Points of Interest

A Publication of the California Mortgage Association

Summer 2019

IN THIS ISSUE:

- Consumer Privacy
- Default Interest
- CA Financial Code
- Attorney's Fees

Private Money Loan Servicing Software
Powerful, Flexible and Easy to Use!

Multi-Lender Loans

RESPA Compliant Escrow Analysis

Online Investor Access

Enhanced Reporting and Forecasting

Rehab, Commercial, Construction, HELOC, ARM

Mortgage Pools

intuit quickbooks Integration

Online and Over The Phone Payments

Borrower and Investor Text Alerts

The Mortgage Office®
Powerful Lending Software

(800) 833-3343 **www.TheMortgageOffice.com**

Applied Business Software, Inc. 2847 Gundry Avenue, Long Beach, CA 90755 **sales@absnetwork.com**

Points of Interest is published by the **California Mortgage Association**, a voluntary trade association serving California mortgage and trust deed brokers and lenders.

2520 Venture Oaks Way, Suite 150
Sacramento, CA 95833
(916) 239-4080 – phone • (916) 924-7323 – fax
cma@camgmt.com
www.californiamortgageassociation.com

Points of Interest

A Publication of the California Mortgage Association

Inside This Issue

From the President

By David Herzer • 2018-2019 CMA President

"We Live In Interesting Times...."

The first quarter of 2019 has been a whirlwind of activity. CMA elected two new members to the Board of Directors, the DRE has gone crazy (again), we enacted term limits and the Education Committee put on another great seminar in San Francisco. State and National politics have gone off the rails to the left and right. I'm not sure 2019 is my favorite year so far.

I would like to welcome Shafiq Taymuree and Sandy MacDougall to CMA's Board of Directors! They take Uncle Chuck Hershson and Dick Selzer's seats who deserve a huge debt of gratitude for their service. Dick has been CMA's Treasurer for the last two years and has done a fantastic job overseeing some difficult budget negotiations. Our beloved Uncle Chuck has decided to retire from the Board but promises to continue to serve CMA in his usual outsized way. Many many thanks to Chuck and Dick for their years of service on the Board. I look forward to exciting new ideas and contributions from Shafiq and Sandy.

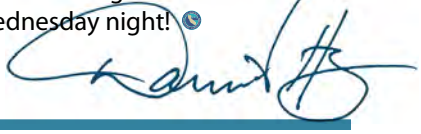
The Board enacted a change in the Bylaws at our last meeting in San Francisco implementing term limits. There are several who would like to see some amendments to the term limits we enacted, but for now, Directors will be able to run for a maximum of three terms. Those Directors holding an Officer's position at the end of their third term are exempt from being termed-out. Also, no more than two Directors can "term-out" in any one election. These changes were made with the goal of including more new faces on the Board, a worthy goal indeed. So get involved, show your face and you too can serve on CMA's Board of Directors!

The DRE has cited a licensee for not complying with Financial Code 4970 (the high-cost loan rule) even though the loan was made for BUSINESS PURPOSES! We have always understood 4970 to only apply to CONSUMER LOANS because that is what is written in the law. Unfortunately, an Administrative Law Judge agreed with the DRE so for now, that is how this law will be interpreted and enforced. CMA is vigorously opposing this determination on several fronts. First, we are assisting the Licensee by funding a lawsuit seeking a Writ of Mandate in Los Angeles Superior Court. Second, CMA General Counsel Robert Finlay is writing an amicus brief in support of said lawsuit. Third, our Legislative Advocate Mike Belote, Robert Finlay and I are meeting with DRE Commissioner Daniel Sandri to see if we can show him the light. Finally, we may need to propose legislation to clarify what "consumer purpose" means in 4970. CMA recently sent the Membership updates on this matter, and a fundraising plea. Please give generously; your business depends on it.

Our seminar in San Francisco received high marks from attendees. From a review of agency, to starting a mortgage fund, to combatting loan fraud, to building income streams, there was a lot to learn and incorporate into our businesses. Hats off to the Education Committee for another informative and practical seminar. You should see what we have in store for you in San Diego this summer! We will look at servicing fee structures, human resources and avoiding "unconscionable loans." Of course, there will be the ever-popular speed networking and legal roundtables- can you say "free legal advice"?

So who can say CMA never did anything for you?

See you in San Diego for smores on the beach Wednesday night!



From the Editor

By Mayumi Bowers • Editor, *Points of Interest*

Spring is supposed to be that time of year when things begin to grow, flowers blossom, the days get longer, and there's just a scent in the air that change is coming. This past spring has proven to be no different. The topics covered in this edition discuss new proposed rules and regulations as well as old rules and regulations that will now have you doing things in a new way given the fresh new perspective. With all the potential new regulations proposed, this summer is sure to be a hot season of change, and I'm not talking about the weather. I hope you find these articles to be as insightful as I did.

Congratulation to the six new members just elected to the 2019-2020 board.

