

# TB LAW

NEWSLETTER

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# TIFFANY & BOSCO welcomes NEVADA ATTORNEYS

The Firm Now Has  
Offices in Both  
the Grand Canyon  
and Silver States

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## Inside

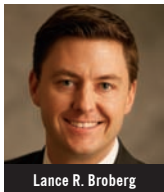
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# ANNOUNCEMENTS

## PHILANTHROPY

In March 2011, Tiffany & Bosco was the Presenting Sponsor for the **Boys and Girls Clubs of Greater Scottsdale 2011 Youth of the Year Gala and Auction**. **Mark and Amanda Bosco** had the privilege to participate in the selection process and presentation of the Youth of the Year. The firm is proud to support the charity, which serves more than 16,000 youth at nine branches and twelve outreach sites in the Valley of the Sun.

In April 2011, Tiffany & Bosco was the lead sponsor for the **Southwest Autism Research and Resource Center's (SARRC) 13th Annual Community Breakfast** for business and community leaders to raise awareness and funds to advance research and services for families living with autism. **Mark and Amanda Bosco** co-chaired the event, recognized as the largest charitable event in Arizona history with close to 2,000 attendees.



Lance R. Broberg

Tiffany & Bosco was a proud supporter of the **2011 National High School Mock Trial Tournament** held May 2011 in Phoenix. The tournament brought 48

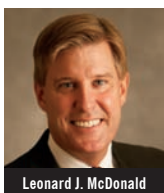
of the world's best mock trial teams, from as far as North Korea and Australia, to conduct "trials" before lawyers, judges, and justices from around the country. **Lance R. Broberg**, a former national champion, served as co-author of the case problem and as a host coordinator. Congratulations to the team from Indiana, this year's champion!

**Lance R. Broberg** was appointed to the Board of Directors of the **American Lung Association in Arizona**.



Aaron T. Lloyd

**Aaron T. Lloyd** was recently appointed to the Board of Directors of **The Miracle League of Arizona**, which gives children with cognitive and/or physical disabilities the opportunity to play baseball.



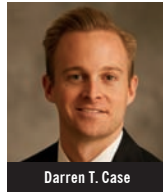
Leonard J. McDonald

**Leonard J. McDonald** was named Vice-Chair of the Executive Board of Directors of the **National Kidney Foundation of Arizona**. The Foundation has been in operation since 1963 as a charitable, non-profit agency dedicated to improving the quality of life of those challenged by chronic kidney disease.

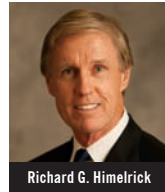
## PERSONAL ACHIEVEMENT



Michael A. Bosco, Jr.



Darren T. Case



Richard G. Himelrick



James P. O'Sullivan



May Lu

**Michael A. Bosco, Jr.** was recognized by the Arizona State Bar Association for 50 years of membership at the State Bar of Arizona's 2011 National Convention. Mike's 50 years include: Assistant U.S. Attorney 1962-1963, Assistant City Attorney, Phoenix, Arizona 1963-1965, and Magistrate, City of Phoenix, 1969-1970. "Mike Bosco has always been a leading member of our legal community," says Alan Bayham, State Bar of Arizona President, "Tiffany & Bosco has become one of the most outstanding and reputable firms in Phoenix. Perhaps even more important is that the ethical code established by the firm has helped set standards for our profession."

**Darren T. Case** was recently appointed to the Board of Directors for the Central Arizona Estate Planning Council and also to the Planning Committee for the 2011 Tax & Legal Seminar presented by the Arizona Community Foundation and the Jewish Community Foundation.

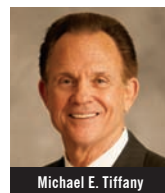
**Richard G. Himelrick** authored an upcoming article in the Arizona Attorney magazine entitled "Turning 60: Bud

Jacobson, Earl Hastings, and Arizona's 1951 Securities Act."

On March 28, 2011, **James P. O'Sullivan** and **May Lu** presented the webinar "Starting Off on the Right Foot: Business Formation and Owner Agreements" to members of NALS, an association of legal professionals.

