

Daily Commerce

Since 1917

A Daily Journal Publication

Thursday, June 12, 1997

The Master of Natural Disaster

Tax lawyer's thesis points way for law change to aid victims

BY MARTY GRAHAM, SPECIAL TO DAILY COMMERCE

SAN DIEGO

Real estate lawyer Jeffrey A. Unger tied a ribbon around his master's in tax law last month with a thesis that may well become tax law in the wake of his presentation to the House Ways and Means Committee.

The proposal would streamline victims' dealings with the Internal Revenue Service and the Small Business Administration after a natural disaster causes property destruction. It came from his own cutting-edge work as a lawyer representing real estate investors who were caught between a jagged rock and a broken hard place after the 1994 Northridge earthquake.

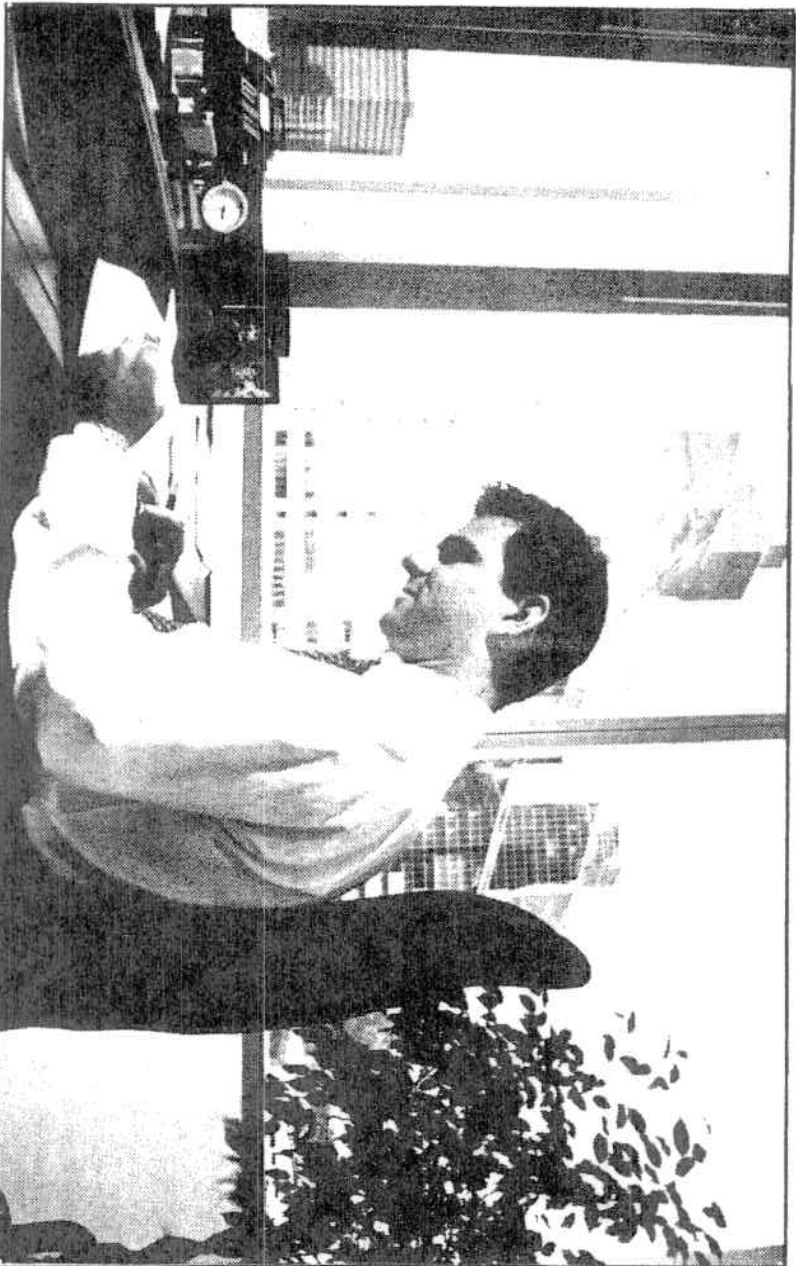
The day of the earthquake, a client called him and asked how to deal with the legal and financial impacts of the quake — many of which they did not anticipate that day. Unger went to the law books and magazines and on-line services to search — and found nothing.

"I told my client: 'Drive over to Malibu,' — where the SBA had set up an office because of the fires there — 'pick up a loan application, cross out the words 'Malibu fires' and write in 'Northridge earthquake,' fill it out and turn it in,'" Unger said. "That's how we ended up with the first loan approved by the SBA in the Northridge quake."

