bank@Work, Executive Banking, and the Diverse Markets and Emerging Market initiatives. Additional responsibilities include consumer and business deposit acquisition, and consumer, small business and branch commercial lending. Through a training program for front-line employees, Linderman drove a 7 percent increase in cross-selling in 2010. She suggests focusing on skill-building rather than promotion-seeking. "When I speak in front of groups of young professionals, I encourage them to 'focus on lattice, not ladders,' as a visual reminder that it's more important to grow their abilities before they strive to climb their career trajectory."

Linderman has previously been honored by the magazine in 2004, 2009 and 2010.



Andrea Moss, President & CEO, American Express Centurion Bank

As President and CEO of AECB for the past four years, Andrea played a key strategic and tactical role in leading the bank through a time of rapid change and an evolving regulatory environment. In addition to her bank leadership, Andrea is an Executive Board member of the Salt Lake Chamber of Commerce and serves as Co-Chair of its Education Committee. She also influences banking policy through her role with the American Bankers Association Government Relations Council and the Board of the Utah Banker's Association.

Bankers on the move

Lisa Gerner has joined American Express as the Global Banking Lead Financial Officer with a supervisory role over the VP/CFOs of Utah-based American Express Centurion Bank and American Express Bank, Federal Savings Bank.

Brent Skidmore has joined Bank of American Fork as a new mortgage loan officer to be located at the Lehi branch.

Steve Gleason has joined Bank of Utah as a vice president in business banking.

Zack Matson has joined Bank of Utah as a mortgage loan officer at its Orem branch.

Kevin Moss joined American Express Bank, Federal Savings Bank as Director of Operational Risk.

Special Recognition



Marcia Clements one of six bankers in nation recognized for outstanding achievements

Bank of American Fork operations manager Marcia Clements has been recognized by the Independent Community Bankers of America (ICBA) as a "Rising Star." The honor is bestowed upon the best and brightest in the community-banking industry who exemplify professionalism, accomplishment and integrity. Clements is one of six bankers in the country to receive the award and is featured in the February 2012 issue of ICBA *Independent Banker* magazine.



Ryan Hunter Recognized For Outstanding Community Contributions

Bank of American Fork business development officer Ryan Hunter has been recognized as the Business Person of the Year from the American Fork Chamber of Commerce. Hunter was chosen from among hundreds of Chamber members for his continued support of local communities, particularly his role in organizing the Chamber's most successful Business Classic golf tournament. The tournament raised funds for the Chamber and collected 400 lbs. of food for the Utah Food Bank.



Rob Brough Receives Utah Business Magazine Sales and Marketer of the Year Award

Executive Vice President and Director of Marketing and Communications Rob Brough was recognized as one of Utah's top sales and marketing executives by *Utah Business* magazine. Brough was one of twenty selected to receive the magazine's first-ever Sales and Marketer of the Year award.

In the midst of challenging economic times, Brough has driven strategic marketing efforts to reinforce Zions Bank's role as a community-focused financial institution that cares about its clients and small businesses.

Brough was honored at an awards luncheon on Jan. 27 and he was featured in the January 2012 issue of *Utah Business* magazine.



Becky Kearns, Zions Bank, Honored as Woman of the Year, Trustee of the Year

Becky Kearns, Regional President of Resort Banking for Zions Bank was awarded the prestigious 2011 Candy Erickson Woman of the Year award at the Park City Women's Business Network's annual fall fashion fundraiser on Oct. 13. Kearns received the award for her consistent, tireless effort to better the Park City community. Her zest for making a difference has been demonstrated in her unwavering involvement in the community. She is the outgoing president of the Park City Chamber Bureau and she has been a member of several boards, including the Youth Winter Sports Alliance, Sundance Institute and the Pacific Coast Banking School in Washington.

The Utah Hospital Association also honored Kearns for making a difference. At an awards dinner on Oct. 6, the association named Kearns the 2011 Trustee of the Year. She is the chairperson of the board of directors at Park City Medical Center and has dedicated hours of her time for years to help make the new hospital possible.

Chris Powell, CPA, has joined Bank of Utah as assistant vice president and internal audit manager.

Bank of American Fork has hired **Dean Robb** as its credit risk assessment officer

Jennifer Smith has been named EVP and director of Bank Operations for Zions Bank.

Dalen Slater has been named executive vice president and chief credit officer for Zions Bank

Thad Allen has been named executive vice president and chief credit officer for Zions Bank.