Save the Dates:

► CMA Summer '19 Seminar ◄
July 24-26, 2019
Hilton San Diego Resort & Spa
San Diego, CA

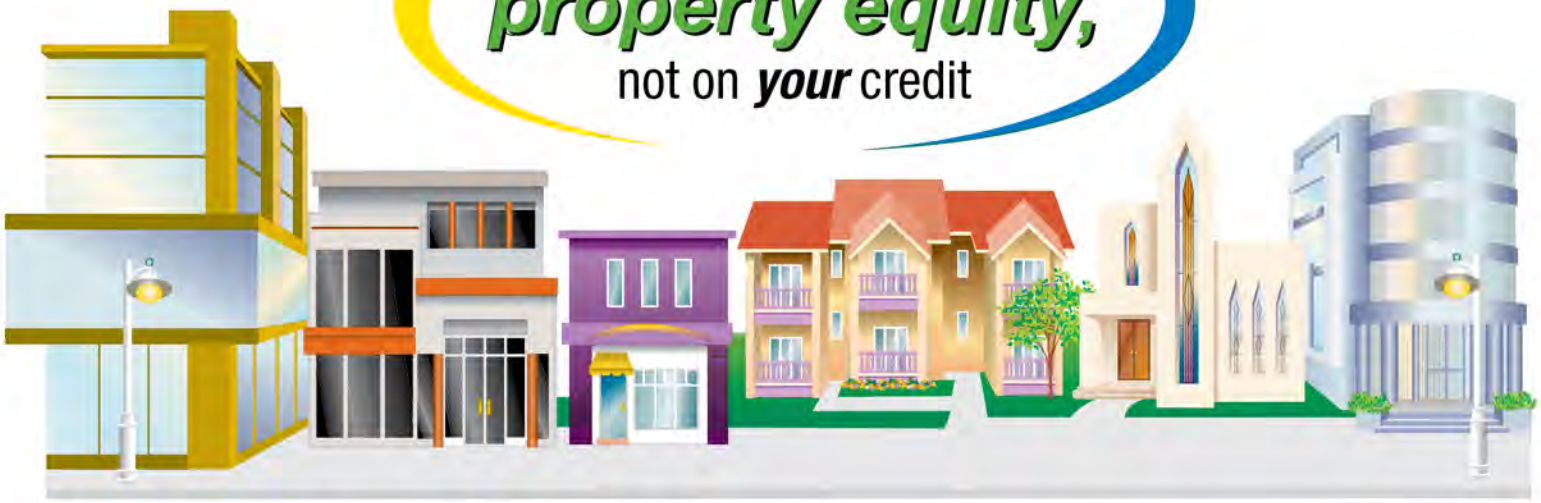
► CMA Fall '19 Seminar ◄
October 23-25, 2019
Aria Resort & Casino
Las Vegas, NV

► CMA Winter '20 Seminar ◄
January 22-24, 2020
Fashion Island Hotel
Newport Beach, CA

► CMA Spring '20 Seminar ◄
April 22-24, 2020
Westin St. Francis
San Francisco, CA

Commercial Real Estate Loans
$50,000 to $10,000,000

We base our loan on the
property equity,
not on ***your*** credit



- Retail
- Factories
- Industrial
- Non-Profits
- Apartments
- Warehouses
- Strip Centers
- Office Buildings
- Automotive Centers
- Churches / Temples
- Mixed-Use / Single Use
- Non-Conforming Properties

Credit Problem? No Problem!

- ✓ No Financial Statements
- ✓ No Tax Returns
- ✓ No P&Ls

GREAT TERMS

- Fixed Rates
- Up to 20 Years Fully Amortized or
- 30 Year Amortization Due in 15 Years
- No Prepayment Penalty
- Interest Only to 5 Years*
  *has balloon payment
- Fast Funding - Less Than 10 Days*
  *subject to verified title report

Call: 1-800-752-9533 • www.fidelityca.com

FIDELITY
MORTGAGE LENDERS, INC.

California Bureau of Real Estate Broker License No. 00388229

SACRAMENTO SUMMARY

By Michael J. Arnold & Michael Belote, Esq.
Legislative Advocates

As we write this article, the Legislature is in full swing. Almost 3,000 legislative proposals have been introduced this year on issues from A to Z! Your legislative advocates and the CMA Legislative Committee have reviewed all of the legislative proposals and have identified 65 bills which could impact the members of the CMA.

Note that the number of bills we follow closely will change throughout the year due to amendments which can cause a bill being followed to no longer be of interest or a bill we were initially not following to suddenly be something of key concern to the Association. We will review all amendments to all legislative proposals throughout the legislative session.

Key Legislative Deadlines

The deadline for bills to be out of the "house of origin" is June 1. The budget must be adopted by June 15 and must be signed into law by the Governor by July 1st. Any bill which remains alive after the June 1st deadline is then considered by the second house. The Legislature will adjourn on September 13th and the Governor has until October 13th to sign or veto legislation. New bills will take effect on January 1st unless the terms of the bill call for a different effective date.