**May Lu** was named the 2011 Outstanding Volunteer Attorney for Pro Bono Service by Arizona State University Sandra Day O'Connor College of Law for her contributions and volunteer activities through the Business Legal Assistance Program. And after concluding her 11-year involvement in coaching and mentoring Chaparral High School's Mock Trial team, May was selected to participate in the 2011-2012 Class of the Bar Leadership Institute (BLI) sponsored by the State of Arizona. BLI provides to the participants education and training in the areas of leadership, ethics, and career development to prepare them for interaction and relationship building with members of the legal, judicial, and executive sectors and other organizations in the community.

## Tiffany Wins Team Roping Competition



Michael E. Tiffany

**Michael E. Tiffany** recently won a prestigious buckle and cash for winning a major team roping competition sponsored by the Sheriff's Mounted Posse of Maricopa County, Arizona. After five qualifying events in which 250 teams roped, the top 10 teams competed in a 10 steer final. Mike and his roping partner caught the most steers in the fastest time. According to Mike, "A 10 steer team roping requires intense concentration over a two-hour period, so much so that the adrenaline did not clear through my system until several hours after we finished."



## ANNOUNCEMENTS

### Tiffany & Bosco, P.A. Expands Its Footprint Into Nevada

On February 1, 2011, Tiffany & Bosco, P.A. opened a Nevada branch to better serve its clients needs in the State of Nevada. This was made possible by bringing into Tiffany & Bosco the attorneys with the law firm Wilde & Associates, further cementing a decade old relationship with its founder, Gregory L. Wilde. Greg is now an equity shareholder at Tiffany & Bosco and serves as the managing partner for the Las Vegas branch. Mark S. Bosco serves as the Department Head for the Nevada default practice group.

This complementary agreement between the firms brings Tiffany & Bosco

to a total of over 40 lawyers and a support staff of over 170. This addition also exemplifies Tiffany & Bosco's continued commitment to providing its clients a wide range of legal services, both locally and throughout the Southwest.

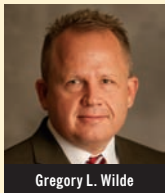
"With the rapid advancement of technology, the severe downturn in real estate values, and the multi-jurisdictional litigation linking Nevada and Arizona, having offices in these states for the convenience of clients makes perfect sense. When the decision was ultimately made to expand the Tiffany & Bosco footprint into Nevada, our previous 10+ year relationship with Greg and his firm made

our joining forces under the Tiffany & Bosco umbrella a very natural fit," Mark Bosco said.

The Nevada office of Tiffany & Bosco primarily provides services in the area of foreclosure mediation, creditor bankruptcy representation, eviction, and related litigation, in both state and federal courts. The Nevada office has capability for other areas of law and a wider client base, and with the backing of the firm's main office in Phoenix, it is expanding its reach even further. The firm has recently become designated counsel for the Federal National Mortgage Association (Fannie Mae) for Nevada in 2011.

#### NEW FACES

#### NEW SHAREHOLDERS

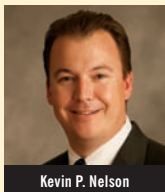


Gregory L. Wilde

**Gregory L. Wilde** joined the firm as a Shareholder with the addition of the Nevada office on February 1, 2011. Prior to joining Tiffany & Bosco, Greg was the founder of Wilde & Associates and practiced law in Nevada for twenty years. Greg graduated

from the University of Utah with a Bachelor of Arts in Finance which has served him well in his creditor-based bankruptcy and real estate practice. He has operated one of the largest creditor bankruptcy practices in Nevada for several years and assisted in Tiffany & Bosco being appointed as designated counsel for Federal National Mortgage Association (Fannie Mae) for Nevada in 2011.

Greg is admitted to practice in Nevada, Utah, the United States Court of Appeals for the Ninth Circuit, and the U.S. District Court for the Districts of both Nevada and Utah. He is a member of the Southern Nevada Association of Bankruptcy Attorneys, the Bankruptcy Law Section of the Nevada State Bar, and the Clark County Bar Association. Greg also has been a member of many committees and task forces regarding judicial rule changes, bankruptcy policies, and real estate matters in Nevada.



