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Vision 2020 Wrap-Up: Looking Back at Looking Forward

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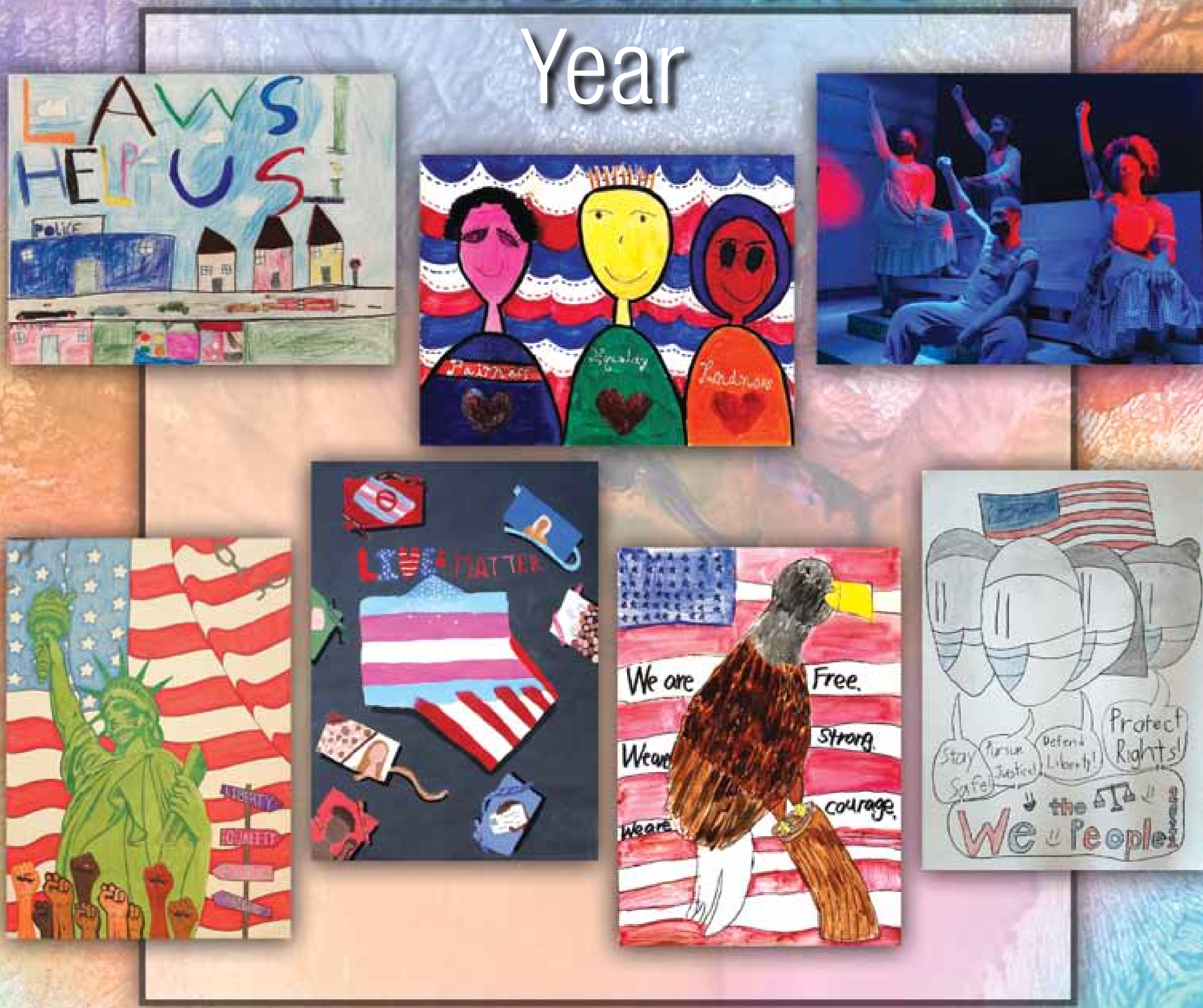
A Transformative Year



or Microsoft Teams to conduct hearings during COVID-19, and some might continue to do so in the future.[2] Some courts already allowed e-filings, which encouraged paperless practices, but for immigration courts, e-filing was used sparsely and inconsistently, which kept immigration firms still using paper filings. The digital accessibility agencies offer will continue to dictate how efficiently firms will be able to provide services to clients.