Governor's Budget

On May 9th, Governor Newsom released his May Revision of the budget he published in January. The "May Revise" focuses on a number of big-ticket items such as housing/homelessness; a new "Parents Agenda" that includes additional money for child care and full-day kindergarten programs; extended paid family leave for new parents; a tax exemption for menstrual products and diapers; and education, including enhanced funding on a permanent basis for special education and teacher training along with one-time cash infusions for universities and community colleges.

The proposed budget for the 2019-2020 fiscal year totals $213 Billion! The state is flush this year, with a sizeable budget surplus anticipated. Governor Newsom's May Revise also proposes to put additional emphasis on California's housing crisis by adding an additional $500 million to a fund designed to remove barriers to building mixed-income housing.

CMA Sponsored Bill

AB 1384 (O'Donnell) Increases the dollar limit on loans for construction or rehabilitation projects -- where the completed value of the project will be used to meet the loan-to-value ratios of current law -- from $2.5 million to $4.5 million. Rising construction costs and property values have dramatically driven up the costs of construction and rehabilitation projects since the $2.5 million cap was placed into law back in 2003. When this issue was raised at a CMA seminar on construction/rehabilitation lending pursuant to Article 5 and Article 6 of the Business and Professions Code, the CMA Board heard the membership and AB 1384 was introduced. The bill has passed the Assembly and is awaiting a hearing in the Senate policy committee.

Financial Code 4970 Issue

During a routine audit of one of our members, a DRE auditor determined that a clear business purposes loan on an owner-occupied property was a "covered loan" under Financial Code section 4970. Following an administrative appeal, the DRE confirmed the auditor's determination, finding that 4970 applied to business purpose loans on owner-occupied properties.

Since the enactment of Section 4970, the CMA and its members have interpreted the statute as only applying to non-business purpose owner occupied loans. As a result, many members have originated, and continue to originate, business purpose loans on owner occupied properties that would otherwise violate the APR and point limits of 4970. The DRE's ruling, if allowed to stand, will put those loans and their originating lenders in jeopardy of being found in violation of 4970.

The CMA Board is considering this new development re Section 4970 and will be acting on behalf of the CMA membership by taking one or more of the following actions: meeting with the DRE to convince the Department that their interpretation should be changed; pursuing a court challenge; and securing corrective language via legislative enactment. We shall keep the membership apprised of our progress on this very important matter of mutual concern.

Beyond the Basics of the Consumer Privacy Act:

Unanticipated Challenges In Complying With the New Privacy

by
Joseph W. Guzzetta
Severson & Werson, PC

California

Law

This article first appeared in Orange County Lawyer *Magazine, April 2019, Volume 61, Number 4, Page 28. The views expressed herein are those of the author. They do not necessarily represent the views of* Orange County Lawyer *Magazine, the Orange County Bar Association, the Orange County Bar Association Charitable Fund, or their staffs, contributors, or advertisers. All legal and other issues must be independently researched.*

As demonstrated by recent issues of *The Orange County Lawyer* and other legal publications, the talk of the entire state – indeed the entire nation – is the California Consumer Privacy Act (the "Act" or the "CCPA"). All this almost a year before the CCPA officially goes into effect (more on that later). A complete description of the Act's requirements, including the rights afforded to consumers, is included in Michael Gregg's article entitled *California's Consumer Privacy Act of 2018: Why Its Ambiguities May Leave Businesses in a Quandary* in the October 2018 issue of *The Orange County Lawyer* magazine.

The purpose of this article is to highlight some of the ambiguities and problems with the Act that will face businesses as they prepare for the CCPA to go into effect next year that have not received much, if any, treatment thus far. There is hope that some or all of these issues will be addressed in the current Legislative session, or through interpretive guidance from the California Attorney General. If they are not, however, these issues will fall to attorneys to chart the best course they can through an Act thrown together in haste, passed in a matter of weeks, and signed by the Governor in record time, all while the compliance clock continues its march toward January 1, 2020.

Will The Attorney General Provide Guidance Soon?

It is widely expected that the CCPA will be further amended this Legislative session. However, it is far from clear how those amendments will ultimately shake out. Lobbyists on both sides of the debate are hard at work advocating for changes to the Act, and privacy advocates have been strongly advocating that any amendments to the CCPA strengthen its privacy protections by, for example, eliminating completely the right of businesses to compensate consumers for refraining

continued on page 8

Consumer Privacy Act – *continued from page 7*

from exercising rights under the Act, and by providing a complete private right of action for any violation of the Act, not just for data breaches.

Many businesses are turning their hopes to the California Attorney General to provide much-needed guidance. The Attorney General has been holding public comment sessions throughout the state in January – March 2019 regarding it's rulemaking authority under the Act. However, comments made by the representatives of the Attorney General's Office at those sessions have suggested that the rule-making process may not even *start* until the Fall of 2019 or later. Accordingly, as businesses gear up for the January 1, 2020 effective date of the CCPA, the ambiguities noted in this article (and others) are likely to persist.

When Does the Act Go Into Effect?