Zions Bank has promoted **Robert Boyd** to executive vice president and manager of Credit Management.

Randy Fischer has been named branch manager of the Providence Office of Zions Bank.

Updating Utah's Mechanic's Lien Statutory Scheme

Understanding the Changes

by Richard H. Reeve



The Utah State Legislature has again revised Utah's mechanic's lien statutory scheme. The lien statute (Utah Code § 38-1-1 et seq.) was substantially revised by House Bill 260 and House Bill 115, which took effect on August 1, 2011. Because of the significant changes and their impact on the validity and enforcement of mechanic's liens claims, anyone who deals with, or seeks to be paid by, mechanic's liens would do well to understand the changes.

From this attorney's point of view, there are four significant changes to Utah's lien statute. The purpose of this article is to provide a general overview of these changes. Competent legal counsel should review and apply the specifics of the changes described below, as well as other changes made to the mechanic's lien statute, on a case-by-case basis.

Separating Services

The revised lien law provides for a separate process by which design professionals can make a lien claim for preconstruction design work, even if the services are never actually incorporated into the project. The statute defines preconstruction design work as a plan or design of planned improvement (Utah Code § 38-1-2(13))¹. This includes, but is not necessarily limited to, land surveys; subdivision plats; structural designs; environmental plans; and installation plans.

Design professionals who want to claim a lien for preconstruction design work must file a Notice of Retention with the State Construction Registry (SCR) within 20 days of the commencement of preconstruction services. Utah Code § 38-1-6.7 requires lien claimants who perform both preconstruction services and construction services to file:

- A notice of retention for preconstruction services
- A preliminary notice for construction services

Establishing Priority

The revised law alters the process of establishing priority between mechanic's liens and construction loans. Under the earlier version of the law, the priority of all mechanic's liens was determined by the date that any contractor provided substantial and visible work on the construction project. If one lien claimant performed this type of work before the construction loan was recorded, all subsequent contractors or suppliers could claim priority over the construction loan.

Under the new law, priority is determined not by the old "commencement of work" standard, but by the filing of the first preliminary notice (Utah Code § 38-1-5). If a preliminary notice is filed by any lien claimant before the recording of the construction loan, all of the lien claimants will have priority over the construction loan. The construction lender, however, can restore its priority position by paying off the claimant who first filed the preliminary notice (in effect, buying its way to the front of the line to aid in the determination of priority) as specified in Utah Code § 38-1-5(3). Construction lenders need to file a Notice of Construction Loan with the SCR when the construction loan is recorded (Utah Code § 38-1-30.7).

Standardizing Project Identifiers

Under HB 260 and HB 115, the tax identification number is now a required identifier, along with other basic project information, on all documents filed with the SCR (Utah Code § 38-1-27(3)(c)). Owners, contractors, suppliers, and all potential lien claimants should implement a process that allows them to identify and record the tax identification number of each project for which they provide labor, services, or materials.

Dividing Private and Government Projects

HB 260 and HB 115 create a division among the SCR filing requirements for private projects and government projects.

¹ All references to the Utah Code refer to sections of the code as they have been modified by HB 260 and HB 115, unless otherwise noted.

Potential lien claimants should ask themselves whether the project is a government project or a private project as they prepare to furnish labor or materials and as they prepare to make filings with the SCR.

- The new law defines government projects as projects built for, or by, the state; any state division or agency; any city; county; town; school district; special district; and so on (Utah Code § 38-1-27(1)(i))
- A private project is a construction project that is not a government project (Utah Code § 38-1-27(1)(l))

Navigating the SCR Filing Requirements

The specific SCR filing requirements for each type of project are listed below.

Notice of Commencement for Private Projects

There is no required notice of commencement for private projects (Utah Code § 38-1-31.5(8)(a)). Instead, the local government entity issuing a building permit is required to input the building permit into the SCR (Utah Code § 38-1-31(1)(a)). For projects that do not require a building permit, a notice of commencement may presumably be filed with the SCR by the owner, original contractor, or owner-builder. The applicant for whom the building permit is issued is responsible to verify the accuracy and existence of the building permit (Utah Code § 38-1-31(1)(a)).

Notice of Commencement for Government Projects

The original contractor, owner, or owner-builder must file a notice of commencement with the SCR no later than 15 days after the commencement of construction work at the project site (Utah Code § 38-1-31.5(1)).