Artificial Intelligence

Law is among the slowest industries to adopt new technology, and likely it is related to the governmental agencies' adoption of technology. Artificial Intelligence (AI) is being used in almost every new online tool, and you can expect to see a lot more in the future. Whether reviewing contracts, anticipating the next question from a prospective client on a chatbot, or helping draft a brief, AI is already here and firms must embrace and leverage this resource.

Non-Lawyer Ownership

Amidst advancements in technology and societal shifts, it is hard to ignore that the legal market's climate is changing on another front. The debate over the legal industry becoming available to non-lawyers has long been a point of contention. Recent court rulings in Utah and Arizona have us rethinking this standard, partly in response to calls for criminal justice reforms, innovation, and increased access to justice concerns. When other states and countries take notice of the results, they could ultimately follow and create a whole new era of law firm ownership and the practice of law.[3]

As leaders in the transformative legal industry, we must remain agile to adapt and thrive in the new environment.

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Endnotes

1. *See* ABA, About ABA Techshow, https://www.techshow.com/ (last visited May 17, 2021).
2. *See A Transformative Year: Reflections from the Judiciary* on page 18 of this issue of *The Houston Lawyer* for more information about how the events of this year have impacted courts.
3. For more information on non-lawyer ownership of firms, *see* Ruby L. Powers, *New Laws Allowing Non-Lawyer Ownership of Law Firms*, HOUS. LAW. (Mar/Apr. 2021).

The Post Pandemic Residential Foreclosure Landscape

By DOMINIQUE MARSHALL VARNER

In March 2020, residential foreclosures were at historically low levels. The economy was booming. The Federal Reserve was keeping interest rates perpetually low—a response to the 2008 Great Recession. Property values continued year-over-year recovery after the devastation caused by the 2007 housing market crash. While Texas, and the Houston area in particular, fared much better than the rest of the country during those years, 2008 to 2010 was an inordinately busy time for firms that specialize in the practice area of "default servicing," *i.e.*, foreclosures, evictions, and creditor representation in bankruptcy court. The ensuing years were calmer, as the lessons learned from the housing crisis resulted in tighter underwriter standards and better-quality mortgages. Struggling borrowers, having more equity in their homes, became more proactive by engaging with their lenders in programs to avoid foreclosure, known in the industry as "loss mitigation." Foreclosures certainly didn't go away, but by early 2020, the number of foreclosure postings each month had significantly declined.

Then came COVID-19.

In a matter of weeks, the booming economy was forcibly stalled. Job losses were rampant, and by January 2021, almost three million borrowers in the U.S. (about 6% of mortgages) were in default and 2.3 million had entered a forbearance program with their lenders. The CARES Act,[1] passed on March 27, 2020, provided for a six-month grace period—free of negative reporting and late fees—to virtually anyone who asked, followed by another six months upon request. While the CARES Act grace period technically only applied to borrowers with "federally backed mortgage loans," private lenders offered them as well. Those forbearance periods were later extended to June 30, 2021,[2] giving some borrowers the potential to avoid payment on their mortgage loans for up to twenty-one months from the start of the crisis, with the liability for the debt remaining intact. There is currently another proposal under consideration to prohibit servicers from initiating foreclosures until December 31, 2021.[3] While these directives have come to the rescue of millions of borrowers, the moratoriums will eventually end, resulting in the resumption of foreclosure activity on residential loans, many of which were in foreclosure before COVID-19.

