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**Perry & Shapiro, L.L.P.**

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Arizona Resumes & Procedures

3300 North Central Avenue • Suite 2200 • Phoenix, AZ 85012 • (602) 222-5711

## **AREAS OF PRACTICE**

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We are available for referrals on a statewide basis for the following:

- Foreclosure (non-judicial and judicial)
- Bankruptcy
- Eviction
- Title
- Replevin
- Deed-in-lieu
- Loan modifications
- Collection on the note
- Automobile collections
- Mobile home title clearance
- Real estate litigation

## MISSION STATEMENT

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The Law Office of Perry & Shapiro, L.L.P. is dedicated to providing prompt, efficient, and sound legal representation to our clients as well as a teamwork-oriented environment for our employees.

Our #1 priority is the satisfaction of our clients.

# Resumes

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## **Gerald M. Shapiro, Co-Founder and Partner**

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### **Education:**

Northwestern University

DePaul University School of Law  
Juris Doctor

### **Bar Admissions:**

State of Illinois - 1969

State of Florida - 1969

U.S. District Court - 1969

### **Profile:**

Gerald M. Shapiro co-founded the Arizona firm in 1984. In addition, he is co-founder with David S. Kreisman of the LOGS Legal Network, located in Northbrook, IL, which has developed into a pre-eminent network of law firms providing national representation to mortgage lenders. A combination of legal and mortgage expertise has enabled him to expand LOGS services and yet remain attentive to the changing requirements and concerns of the banking industry.

LOGS partnerships currently provide representation throughout the United States. Mr. Shapiro concentrates on the overall management of LOGS operations and in providing client assistance. With more than 20 years of private practice, he is widely experienced in co-ordinating multi-state representation of lenders in the areas of foreclosure, bankruptcy, real estate closing and document preparation. His legal experience also includes representation in other fields of real estate law, including acquisitions, development and financing of complex commercial enterprises.

His professional affiliations are numerous and include the American Bar Association, Illinois State Bar Association, Florida Bar Association, as well as the Mortgage Bankers Association of America and the National Council of Savings institution among others.

## **David M. Kreisman, Partner**

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### **Education:**

University of Chicago

University of Chicago School of Law  
Juris Doctor

### **Bar Admissions:**

State of Illinois - 1963

U.S. District Court - 1963

Court of Appeals – 1964

### **Profile:**

David S. Kreisman, a partner in Perry & Shapiro, L.L.P., is also co-founder with Gerald M. Shapiro of the LOGS Legal Network. He is director of national operations for all LOGS Legal Network offices and has direct responsibility for the management and supervision of same. Mr. Kreisman remains at the forefront of legal trends and developments in the fields of real estate and bankruptcy throughout the country.

In more than 35 years of private practice, Mr. Kreisman concentrates on real estate, lender representation and civil litigation at the trial and appellate levels. In addition to foreclosure and bankruptcy representation, he has developed expertise in the associated areas of tax deed and fire loss litigation, drug seizures, code enforcement and condemnation proceedings. In these areas, Mr. Kreisman has pioneered unique legal defenses and strategies that have been adopted by many members of the legal community practicing in those areas. He is also author of many real estate articles.

His professional affiliations include the American Bar Association, Chicago Council of Lawyers, National Association of Chapter 13 Trustees, the Illinois Mortgage Bankers Association and Mortgage Bankers Association of America.

## **Christopher Perry, Managing Partner**

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### **Education:**

B.S. Arizona State University  
J. D. Thomas M. Cooley School of Law

### **Bar Admissions:**

State of Arizona  
Federal District Court of Arizona

### **Profile:**

Mr. Perry is a member of the State Bar of Arizona and the Maricopa County Bar of Arizona. Mr. Perry was either the author of or actively participated in the drafting of every legislative amendment to Arizona's trustee's sale excess proceeds statute. He is the chairman of an ad hoc Excess Proceeds Judicial Taskforce and regularly instructs Superior Court Judges and their staff on how to apply the statute.

## **Jason P. Sherman, Associate Attorney**

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### **Education:**

B.S. Arizona State University  
J. D. Thomas M. Cooley School of Law

### **Bar Admissions:**

State of Arizona  
Federal District Court of Arizona

### **Profile:**

Mr. Sherman holds memberships with the Real Property and Alternative Dispute Sections of the State Bar of Arizona and is a Member of the Board of Directors of the Bankruptcy Section of the Maricopa County Bar of Arizona. Mr. Sherman is a Court appointed Mediator for the Maricopa County Justice Courts and has been appointed as Judge *Pro Tem* for the Maricopa County Superior Courts.