The answer to this question seems easy. Newly added California Civil Code Section 1798.198 (a) provides that "this title shall be operative January 1, 2020." When the Legislature amended the CCPA for the first time in September 2018, it delayed enforcement of the provisions of the Act by the California Attorney General to July 1, 2020, but left the effective date (in other words, the date on which consumers can start making requests under the Act) in tact.

However, it is not quite that simple. The Act provides that as of January 1, 2020, consumers will be permitted to make verifiable consumer requests of businesses in California requiring them to disclose information regarding consumer data that the business has collected and sold (including potentially providing consumers with copies of all of that information) going back one calendar year to the beginning of 2019. In other words, businesses should begin to comply with the CCPA effective January 1, 2019. If you are just beginning your compliance efforts, you're already behind.

How Does a Business Verify a "Verifiable Consumer Request"?

A business must provide various disclosures and other rights provided under the CCPA to consumers upon receipt of a "verifiable consumer request." A "verifiable consumer request" is defined in the Act to mean a request by a consumer (or, in certain circumstances, an authorized representative of the consumer), that the business can reasonably verify to be from the consumer about whom the business has collected personal information.

However, beyond this basic definition, the Act does not specify or provide guidance regarding how a business is supposed to go about verifying a consumer request, nor does it provide any "safe harbor" if certain practices are followed. It is not hard to imagine circumstances in which individuals may seek to obtain personal information about consumers by impersonating them

continued on page 9

and making "verifiable" consumer requests to businesses. Financial and similar institutions are particularly vulnerable to such impersonation; after all, the Act requires businesses that receive verifiable consumer requests for the information to provide consumers with *copies* of all consumer information that the business has collected regarding the consumer (while certain information collected by financial institutions is exempted from the CCPA to the extent that it is governed by the federal Gramm-Leach-Bliley Act, that exception undoubtedly will not cover all information that such businesses collect about California consumers – the remainder is subject to the CCPA).

It will be important for businesses – particularly larger businesses that may be targets of this sort of fishing – to develop robust internal procedures for ensuring that verifiable consumer requests are actually verified. Traditionally, businesses releasing information over the phone require customers to answer certain questions, such as the last four digits of the customer's social security number or a mother's maiden name, to verify their identity. However, in the context of a request to release all personal information that a business has collected about a consumer (as required upon receipt of a verifiable consumer request under California Civil Code Section 1798.110(a)(5)), such traditional methods may not be sufficient. This is an area where rulemaking by the California Attorney General would be particularly helpful.

What Constitutes a "Category"?

After a business receives a verifiable consumer request from a consumer and actually verifies that the request is from the consumer, the business is required, within certain time frames, to disclose, upon request by the consumer and among other things, the categories of personal information that the business has collected about the consumer, the categories of sources from which the business has obtained personal information about the consumer, and the categories of third parties with whom the business shares personal information about consumers. The terms "category" and "categories" continue to appear throughout the Act, including in the definition of "aggregate consumer information." With all of these "categories" referenced in the Act, one would think the Legislature would have seen fit to define what a "category" is, and how broad (or narrow) such a disclosure must be. No such luck.

Absent such a definition in the Act, one possible source of guidance regarding how a business should categorize the information it is required to disclose is prior case law. But case law, too, leaves much to be desired. The California Supreme Court has defined the term "category" to mean "a class, or division, in any general scheme of classification." *Am. Coatings Ass'n v. South Coast Air Quality Management Dist.,* 54 Cal. 4th 446, 472 (2012) (citing the Second Edition of the Oxford English Dictionary); *see also Prop "A" Protective Ass'n v. Mts. Rec. & Conservation Authority,* 2018 Cal. Unpub. Lexis 4826, at *15-16 (July 17, 2018) (citing the 2018 edition of the Merriam-Webster Unbridged Dictionary and defining "category" to mean "a class, group, or classification of any kind"). Obviously, these definitions are not all that helpful.

It is hoped that the Attorney General will aid businesses by defining in some detail how these "categories" are to be constructed when responding to verifiable consumer requests. However, absent such guidance, or a clarifying amendment from the Legislature, each individual business must decide for itself, in consultation with its legal counsel, how broadly or narrowly to list these categories.

When Do Consumer Requests Under the CCPA Become "Manifestly Unfounded or Excessive"?

The Act requires businesses to respond to verifiable consumer requests. However, certain consumers – perhaps those having disagreements or disputes with the business – could wreak havoc by submitting repeated requests for information, each requiring verification and response within the time periods listed in the statute. The drafters of the statute appear to have considered this possibility, providing that businesses may either charge a consumer a "reasonable fee," or refuse to respond altogether, with requests from consumers that are "manifestly unfounded or excessive." *See* Cal. Civ. Code

continued on page 10

§ 1798.145(g)(3). Unfortunately, the statute has left it to businesses and their attorneys to outline the contours of this exception. And the Act provides that a business has the burden of demonstrating that a request is manifestly unfounded or excessive.

The Act makes clear that a consumer is permitted to make requests for information from businesses no more than twice in a 12-month period. *See,* e.g., Cal. Civ. Code § 1798.100(g). Presumably, if a single consumer makes more than two verifiable consumer requests in any 12-month period, the business would be justified in deeming those requests to be excessive.