So, what can we expect this time around? The avalanche feared by many government policy makers may not materialize. There are significant differences between 2008 and 2021. For one, mortgage loan servicers learned how to better process requests for help from borrowers. During the earlier crisis, they improved upon various tools for helping borrowers stay in their homes by, for example, streamlining the processing of loan modifications (where payments are reduced and/or the loan terms extended), or by allowing borrowers a less painful exit from their homes with short sales (the servicer accepts a payoff that is less than the debt owed), or by accepting a deed in lieu of foreclosure (the borrower conveys the property back in full or partial satisfaction of the debt). With foreclosures being on hold since March 18, 2020, mortgage servicers have had plenty of time to fine-tune these loss mitigation options and will be much better prepared when the moratoriums end.

Servicers are also subject to strict scrutiny under the Consumer Financial Protection Bureau ("CFPB"), a consumer protection watchdog, largely dormant during the Trump Administration, that has come roaring back to life. On March 31, 2021, the CFPB issued a bulletin that essentially warned mortgage servicers that they will be held accountable if they are unprepared for the wave of requests from borrowers for loss mitigation assistance once the forbearance periods are over.[4]

Additionally, the pandemic has resulted in a severe housing shortage, which means property values are at an all-time high. Selling a property to avoid foreclosure (and retaining the equity in the process) is an option that was not available to many struggling borrowers during the Great Recession.

Finally, the American Rescue Plan Act of 2021[5] has provided an unprecedented infusion of cash into the economy, much of it specifically directed towards various programs to assist homeowners in avoiding default. While foreclosure attorneys cannot see the post-pandemic landscape with a set of clear binoculars just yet, we are optimistic that this time around, the tidal wave of anticipated foreclosures may turn out to be more of a steady trickle.

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Endnotes

1. Coronavirus Aid, Relief and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (Mar. 27, 2020).
2. U.S. DEP'T OF HOUS. & URBAN DEV., SUBJECT EXTENSIONS OF SINGLE FAMILY FORECLOSURE AND EVICTION MORATORIUM, START DATE OF COVID-19 INITIAL FORBEARANCE, AND HECM EXTENSION PERIOD; EXPANSION OF COVID-19 LOSS MITIGATION OPTIONS, 2021 WL 1132344, at *2 (Feb. 16, 2021); *see also* WHITE HOUSE, FACT SHEET: BIDEN ADMINISTRATION ANNOUNCES EXTENSION OF COVID-19 FORBEARANCE AND FORECLOSURE PROTECTIONS FOR HOMEOWNERS (Feb. 16, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/16/fact-sheet-biden-administration-announces-extension-of-covid-19-forbearance-and-foreclosure-protections-for-homeowners/.
3. Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement Procedures Act (RESPA), Regulation X, 86 Fed. Reg. 18840 (proposed Apr. 9, 2021) (to be codified at 12 C.F.R. 1024).
4. BUREAU OF CONSUMER FIN. PROTS., BULLETIN 2021-02: SUPERVISION AND ENFORCEMENT PRIORITIES REGARDING HOUSING INSECURITY (Mar. 31, 2021) (Bulletin from David Uejio, Acting Directo)r, https://files.consumerfinance.gov/f/documents/cfpb_bulletin-2021-02_supervision-and-enforcement-priorities-regarding-housing_WHcae8E.pdf.
5. American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (2021) (enacted).

COVID's Impact on Houston Commercial Real Estate

By CASSANDRA MCGARVEY

Commercial real estate has not normalized after the pandemic—either in transactions or in litigation. While I do not characterize the future of commercial real estate as bleak, I would say that the market reflects the uncertainty that many business owners are feeling. This uncertainty is reflected in sales transactions, leases, and litigation. And the level of uncertainty varies based on the type of business and the location of the business.

Transactions remain in flux, but seasoned investors are actively making deals. Low interest rates are encouraging investors whose primary concern is the cost of borrowed money to make purchases. More cautious investors are opting to wait for the ideal market conditions and until they believe prices are at their lowest. These cautious investors are waiting for the recession and are prepared to spend when others are not. Even with market uncertainty, increased residential development is supporting the development of shopping centers providing essential services. These shopping centers are particularly attractive to commercial investors when they are anchored with grocery stores, pharmacies, and other stores providing essentials. These centers will be successful be-