## **Procedures**

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### **Referral Package**

The referral package contains the following documents and information:

- Prepared and executed Substitution of Trustee and Statement of Breach
- Copies of demand letters sent to mortgagors
- Copy of the face and reverse of Note
- Copies of all Assignments
- Copy of Title Policy
- Copies of any Intervening Deeds
- Information if the mortgagor(s) is/are deceased
- Names and addresses of any other borrowers liable on the Note
- Information relating to
- Loan Status Screens and Default Information

The referral also includes the following information, when available, to ensure a valid foreclosure:

- Documentation indicating an owner or grantor either is or is not in the military.
- Occupancy status, including the names of the current occupants of the property.
- Addresses for the mortgagors and owners, social security numbers, changes in marital status subsequent to execution of the Deed of Trust and evidence indicating a grantor/owner is or may be deceased.
- Current bankruptcy information or prior bankruptcy discharges.
- Documentation regarding lien claims or other encumbrances and details regarding substantial damage to the property or pending insurance claims.

**It is critical that the executed Substitution of Trustee and Statement of Breach be received with the referral package to initiate the foreclosure in a timely manner.**

### **Substitution of Trustee**

Upon receipt of the foreclosure referral, the file is reviewed to ensure compliance with all statutory requirements. The Substitution is recorded in the county in which the property is located. Counsel for the lender will be appointed as Substitute Trustee. The Notice is also mailed to the Trustor and any successor in interest via certified mail with a return receipt requested.

### **Notice of Sale**

After the substitution is recorded, the Trustee records a Notice of Trustee's Sale in the county in which the property is located. All assignments must be of record prior to recording the Notice. Sale will be held a minimum of 90 days after recording. Notice of the Trustee's Sale and the Statement of Breach is mailed to each party to the Deed of Trust within five days of recording the Notice of Trustee's Sale. Service is made by certified mail with a return receipt requested. Within 30 days of recording the Notice of Trustee's sale, all parties having a record interest in the property or having recorded a request for notice must be served with Notice of Trustee's Sale and Statement of Breach.

The Notice of the Trustee's Sale is published in a local newspaper of general circulation in the county in which the property is situated at least once a week for four consecutive weeks. At least 20 days prior to sale, Notice of Trustee's Sale is posted at the trust property and the county courthouse.

### **Sale**

Upon receipt of the referral, the file is reviewed for all necessary documents and the title search is ordered. If the Substitution of Trustee and Statement of breach are *with* the referral, the Notice of Trustee's Sale will be recorded within seven calendar days of receipt of the file. This step is the first legal action for Arizona foreclosures. If these documents are not received with the referral, we will draft and send them to the client for execution, as may be necessary to be returned to our office. The file will remain on hold until these original, executed documents are received back in our office. Once received, we will record the Notice of Trustee's Sale with the County Recorder's Office in the county where the property is located. Upon recording the Notice of Sale, the sale is set for approximately 91 days in the future, per Arizona statutes. During this 91 days, certified mailings are sent to the owners and other parties with a legal interest within five days of recording of the Notice of Sale. Copies of all documents are also mailed to the client. Publication of the Notice of Sale is required for four consecutive weeks in a local newspaper located on a county where the property is located. Posting of the Notice of Sale on the property and at the county courthouse are done during this time. Approximately four weeks before the Trustee's Sale, our firm will request bidding instructions from the client.

Bidding instructions for the Trustee's Sale must be in writing with specific instructions if fees and costs are to be added or if it is a specified bid. The opening credit bid must be available to provide to the public by 9:00 a.m. the day before the sale date. We will need the bidding instructions from the client prior to that deadline. The property is sold at public auction to the highest bidder; the total bid amount is due in our office by 5:00 p.m. the next business day. A \$10,000 deposit is required by all bidders and is non-refundable as to the successful bidder only. After the Sale is held, our firm will inform the client of the sale results the same day. We will then record the Trustee's Deed Upon Sale and provide the client with the recorded original along with an invoice.

The Trustee's Sale may be postponed if requested by the client, or as may be necessary by the Trustee. Postponements can be to a time later the same day or as long as 90 days in the future. Postponement is announced publicly by the auctioneer at the date, time, and location of the original sale date. Costs for postponement vary by the county where the property is located. Announcement by auctioneer is the only requirement to postpone the sale.

If the loan is a Conventional, FHLMC or FNMA loan, we will forward the original recorded trustee's deed upon sale to the client upon it return from the county recorder's office.