Historic Santa Monica Building

Unger's client owns a historic Santa Monica apartment building whose ornate facade fell off, taking the fourth floor with it. Photos of the devastation to the building — repairs cost \$1.4 million — ran as a sort of centerfold in Time magazine the next week.

But if the pictures looked bad, the cleanup was much, much



JEFFREY A. UNGER — Associate at San Diego's Post Kirby Noonan & Sweat is referred to in Washington as "the earthquake lawyer."

TOM KLIRTZ / FOR THE DAILY COMMERCE

worse for the client. The building was found to be unsafe for tenants, who then fought to get back in and remove their belongings. That, in turn, meant the clients had no rental income to use as cash flow to fund the repairs.

"Even though the SBA loaned them the money, it was on a completion basis, so my client had to come up with \$200,000 to pay the contractor on completion of each part, then wait for the SBA to reimburse him," said Unger, an associate at San Diego's Post Kirby Noonan & Sweat. "Without cash flow, the victims

are sunk."

Meanwhile, owners of neighboring structures sued his client, arguing the damaged property posed a danger to their buildings — and their property values — and tried to force the demolition of a reparable building.

So, while trying to sort out competing lawsuits, reunite the tenants and their belongings and figure out how to work with the SBA to repair the building, Unger and his client also had to fig-

See **DISASTERS**, page 4

DISASTERS

Continued from page 1

ure out a way to pay for the process.

Fortunately, Unger's client had little debt and was able to secure a line of credit to push repairs through. Not all his clients are so lucky, he said — particularly lenders who end up with damaged properties after the owners walk away from them.

"Under SBA rules, a party which acquires more than 50 percent ownership of a damaged property after the disaster does not qualify for SBA loans," he said. "That means if the owners walk away and the lender ends up with the property, they can't get SBA funding and they end up with a broken building."

Surprised? There are more surprises when commercial building owners consider rebuilding, Unger said.

"With commercial buildings, insurance is almost never a factor," he said. "Policies are nearly impossible to find and when you find one, it will be prohibitively expensive."

Newer buildings tend to have been built with earthquakes in mind and usually suffer little damage. But older buildings — and that is a large segment of investment properties — are

rarely earthquake-proof.

So what's a commercial building owner to do? Prepare well, Unger says. He is seeing an increasing segment of his business turned toward answering disaster questions before investors buy and well before disasters may occur.

"Many of my clients are out-of-state investors who have become interested in California commercial properties now that our economy is on the upturn," he said. "Unlike the local investor, they are very concerned about the potential for earthquakes and what they should do ahead of time for these disasters."

Longer-term finances come into question as well. "Tax issues become a huge factor in deciding to repair and deciding how to finance repairs," Unger said.

For example, in a presidentially declared disaster, an investor can take the current year's loss on the previous year's taxes — which adds up to an immediate refund of cash to throw at rebuilding. But to take that loss, the investor needs an appraisal of the loss that will be accepted by the Internal Revenue Service.

Right now, the IRS requires the owner to hire an independent appraiser, which takes time and costs money. Meanwhile, the SBA has already sent in an appraiser as part of its loan process.

Although he has written the only treatises available on how to help clients after disasters, Unger doesn't want to become known as 'the earthquake lawyer,' as he is referred to in Washington.

Unger's proposal, presented to the congressional committee in mid-May, would allow the IRS to accept the SBA appraisal for tax purposes and leave open the gate for further appraisals as work progresses.

"That saves the owners a great deal of time and money, and the SBA appraisals are generally done very well, provided they are not swamped," Unger said. "And you can always get them to come back and try it again."

An attorney with the office of IRS counsel in Washington, who asked for anonymity, said the proposal "is a good idea and we support it." With the SBA loans come SBA audits of the

work and how the loan is being handled. Unger said this will save the government in the long run because the IRS will not have to redo audits the SBA has already done.

"The House does a calculation with new law to determine if it will cost money or save money, and I'm predicting this proposal will save millions of dollars for the government as well as millions for disaster victims," Unger said. "It was reviewed last week by IRS counsel and they think it's a good idea."

So far, 10 Congress members, including Rep. Randy "Duke" Cunningham, R-Escondido, have signed onto the measure, which was proposed by Rep. Wally Herger, R-Chico.

Although he has written the only treatises available on how to help clients after disasters, Unger doesn't want to become known as "the earthquake lawyer," as he is referred to in Washington.

But, he said, he is the only person he knows who's noticed that the brick building shown in the exterior scenes of "Seinfeld" has an earthquake retrofit plate in one corner.

"It's just something I'm sensitive to," he said. "Every time I see it — and the building is supposed to be in New York, where they don't do much retrofitting — I just think some producer goofed up."