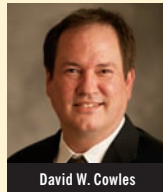
Kevin P. Nelson

**Kevin P. Nelson** was named Shareholder in the firm's Phoenix office. His litigation and transactional practice focuses on construction, Indian law, personal injury, and regulatory compliance and default issues regarding residential and commercial loans. The

clients Kevin represents cover a broad spectrum, including institutional and private lenders, contractors, subcontractors, suppliers, architects, engineers, and owners. Kevin is licensed in all Arizona state and federal courts, as well as the Navajo Nation, Hopi, White Mountain Apache, and Fort McDowell Yavapai Nation tribal courts.

#### NEW ASSOCIATES

**David W. Cowles** joined the firm



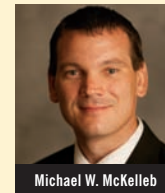
David W. Cowles

in March 2011.

David is part of the firm's financial services department where he practices primarily in the areas of commercial litigation and appeals. He has represented clients in disputes involving a wide range of areas of the law, including contract, construction, officer and director liability, nuclear tort, Federal Indian law, professional liability, securities fraud, intellectual property, and real estate. Before joining the firm, David was an associate at Lewis and Roca, LLP, and Meyer Hendricks & Bivens, P.A. After graduating from Arizona State University Sandra Day O'Connor College of Law, where he was an Associate Articles Editor for the law review, David clerked for the Honorable Frederick J. Martone at both the Arizona Supreme Court and the United States District Court for the District of Arizona. Before law school, David taught Philosophy at Arizona State University.

**Michael W. McKelleb**, an associate with the firm, is another addition arising from the firm's expansion into Las

Vegas. His practice focuses mainly in the areas of commercial litigation and bankruptcy. Mike graduated *cum laude* from the William S. Boyd School of Law at the University of Nevada, Las Vegas. While in school, he was a judicial extern for the Hon-

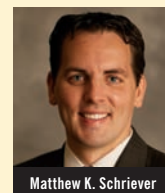


Michael W. McKelleb

orable Kathleen Delaney in the business court of the Eighth Judicial District Court, and participated in both the ABA

Negotiation Competition and the school's moot court competition. As a result, he was inducted into the school's Society of Advocates and received the Dean's Award. Prior to law school, Mike had a successful career in residential construction.

**Matthew K. Schriever**, a licensed attorney in the state and federal courts of Nevada since 2007, joined the



Matthew K. Schriever

firm as an associate with the addition of the Nevada office. Matt was raised in Missouri and graduated from the University of Utah

in 2004 with a Bachelor's Degree

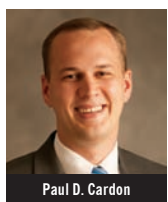
## IN FOCUS

# Making or Breaking Deficiency Claims

## The Effect of Choice of Law Provisions on Deficiency Judgments

BY PAUL D. CARDON

**U**nder Arizona law, a lender may, subject to protections afforded to borrowers under Arizona's anti-deficiency laws, be able to pursue a borrower for a deficiency after foreclosure. Mathematically, a deficiency is the difference between the total outstanding balance of the loan and the greater of the proceeds from the foreclosure and the fair market value of the collateralized property.<sup>1</sup> Not long ago, Arizona's deficiency statutes were relatively in-



Paul D. Cardon

consequential. Because of increasing property values, a defaulting borrower could be assured that a lender would not seek a deficiency. Nowadays, however, because property values have steadily declined, a lender is much more likely to pursue a deficiency against a defaulting borrower.

Deficiency claims arise out of contract, usually a promissory note. One common provision of a promissory note is the choice of law provision. A choice



of law provision is an agreement between the parties as to which state's laws apply when enforcing or interpreting the promissory note. These choice of law provisions may have a profound impact on how a lender prosecutes or how a borrower defends a deficiency action.

For lenders, a choice of law provision could provide a means of avoiding borrower-friendly statutory protections. For example, Arizona has adopted an anti-deficiency scheme protecting certain residential borrowers from personal liability under limited circumstances whereas Nevada's anti-deficiency protections are slightly less favorable to borrowers.<sup>2</sup> Some states, such as Iowa or Kansas, have no such protections.

For borrowers, a choice of law provision could provide a means of adopting

borrower-friendly statutory protections. California, for example, prohibits lenders from seeking a deficiency from almost any borrower with very limited exceptions.<sup>3</sup>

In any of these situations, a lender and borrower should be aware of a "conflict of laws" analysis under the *RESTATEMENT (SECOND) OF CONFLICTS OF LAWS*. The Restatement provides two relevant scenarios in which the laws of the chosen state may not govern the contract: (1) if the parties cannot resolve the particular issue with an explicit provision in the contract, or (2) if applying the law of the chosen state would conflict with the fundamental policy of the state with a materially greater interest.