However, there is no guidance for determining whether a request is "manifestly unfounded." Certainly, if a consumer sought information that a business does not have about the consumer (for example, if the business did not sell any personal information of that consumer, but the consumer requested information about what information the business sold about the consumer), the request may be deemed "unfounded" (though it is doubtful that the business could charge the consumer a fee for responding to such a request). However, beyond this obvious situation, the Act provides no guidance, and absent clarification, businesses must develop their own criteria – consistent with the letter and spirit of the Act – for making that determination.

What "Appellate Rights"?

If a business does not take any action regarding a verifiable consumer request, either because the business determines that the request is manifestly unfounded or excessive, as discussed above, or because the business does not have the information that the consumer requests, the Act requires the business to inform the consumer "without delay" of the reasons that the business is not taking action, along with a description of "any rights the consumer may have to appeal the decision of the business."

However, the CCPA nowhere provides any rights of consumers to "appeal" a business' decision not to respond to a verifiable consumer request. Accordingly, it is not clear what appellate rights to which this language in the CCPA may be referring. Obviously, if the business provides, as part of its own internal procedures for compliance with the Act, a right to appeal the business's decision not to respond to a request, those rights would qualify and must be disclosed. However, absent such an internal procedure, it would appear that a business need not provide a consumer any right to appeal the business's decision regarding a verifiable consumer request, and it is not clear why this language appears in the Act or how businesses should interpret it.

continued on page 11

Potential Federal Preemption of Class Action Right?

The CCPA provides that any provision in any contract purporting to waive a consumer's rights under the CCPA is deemed to violate public policy and is void. And as noted above, the CCPA also provides a limited private right of action for data breaches, and allows a consumer to bring a class action for any such breach. These two provisions set up a potential conflict between the Act and the Federal Arbitration Act (the "FAA").

In recent years, businesses have managed class action liability by, at least in part, including in their customer contracts provisions that require the customer to arbitrate all disputes with the business. These provisions also often expressly prohibit class-wide arbitration, effectively requiring customers to waive the right to bring a class action in a dispute related to the business relationship. In *Discover Bank v. Super. Ct.*, 36 Cal. 4th 148 (2005), California's Supreme Court held that such class action waivers are unconscionable and hence, unenforceable under California law. But in the famous United States Supreme Court decision of *AT&T Mobility v. Concepcion,* 563 U.S. 333 (2011), the Supreme Court overturned the *Discover Bank* rule, holding that "[r]equiring the availability of classwide arbitration interferes with the fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA."

It is not hard to see the potential conflict between the CCPA's declaration that any contractual provision purporting to waive or limit a consumer's rights under the CCPA is void, and *Concepcion's* declaration that the FAA prohibits states from prohibiting class action waivers in arbitration clauses. This is a conflict that is unlikely to be resolved either by amendment to the CCPA or rulemaking by the Attorney General. Likely, this ambiguity will persist for years as the lower courts grapple with the argument.

Heading East

As often happens with respect to consumer protection laws that originate in California, the CCPA appears to be on the march Eastward. Privacy bills modeled on the CCPA have been proposed in New York, Washington state, Hawaii, Texas, Utah and others. And, no doubt, additional proposals will have been made in the time between when this article was written and when it goes to press. While it is too early to tell what laws will ultimately be enacted in these, and other, states, it is clear the CCPA is having nationwide effect.

Business advocacy groups have pinned their hopes on Congress enacting federal privacy legislation that preempts state laws like the CCPA. Complying with a patchwork of privacy regulations across the fifty states, they argue, would be unduly burdensome and expensive. At least one federal consumer privacy law has been introduced in the Congress by Senator Marco Rubio (R-FL) that would preempt such state privacy laws. However, given the current political climate when it comes to privacy in general, privacy advocates appear to have the ear of both parties in Congress, and are lobbying hard against preemption. It is far from clear that a law that includes preemption could garner 60-votes in a divided Senate, and even if such a federal law could be passed, it is unlikely any such preemption would take effect before January 1, 2020 (and state attorneys general would no doubt challenge the law in court).

Conclusion

This article provides only an overview of some of the larger issues raised by the CCPA as businesses prepare for compliance. While there is hope of clarifying amendment from the Legislature or regulations from the Attorney General, businesses and attorneys should not assume that these bodies will come to the rescue with respect to all – or even some – of these problems before January 1, 2020. Accordingly, it will be up to those businesses and attorneys to chart the best course they can through the maze that is the CCPA.

Joseph W. Guzzetta is an attorney currently practicing at Severson & Werson, P.C. in San Francisco, California. A civil trial lawyer who has taken more than 10 jury trials to verdict in the last 5 years, Mr. Guzzetta specializes in consumer privacy regulation in California and around the nation. He is the author of a forthcoming treatise focused on state and federal financial privacy regulation under the Gramm-Leach-Bliley Act and its state analogues. In October 2018, Mr. Guzzetta pre-released a chapter from that forthcoming treatise entitled *The California Consumer Privacy Act of 2018: A Guide to Compliance,* which provides a detailed, up to date blueprint for businesses seeking to comply with the new CCPA. Mr. Guzzetta can be reached at *jwg@severson.com* or by telephone at 415-677-5622.