If the loan is an FHA loan, we will wait for the lender to provide recording instructions to HUD. A warranty deed to HUD will be sent to the client during the foreclosure process for execution, to be signed and returned to our office until needed after the sale is held. Upon receipt of written recording instructions, we will deliver the warranty deed to the recorder's office on the date requested by the client. We order the final title policy to HUD and upon receipt deliver the final title package to HUD and provide a copy to the lender.

If the file is a VA loan, we will also record the deed to VA along with the trustee's deed, and order the final policy. Upon receipt of the final policy, we will hand deliver the final title package to the VA, with a copy to the client. A warranty deed to the VA will be sent to the client during the foreclosure process for execution, to be signed and returned until needed after the sale is held.

Our firm can prepare and mail HUD Occupancy letters and order VA Appraisals, if requested by the client.

Notice to the Internal Revenue Service is provided if the title report shows IRS Liens, as required by federal statutes.

Upon receipt of such information, we notify clients of any delinquent taxes owing against the property, missing assignments, title defects, ownership changes, or anything else that may affect final title to the property.

### **Conveyance & Final Title**

If the beneficiary is the successful bidder at sale, the Trustee's Deed is recorded immediately after the Trustee's Sale. If the property is to be conveyed to the Secretary of Housing and Urban Development or Secretary of Veterans Affairs, a deed from the Beneficiary to the appropriate agency is forwarded to the lender prior to the foreclosure sale.

After receipt of the executed deed and recording instructions from the client, the deed is sent for recording and the client advised on the day of recordation. An owner's policy is ordered and, upon receipt, sent to the client, HUD, VA or grantee along with the original deeds.

### **Reinstatement**

The mortgagors or anyone else with a legal interest in the property may reinstate the default on the loan up to 5:00 p.m. the last business day preceding the sale by paying the amount in default plus all accrued fees and costs of the Trustee's Sale.

### **Redemption**

There is no post-sale redemption period following a foreclosure by power of sale. In the few instances of judicial foreclosure, the redemption period is 30 days from sheriff's sale for abandoned property or six months from sale for occupied property. Redemption is made by tendering the full bid amount plus statutory interest to the sheriff.

### **Eviction**

Eviction proceedings are initiated by delivering a five-day notice to vacate the property to the occupants. If the property remains occupied after expiration of the five-day period, a Complaint in Forcible Entry and Detainer (Eviction) is filed in the Superior Court for the county in which the property is located. The named defendants are all persons believed to be occupying the premises as well as "Occupants/Parties-in-Possession." This assures effective service of process if the named parties are incorrect or no longer in possession.

A preliminary hearing is set within three to nine days after the Complaint is filed. If the occupants appear and plead not guilty, a trial date is set within 10 days. If the occupants do not appear at the preliminary hearing, a judgment is signed awarding possession to the lender, enforceable following an additional five-day period.

If judgment is obtained and the property is still occupied, the Clerk of the Court issues a Writ of Restitution, instructing the local sheriff to assist the occupants in a move out. However, the sheriff has broad discretion and 90 days to execute the Writ, and will require that the lender provide for movers and storage for the occupants' personal property.

### **Deficiency Judgment**

Deficiency rights following a foreclosure are limited by statute in Arizona. Deficiency rights are not available on property that is 2.5 acres or less and consists of a one or two-family residence. For properties outside this definition, a complaint seeking the deficiency balance must be filed within 90 days after the foreclosure sale. Deficiency judgments are limited to the amount owed on the debt less the fair market value of the property as of the date of the foreclosure sale.

### **Judicial Process**

Loans on Arizona property that are secured by a Mortgage, instead of a deed of trust, must be foreclosed by a judicial proceeding. A Judicial Foreclosure procedure may also be used when there are serious title defects. A complaint is filed in Superior Court in the county where the property is located, seeking a foreclosure judgment. Upon obtaining a signed judgment, we obtain a Writ of Execution that commands the local sheriff to sell the real property at public auction. According to the specific instructions on each file, we will appear at the sheriff's sale and bid on the client's behalf.

### **Bankruptcy**

The legal projects or pleadings required for any specific bankruptcy case vary on a case-by-case basis and may include: filing a Proof of Claim, filing a Motion for Relief From Stay, reviewing and objecting to a plan, stopping repetitive filings, etc. Each case is handled and continually reviewed for the appropriate action consistent with the lender's stated objectives and the borrowers' performance under the requirements of the Bankruptcy Code.

### **Loss Mitigation**

Throughout the bankruptcy and foreclosure process, we remain open to alternatives or settlements that reduce the cost to the lender. These include, when appropriate and acceptable to the lender, negotiating payment plans, documenting loan modification agreements, obtaining title through a Deed in Lieu of Foreclosure, as well as specific programs offered or approved by the lender and investor.