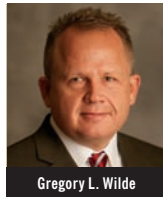
In the end, Arizona's appellate courts have not resolved the enforceability of choice of law provisions as



# TO BREACH OR NOT TO BREACH? That is the Question.

BY GREGORY L. WILDE

It is impossible for a Nevada lawyer to attend a dinner party, sporting event, or even church without someone asking about the pros and cons of letting a house go into foreclosure, seeking a loan modification, or listing a home for a “short sale.” These are common questions because of Nevada’s decline in property values, soaring unemployment, and foreclosure crisis. One cannot fully discuss foreclosures without discussing whether borrowers will be liable for any deficiency under Nevada Revised Statutes 40.451 to 40.462.



Gregory L. Wilde

Generally, a deficiency is the difference between the total debt obligation less the foreclosure sale price or fair market value, whichever is greater. When land values began to plummet, Nevada enacted its first anti-deficiency statute in 2009 prohibiting lenders of purchase money loans *made after October 1, 2009*, from seeking a deficiency.

Two years later, the Nevada Legislature radically revised its deficiency statutes with Assembly Bill 273 (AB 273) and Senate Bill 414 (SB 414). The following changes became fully effective October 1, 2011:

Mortgage insurance proceeds received or made payable to the lender are subtracted from the total debt obligation.

The statutory period for downstream lienholders to file a deficiency action is reduced from 6 years to 6 months after the foreclosure sale.

Deficiency actions are prohibited after a “short sale” unless both the lender and homeowner sign an agreement specifically detailing: a) a right to recover a deficiency, b) the total amount of the deficiency, and c) the portion of the deficiency that is forgiven.

The loan amount of a subsequent lienholder (assignee) is limited to the discounted consideration paid for the negotiable instrument, together with accruing interest and costs.

With these changes, lenders have 6 months to seek a deficiency. Downstream lienholders wiped out by the sale also have 6 months to bring a suit on their lien. Some argue that limiting the recovery of a subsequent lender (assignee) is unconstitutional because it: destroys the benefit of the bargain obtained by purchasing the loan at a discount; chills the sale of negotiable instruments; makes it difficult for distressed banks to sell real estate notes; and further thwarts the recovery of Nevada’s real estate market.

proscribed above in the context of a deficiency judgment. Until they do, and even after they do for that matter, the best policy is to analyze the potential impact of a choice of law provision with your attorney at the time the contract is entered into. Tiffany & Bosco is ready to respond to any questions you may have in this area.

- 1 Ariz. Rev. Stat. §§ 33-729, 33-814.
- 2 One major difference between Arizona’s and Nevada’s anti-deficiency protections is that property in Arizona must merely be “limited to or utilized for” a dwelling, whereas a borrower in Nevada must “continuously occup[y] the real property as the [borrower’s] principal residence.” Ariz. Rev. Stat. § 33-814; Nev. Rev. Stat. § 40.455(3).
- 3 Cal. Civ. Proc. Code §§ 580b, 580(d).

## TAKE CHARGE

For more information about Tiffany & Bosco’s Nevada resources in this area, please contact Greg Wilde at (702) 258-8200 or [glw@tblaw.com](mailto:glw@tblaw.com).

## BUSINESS

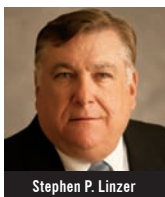


# CAR TALK

## *Tiffany & Bosco Style*

BY STEPHEN P. LINZER

Although there are thousands of auto, RV, and light truck dealers in the United States, no law school has a curriculum devoted to training lawyers to practice in the automobile industry. Yet, when lawyers practicing in this area banded together to form their own association, it took little time to gather over 500 attorneys to become participating members of the



Stephen P. Linzer

National Association of Dealer Counsel.