Joffrey Long
Proudly Sponsors

The Phillip M. Adleson Education Award

As the most highly recognized, and primary provider of education in the private money lending field, CMA presents the Phillip M. Adleson Education Award to acknowledge and recognize individuals who have made outstanding contributions to education in our industry.

The award was first presented to the late Phil Adleson as the "CMA Education Award." As intended, the award now continues as "The Phillip M. Adleson Education Award."

CMA congratulates the 2019 recipient of the award,

Dennis Doss

SUMMER SEMINAR
CMA San Diego

July 24th-26th, 2019 • Hilton San Diego

KEYNOTE SPEAKER:
Chika Sunquist, DRE
Supervising Special Investigator
Mortgage Loan Activities

Annual Installation of Officers and Directors

Cannabis Covenants and Disclosures

Fire and Casualty Coverage Explained

Service Fee Options – Who Can Pay?

Social Media Policies for Employees

Are You Required to Do Sexual Harassment Training?

Employee vs. Independent Contractor

Is Your Employee Policy Manual Up-to-Date?

PLUS:
Attorney Roundtable, Cocktail Event, Speed Networking
... and more!

Register Online at *www.CaliforniaMortgageAssociation.com*

Take It to the Next LEVEL

New Connections | New Concepts
New Knowledge | Connect with Your Friends!

Great Education *and* Great Networking

A WIN-WIN COMBINATION!

"CMA always does a terrific job of providing interesting and relevant content"

[Winter, 2019 Attendee]

This activity is approved for Minimum Continuing Legal Education Credit by the State Bar of California in the amount of 7.5 hours. The CMA certifies that this activity conforms to the standards for approved education activities prescribed by the MCLE Rules of the State Bar of California.

GENERAL INFORMATION

LOCATION:

The CMA Summer Seminar will be held July 24-26, 2019 at the Hilton San Diego Resort & Spa, located at 1775 E. Mission Bay Drive, San Diego, CA 92109. For room reservations, call the hotel at (877) 313-6645. Ask for the "CMA 2019 Summer Seminar" rate. (Room rate is $245 per night Single/Double) through June 25, 2019 or until sold out.

SEMINAR FEES:

Full registration includes seminar events, materials, cocktail/networking receptions and Friday lunch.

	Registration received on or before July 11, 2019	Registration received from July 12, 2019 to date of seminar
CMA Member	$495	$595
Additional Attendee Same Company	$395	$495
Non-Member	$695	$795
Registration Total	$_____	$_____
PAC Raffle Tickets (voluntary; $20 or more)	$_____	$_____
TOTAL ENCLOSED	**$**_____	**$**_____

REFUND POLICY:

Cancellations received in writing on or before July 11, 2019 will receive a credit toward a future seminar. Cancellations received in writing on or after July 11, 2019 will not receive a credit or refund.

CMA DISCLAIMER STATEMENT:

Views, statements, information, and materials provided at CMA seminars do not necessarily reflect the views of the California Mortgage Association, its Officers, Directors, or Members. When considering any document, opinion, publication, or other material obtained from CMA or from any CMA event, attendees and recipients of the information are advised to seek qualified counsel as to the suitability of that material or information for their own business operation or use.

MISCELLANEOUS:

Please wear name badges to all functions. Tickets are required for various events. Please be courteous of others and place cell phones on silent mode. Program and speakers are subject to change without notice.

Wednesday, July 24, 2019

9:00 am – 5:00 pm **CMA Golf Outing**

Enjoy a day of golf overlooking the Pacific at the beautiful Encinitas Ranch Golf Course! Benefitting Wounded Warrior Homes of Vista, CA, this is a day of magnificent scenery, laughter and great fun with people in our industry! Sign up with Belinda Savage at bgsavage800@gmail.com.

6:30 pm – 8:30 pm **Wednesday Night Mixer**

Come in and join us for a beach party at the Hilton San Diego Resort & Spa in the Garden by the Bay. You'll enjoy drinks, appetizers and fun – all included in your seminar registration fees. (Separate reservation requested.)

Thursday, July 25, 2019

7:30 am – 8:30 am **Continental Breakfast**
7:30 am – 5:00 pm **Seminar Registration**
8:00 am – 10:00 am **Exhibitor Set-up**
10:00 am – 6:00 pm **Exhibitor Fair Open**

8:30 am – 10:30 am **Attorney Round Table**
Back by Popular Demand!

