

# Fed raises interest rates, keeps forecast for 3 hikes in 2018 - USA Today

<https://www.usatoday.com/story/money/2018/03/...hikes-interest-rates.../444986002/> ▼  
18 hours ago - The Federal Reserve raised its key interest rate and kept its forecast for three hikes in 2018 amid modest inflation.

Sept  
inves

...the state of housing prices in the U.S. that a [Harvard University study](#) from over the summer estimated that nearly 39 million Americans can't afford their homes.

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It's not hard to see why. Hunger for real estate, [along with shortage of supply](#), sent nationwide housing prices soaring last year—up by 6.3% according to the S&P CoreLogic Case Shiller Home Price Indices.

defines as buy  
percent from 4

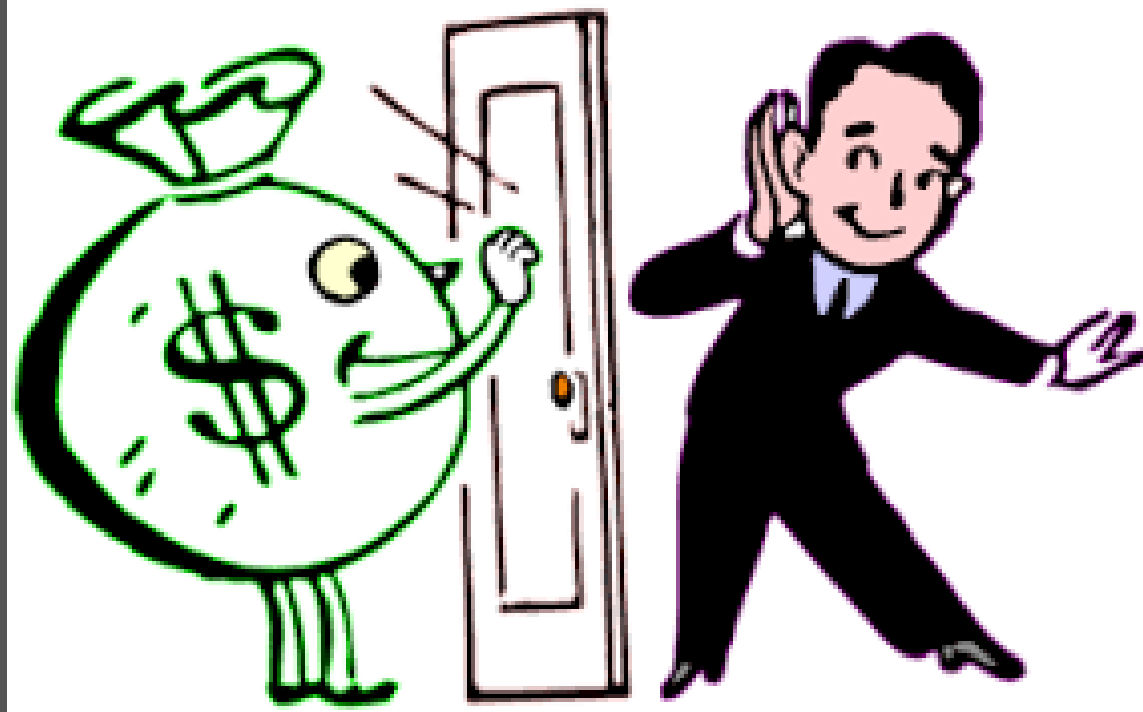


record-breaking returns  
House Prices Are Soaring. Here Are the 5 Cities Where They'r...



DISTRESSED PROPERTY  
ACQUISITIONS  
&  
REAL ESTATE INVESTMENT  
PRODUCTS

WHEN OPPORTUNITY KNOCKS...



BROKER BEWARE!

“If somebody offers you an amazing opportunity but you are not sure you can do it, say yes – then learn how to do it later!”

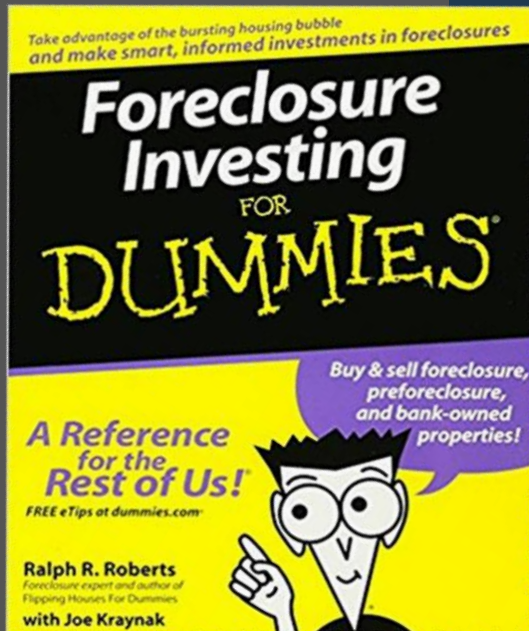


— Sir Richard Branson



# FORECLOSURES:

OPPORTUNITY OF A LIFETIME  
OR LEGAL LANDMINE?



One man's loss is another  
man's gain.