Recognizing that the automobile industry is one of the most regulated industries in the U.S., law firms like Tiffany & Bosco are beginning to form and promote groups of lawyers to make it the focus of a large part or all of their practices. To do so, they must be properly prepared to venture into areas of the law that require many different skills. An overview illustrates the complexity of the industry's legal issues and affairs:

**Business Formation Issues.** A dealership must decide its proper business form. To adequately advise the dealer principal, attorneys must be familiar with corporate management and control issues as well as be knowledgeable on tax matters.

**Franchise Issues.** Vehicles can be sold only through dealers appointed or selected by manufacturers or distributors. The dealer must understand not only its contractual obligations and responsibilities but also its rights under federal and state franchise laws.

**Real Estate and Land Use Issues.** Real estate is a critical investment for dealers. Land purchases or leases must be negotiated, drafted, and consummated. These tend to be sophisticated real estate transactions requiring financing, land use, environmental compliance, and zoning knowledge and experience.

**Administrative Licensing and Governmental Relations.** Dealers have multiple licenses, including state

licenses from the Motor Vehicle Division and the Departments of Financial Institutions, Insurance, and Revenue.

**Employment Issues.** Dealers employ many people. They hire employees, establish pay plans, negotiate employment agreements, and adopt policies. In its operations, the dealership must comply with a large number of federal and state laws ranging from wage and hour to civil rights.

**Advertising Compliance; Vehicle and Consumer Finance.** Dealers spend millions in advertising — federal, state, and local laws apply to all media.

**Tax Issues.** Auto dealerships tend to be the largest source of sales tax to state and local governments. They must protect against adverse scrutiny by complying with all applicable tax laws.

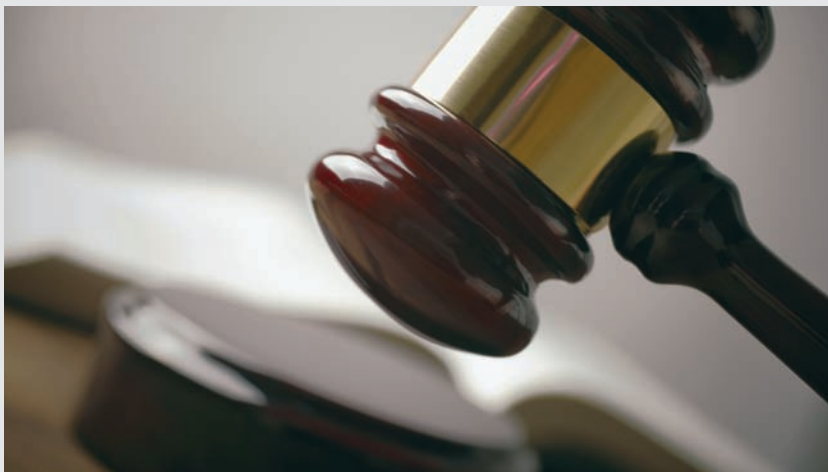
**Litigation.** Every dealer must have the support of litigation attorneys to handle a variety of cases arising from either the sales process or the products themselves. Typical cases may allege consumer deception, defective vehicles, or bad repairs resulting in a vehicle causing personal injury or property damage.

To provide the vast range of services required by the present day auto, RV, and light truck dealer capably, a law firm must not just be of sufficient size to have the resources available. A truly sophisticated automotive lawyer group understands practical and efficient strategies that enable it to utilize them effectively. Tiffany & Bosco's innovative automotive law practice group draws upon the firm's skill and broad experience to meet virtually all the legal needs of its client dealerships and their principals.

### GET STARTED

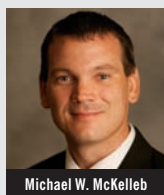
For more information about Tiffany & Bosco's automotive law practice group, please contact Steve Linzer at (602) 452-2748 or spl@tblaw.com.