MODERATOR: Don Hensel, ***President, North Coast Financial, Inc.***

ONCE A YEAR ... your CMA provides you with free access to the greatest legal minds in the industry. And, this year the lineup of **brilliant attorneys** is staggering. Bring your legal problems, bring your compliance questions and, absolutely bring your legal pads! The information you will receive is **priceless!**

10:30 am – 11:00 am **Networking/Refreshment Break**

11:00 am – 12:00 pm **Service Fees, How to Receive Them and How to Report Them**

Dennis Doss, ***General Manager, Doss Law***
Jeff Spiegel, ***Founder and Principal, Spiegel Accountancy Corp.***
Don Hensel, ***President, North Coast Financial, Inc.***

Service fees can be a **profit center**, whether you outsource your servicing or keep it in house. Either way, the initial set up documentation is crucial. Do you charge service fees or share in the interest with your investor? OR can the borrower pay the service fee? Once you have the services fees set up properly, **you must report the income.** But how do you report? Net? Gross? That is the question. Get the answers.

Thursday, July 25, 2019

12:00 pm – 1:30 pm **Lunch, On Your Own**

Don't want to look for a place to eat? Grab a boxed lunch courtesy of CMA and head outside and enjoy the beach.

1:30 pm – 3:00 pm **Cannabis Disclosures**

Dennis Doss, ***General Manager, Doss Law***
Glenn Goldan, ***President, ReProp Financial***

With the ever growing (pun intended) need for **cannabis financing**, more and more Brokers are exploring the **lucrative** area of this business. But, this isn't your ordinary farm or manufacturing loan. Certain disclosures are needed and lenders are advised to **proceed with caution.** Begin the process with the appropriate initial disclosures.

3:00 pm – 3:30 pm **Networking/Refreshment Break**

3:30 pm – 5:00 pm **Human Resources (part 1)**

Michelle Rodriguez, Esq., ***General Counsel, Woodland Hills Mortgage Corp.***
Krys Delk, ***The Wolf Firm, a Law Corporation***

Do you have a Human Resources department or is it just YOU? Some of the most **costly mistakes** are made in the employee relations area. Are you required to do the new Sexual Harassment training with your employees? Do you know the difference between an employee and an independent contractor? What are your Social Media policies? Are they in writing? Big or small, all companies are affected.

5:00 pm – 6:30 pm **Networking/Cocktail Hour**

Sponsored by S.B.S. Trust Deed Network

Friday, July 26, 2019

7:30 am – 8:30 am **Continental Breakfast in Exhibitor Area**
7:30 am – 4:00 pm **Registration**
7:30 am – 4:00 pm **Exhibitor Fair Open**

8:30 am – 10:30 am **Speed Networking**
Back by Popular Demand!
Randy Newman, ***Founder, Total Lenders Solution***
Fast paced networking session – bring a HUGE stack of business cards. Everyone is always surprised HOW MANY people they meet! How many times have you seen that same person and never met them? Be prepared to discuss what you offer and what you need. Find out who can help you with what. Maximize your exposure and your NET RETURN from the event!

10:30 am – 11:00 am **Networking Break**

11:00 am – 12:00 pm **Insurance – Are You Covered?**
Elizabeth Knight, ***President/CEO, PLM Lender Services, Inc.***
Ed Babtkis, ***President, Ross Diversidied Insurance Services***
Mel Babtkis, ***Senior Vice President, Ross Diversidied Insurance Services***
When it comes to insurance, don't assume that the policy presented covers your lender. When is the last time you read a policy? A whole policy? Policies today are as unique as the properties you lend on. You need to know **the ins and outs of each type of policy**, the proper way to have your lender endorsed, cancellation notification issues, **what is covered**, or more importantly what is not covered and much more. **Hear it from the experts!**

12:00 pm – 1:30 pm **Installation Luncheon and PAC Raffles**

KEYNOTE SPEAKER: Chika Sunquist, ***Supervising Special Investigator of the Mortgage Loan Activities unit at the California Department of Real Estate***

1:30 pm – 3:00 pm **Avoiding Unconscionability Claims: 5 Areas to Consider**
John L. Hosack, ***Shareholder, Buchalter***
Jason Goldstein, ***Shareholder, Buchalter***
Joffrey Long, ***President, Southwest Mortgage***
Your loan terms, origination procedures, even your loan servicing and foreclosure could all lead to unconscionability claims. On any type of loan, (business purpose or consumer purpose) borrowers may look for any "cause of action" to add to their complaints. Recent law/legislation has increased the focus on this – even on business purpose loans. Find out steps you can take to protect yourself. John, Jason, and Joffrey will give you actionable ideas that will help you reduce risk while you write and/or service loans.

3:00 pm – 3:30 pm **Networking/Refreshment Break**

3:30 pm – 4:30 pm **Human Resources (part 2)**
Michelle Rodriguez, Esq., ***General Counsel, Woodland Hills Mortgage Corp.***
Todd Wulffson, ***Carothers DiSante & Freudenberger LLP***
Don't leave early and miss this session! Yesterday's session was just the beginning. Employee issues can become bigger **headaches** and more costly than you think. Know their rights ... because they sure do! Issues with employees are **mostly preventable** with the correct policies in place.