English 16th Century Proverbs



# HOME EQUITY SALES CONTRACTS ACT

California Civil Code §§1695, *et seq.*

# WHY DID IT BECOME LAW?

[B]etween foreclosure proceedings and the scheduled foreclosure sale date, homeowners in financial distress, especially the poor, elderly, and financially unsophisticated, are vulnerable to the importunities of home equity purchasers who induce homeowners to sell their homes for a small fraction of their fair market value...”

- Civ. Code §1695(a)



"Take this win-lose agreement over to legal and ask them to make it look like a win-win agreement."



# “RESIDENCE IN FORECLOSURE”

(Civ. Code §1695.1)

- 1 to 4 family dwelling units
- 1 of which is owner-occupied
- Outstanding & recorded Notice of Default

# “EQUITY PURCHASER”

(Civ. Code §1695.1)

“[a]ny person who takes title to any residence in foreclosure”

# “EQUITY PURCHASER” EXEMPTIONS

- Court-ordered transfers (probate, divorce, etc.)
- Trustee sales, tax auctions
- Spouses, blood relatives
- Owner-occupier purchaser

NOTE: NO EXCEPTION FOR LLC/OWNER-OCCUPIERS or “GOOD” SAMARITANS

- *Capon v. Monopoly Game LLC* (2011)
- *Segura v. McBride* (2014)

# THE RULES

## (Civ. Code §§1695.1 – 1695.17)

- Written contract, signed, completed, and dated (§1695.2)
  - No small print!
- Agreement is set forth in writing and in full (§1695.3)
  - All terms
  - Total consideration paid
  - Any services to be rendered
  - Terms of any rental agreement
- Notice of right of cancellation (§1695.3)
  - 5 days or until trustee sale, whichever comes 1<sup>st</sup>
  - No small print!

# PROHIBITED TRANSACTIONS

## (Civ. Code §1695.6)

- Until right of cancellation passes:
  - No payments of any consideration to seller
  - No recording of signed documents
  - No instrument showing any interest in residence can be accepted
  - No transfer or encumbrance
- No untrue or misleading statements re:
  - Value of residence;
  - Proceeds seller would have received after foreclosure sale;
  - Any contractual term;
  - The nature of any document that seller will sign; or
  - *“any other...statement concerning the sale of the residence in foreclosure”*



# THE CONSEQUENCES

- Civil liability (Civ. Code §1695.7)
  - Actual damages
  - Attorney's Fees
  - Punitive damages (if awarded, no less than 3x actual damages)
- Criminal liability: Any violation of § 1695.6 or any practice which would operate as a fraud or deceit
  - Felony → 3 years/crime
  - Fine up to \$25K

# REAL ESTATE INVESTMENTS,

HOLMBY HILLS

LAWSUITS

## **Luxury real estate firm that owns storied Owlwood Estate accused by SEC of 'massive' Ponzi scheme**

1

*The SEC has ordered the firm to freeze its assets and halt business operations*

By **Bianca Barragan** and **Jenna Chandler** | Dec 27, 2017, 3:25pm PST

Are you unwittingly (or unscrupulously) dealing  
in securities?

# SECURITIES LAW

- Federal ≠ State
  - Federal enforcement: Securities & Exchange Commission; US Atty
  - CA enforcement: Department of Business Oversight; DA
- More than one state's laws may be implicated
  - E.g., Investor resides out of state; advertising outside of CA
- Rules may be different for different kinds of investors
  - Accredited vs. non-accredited
  - Private placement vs. limited public offering vs. public offering

“One must look through the form and consider the real substance of the transactions.”

- *People v. Leach* (California Supreme Ct., 1930)



# SUBSTANCE OVER FORM

1 - The Investment Contract Test or “Howey” Test

OR

2 - The Risk Capital Test





# THE HOWEY TEST

“A contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party.”

- *SEC v. W.J. Howey Co.* (US Supreme Ct., 1946)

## Important Points:

- Passive investors
- Fixed return products (*e.g.*, investment “contracts”) can be securities:
  - Risk of loss
  - Sharing of profits

# RISK CAPITAL TEST

*Silver Hills County Club v. Sobieski*: Sale of country club memberships to raise funds to build facilities (Cal. Supreme Ct., 1961)

“Security” = Four factor test

- (1) Funds are being raised for a business venture
- (2) Transaction is being offered indiscriminately to the public at large
- (3) Investors’ ability to influence the success of the venture
- (4) The risk to investors’ money because it is inadequately secured

# HOW TO VIOLATE SECURITIES LAW

- Take other people's money...and then lose it
- Fail to provide full and fair disclosures
- Work with unethical (or uninformed) partners
  - Conspiracies
  - Aiding and abetting
  - Accessories
- Fail to educate yourself
  - General intent vs. specific intent
  - Safe harbors in securities law
- Forget that securities law is enforced by both the States and the Feds

# THE GOOD NEWS:

IT'S NOT THAT HARD!



BE FAIR  
BE HONEST  
BE KNOWLEDGEABLE  
&

DISCLOSE, DISCLOSE, DISCLOSE!