# NEVADA LAW



## Nevada Legislative Update

BY MICHAEL W. McKELLEB



Michael W. McKelleb

**The Nevada Legislature recently concluded its 2011 biennial session with a few bills worth noting.**

### FORECLOSURE

Significant changes have made it more difficult to foreclose and obtain a deficiency judgement. The six-month statute of limitation for a deficiency now applies to all lienholders and is limited to the amount paid for the lien. Lenders are also required to disclose significantly more information prior to foreclosure.<sup>1</sup>

### SMOKING RESTRICTIONS LOOSENED

The Nevada Clean Air Act was revised to allow smoking in bars, taverns, and saloons by modifying the definition of a "stand alone" establishment, allowing smoking in any "age-restricted" area. Moreover, by removing the requirement that food service be "incidental" to the business, establishments that allowed smoking may once again offer food.<sup>2</sup>

### CELLULAR PHONE USE

Nevada now prohibits use of handheld cellular phone while driving, which includes escalating

fines from \$50 to \$250. Second or subsequent violations may include license suspension.<sup>3</sup>

### EDUCATION REFORM

Teachers can now be terminated for poor job performance after three one-year probations while high-performing teachers will receive pay increases. Additionally, the Board of Education was increased to seven members: four elected, one appointed by the Governor, and one each selected by the Senate majority leader and Assembly speaker.<sup>4</sup>

### MINING

A non-public agency can no longer exercise eminent domain for mining and smelting activities. This stripped the Nevada mining industry's ability to acquire real property it was otherwise unable to obtain through regular negotiations.<sup>5</sup>

1 See AB 77, AB 273, AB 284, AB 373, AB 388, SB 200, and SB 314, 76th Leg. (Nev. 2011).

2 See AB 571, as enrolled, 76th Leg. (Nev. 2011).

3 SB 140, 76th Leg. (Nev. 2011).

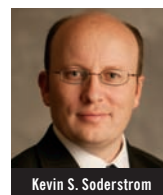
4 SB 197, 76th Leg. (Nev. 2011).

5 SB 86, 76th Leg. (Nev. 2011).

Continued from page 3

in Political Science and a Certificate in International Relations. He returned to Missouri and received his Juris Doctor from the University of Missouri-Kansas City School of Law in 2007. Matt's practice primarily focuses on representing the rights of creditors in bankruptcy, civil, and commercial litigation, forcible entry and detainer/eviction, and foreclosure/trustee sales matters. Prior to entering law school, Matthew was employed with the United States District Court for the District of Utah and the Fourth District Court of the State of Utah, where he worked as a clerk for the Honorable Claudia Laycock and the Honorable Guy R. Burningham (Ret.).

Kevin S. Soderstrom also joined the firm as an associate with the addition of the Nevada office. Kevin is a 5th year associate admitted to practice in all Nevada state and federal courts and represents a wide variety of clients



Kevin S. Soderstrom

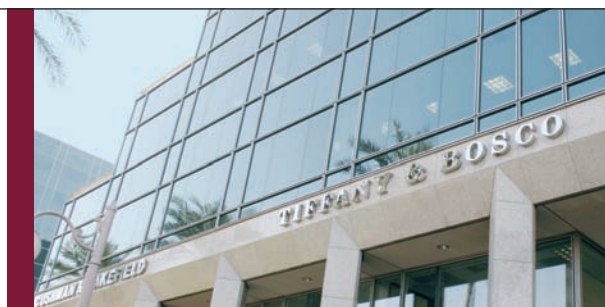
Kevin S. Soderstrom also joined the firm as an associate with the addition of the Nevada office. Kevin is a 5th year associate admitted to practice in all Nevada state and federal courts and represents a wide variety of clients ranging from individuals to large, national lending institutions. His current efforts are primarily focused on representing lenders, loan servicers, and trustees in foreclosure-related matters including litigation, evictions, mediations, judicial reviews, and representation of creditors in bankruptcy court. Kevin was born and raised in Alberta, Canada. He attended the University of Calgary for his undergraduate studies, where he received a Bachelor of Arts degree in Philosophy. He subsequently received his law degree from the University of Alberta in 2005. During his time at the University of Alberta, Kevin served as a Student Legal Services volunteer and gained experience in civil, family, and criminal law issues, assisted with editing the law school publication "Canons of Construction," and supported the Canadian Cancer Society.

ADDRESS SERVICE REQUESTED



**TIFFANY  
& BOSCO**  
 P.A.

Tiffany & Bosco, P.A. has provided a wide range of legal services to the business community since 1967. The firm's experienced attorneys represent domestic and foreign clients on a local, national and international basis. Tiffany & Bosco, P.A. is the Arizona law firm member of MSI, a worldwide network of independent legal and accounting firms. Tiffany & Bosco, P.A. is also a member of the USFN, and the FNMA and FHLMC designated counsel programs.



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