- If no one files a notice of commencement, then lien claimants do not have to file preliminary notices with the SCR (§ 38-1-31.5(7))
- No one is required to file a notice of completion if no one filed a notice of commencement (Utah Code § 38-1-31.5(7))

Notice of Retention of Construction Lien

For all projects:

- Lenders must file a notice of construction loan with the SCR within days of recording the Deed of Trust securing the construction loan (Utah Code § 38-1-30.7).
- Design professionals who furnish preconstruction design services must file a notice of retention within 20 days of first furnishing preconstruction services (Utah Code § 38-1-6.7).

Preliminary Notices for Construction Lien

For private projects, all parties who are entitled to a lien must file a preliminary notice with the SCR within 20 days of first furnishing labor, supplies, or services in connection with the construction project (Utah Code § 38-1-32(2)(a)(i)). Failure to file a preliminary notice results in a waiver of subsequent lien rights (Utah Code § 38-1-32(1)(d)(i)). There is no provision for the late filing of a preliminary notice.

There are two significant changes to the preliminary notice requirements for a private project. Under the earlier law, only subcontractors were required to file preliminary notices. Now, all parties that are entitled to lien must file a preliminary notice, including those parties who have a contract with the owner or owner-builder. Lien claimants were given an opportunity to file a preliminary notice late, although there was also a five-day penalty on the amounts they could claim. HB 260 eliminates the late filing provision for preliminary notices for private projects.

For government projects, all potential lien claimants who do not have a contract directly with the owner of the construction project (such as a subcontractor), must file a preliminary notice with the SCR within 20 days of first furnishing labor, supplies, or services in connection with the construction project (Utah Code § 38-1-32.5(1)). Preliminary notices can be filed late; however, lien claimants can only claim amounts incurred five days after the late preliminary notice is filed with the SCR (Utah Code § 38-1-32.5(4) and (5)).

Notice of Intent to Complete

When a project fits the following criteria, then a Notice of Intent to File a Notice of Completion must be filed with the SCR 45 days before a Notice of Completion is filed with the SCR (§ 38-1-40(1)-(2)):

- The project is commercial
- Extends for more than 120 days
- Costs more than \$500,000.00
- Is not secured by a payment bond

The filing of a Notice of Intent to File allows subcontractors and suppliers to file an Amended Preliminary Notice and a Demand for a Statement of Adequate Assurance (Utah Code § 38-1-40):

- An Amended Preliminary Notice must be filed within 20 days of the Notice of Intent to File (Utah Code § 38-1-40(2))
- A Demand for a Statement of Adequate Assurance must be filed within ten days after the filing of an Amended Preliminary Notice (Utah Code § 38-1-40(4))

This is true for all projects.

Because of the significant changes and their impact on the validity and enforcement of mechanic's liens claims, anyone who deals with, or seeks to be paid by, mechanic's liens would do well to understand the changes.

Notice of Completion for All Projects

Utah Code § 38-1-33(1)(a) states that a Notice of Completion can be filed by any person with an interest in the project, including:

- The owner
- A contractor
- A title insurer
- A holder of surety bond


The Notice of Completion must be filed at final completion of the construction project (Utah Code § 38-1-7(1)(a)). Final completion is:

- The date of the issuance of a Certificate of Occupancy if one is required;
- If not, then the date of the final inspection if one is required;
- If not, then the date on which the last substantial work was furnished by the lien claimant (§ 38-1-7(1)(a))

As before, Notices of Completion are very important because they shorten the owner's exposure to mechanic's liens from 180 days to 90 days (Utah Code § 38-1-7). Notices of Completion are also important because all preliminary notices for contractors furnishing work at the end of the project must be filed within ten days of the filing of the Notice of Completion with the SCR.

Summing Up

As a result of HB 260 and 115, it has never been more important to file timely and accurate SCR findings. This is especially true for Preliminary Notices and Notices of Completion, because failure to understand and incorporate these changes could have profound impacts on both a lien claimant's ability to assert and enforce a mechanic's lien and an owner's exposure to mechanic's lien claims.

All developers, owner-builders, contractors, subcontractors, suppliers, and design professionals who work on construction projects should understand these changes and implement internal programs to ensure that accurate and timely SCR filings occur in connection with each active construction project. 



Richard H. Reeve is an associate and member of Van Cott's Litigation Section and Personal Injury Practice Group, focusing his practice in the area of general civil litigation with an emphasis on property law. Mr. Reeve also advises clients in land use, real property, and land development matters. A significant portion of Mr. Reeve's practice involves representing clients in a variety of areas of law including property acquisition and development issues, collections and foreclosures, and regulatory issues.

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