4:30 pm **Seminar Concludes**

— Register Online —

californiamortgageassociation.org/events/meetings-seminars/

TO PAY BY CHECK, FILL OUT THIS FORM AND MAIL TO:

CMA | 2520 Venture Oaks Way, Suite 150 | Sacramento, CA 95833

	Registration received on or before July 11, 2019	Registration received from July 12, 2019 to date of seminar
CMA Member	$495	$595
Additional Attendee Same Company	$395	$495
Non-Member	$695	$795
Registration Total	$_____	$_____
PAC Raffle Tickets (voluntary; $20 or more)	$_____	$_____
TOTAL ENCLOSED	**$**_____	**$**_____

Advanced registration is recommended. Call to confirm space availability. Please check all applicable boxes.

Attendee Name: _____ Attendee Name: _____

Company: _____

Address: _____ City/State/Zip: _____

Phone: _____ Fax: _____ E-mail: _____

Dietary Restrictions (please detail): _____

Support Our PAC – Buy Raffle Tickets!

$20 buys 1 ticket • $100 buys 6 tickets
$200 buys 14 tickets (7 per $100)
$300 buys 24 tickets (8 per $100)
$400 buys 36 tickets (9 per $100)
$500 buys 50 tickets (10 per $100)
Get free tickets when you register online!

CMA Regular Member qty. ___ @ $495/$595 = _____
Additional Attendee qty. ___ @ $395/$495 = _____
Non-Member qty. ___ @ $695/$795 = _____
PAC Raffle Tickets ($20 min) qty. ___ @ _____ = _____

TOTAL _____

California Mortgage Association
2019 Summer Seminar • July 24-26, 2019
Hilton San Diego

Sponsorship Opportunities

We have MANY sponsorship opportunities at the upcoming CMA Seminar. Check it out!

Please mark the appropriate category you have chosen and mail or fax this document along with payment to California Mortgage Association: 2520 Venture Oaks Way Suite 150, Sacramento, CA 95833 • 916.924.7323/fax

☐ **Thursday Cocktail/ Networking Hour. . . . . $4,000** (1 available)

Includes logo printed on seminar signage posted throughout hotel and on screen in session room; listing with logo on seminar app; opportunity to introduce your company, verbal acknowledgement at luncheon; logo display inside coordinating issue of *Points of Interest.*

☐ **Wi-Fi Sponsorship . . . . . $2,000** [SOLD]

☐ **Seminar App . . . . . $2,000** (1 available)

Includes logo printed on seminar signage posted throughout hotel and on screen in session room, listing with logo on seminar app; opportunity to introduce your company; verbal acknowledgement at luncheon; logo display inside coordinating issue of *Points of Interest.*

☐ **Events: Please check your preference(s):**

All event sponsors will be verbally recognized at the event, receive logo recognition on the screen in the session room and on the conference signage.

- ○ Wednesday Night Mixer Sponor. . . . . **$3,000** (2 available)
- ○ Thursday Breakfast Sponor . . . . . **$1,500** (2 available)
- ○ Friday Breakfast Sponsor . . . . . **$1,500** (2 available)
- ○ Want to sponsor something unique and special?

Contact Teresa Excinia (916) 239-4080

☐ **Education Sessions $500/Session**

Includes logo printed on seminar signage posted throughout hotel and on screen in session room; listing with logo on seminar app; opportunity to distribute brochures to attendees in the session room; logo displayed on screen in session room.

Which Session(s) would you like to sponsor? *(See Seminar Brochure)*

_____

_____

☐ **General Sponsor Please check your preference(s):**

General Sponsors will be acknowledged throughout the event, listed in the seminar app and in the post-seminar issue of *Points of Interest.*

- ○ Custom Lanyards (Company name & logo on lanyards*) . . . . . **[SOLD]**
  * Lanyard is only $^{5}/_{8}$" so logo must fit within that width. Logo color must be CMYK, not a spot color.
- ○ Refreshment Sponsor. . . . . **$250** (4 available)
- ○ Snack Break Sponsor. . . . . **$500** (4 available)
- ○ General Donation *Use where you deem necessary* . . . . . **Amount: $_____**

Name/Company (this name will be listed as the sponsor): _____

Contact Person: _____ E-mail: _____

Phone: _____ Fax: _____

Address: _____ City, State: _____ Zip: _____

☐ **We are enclosing a check** for $_____ (make check payable to the California Mortgage Association)

☐ **Charge my credit card** $_____: ○ Visa ○ AmEx ○ MasterCard **Are you a CMA Member?** ○ **Yes** ○ **No**

Last 4 digits of card: _____ Name on Card: _____ Signature: _____

Billing Address: _____ City, State: _____ Zip: _____

Full Card number: _____ Expiration Date: _____ 3-4 digit CID#: _____

Annual Sponsorship Opportunities

Maximize your sponsorship dollars!

Don't miss this chance to secure one of these exclusive sponsorship opportunities!

All opportunities are available on a first-paid, first-served basis.

EVENT SPONSORSHIPS:	Platinum	Gold	Silver
	$7,500	$5,000	$2,500
Splash Page on Seminar App*	✔		
Push Notifications	✔	✔	
Sponsors Listing on Seminar App	✔	✔	✔
Banner Ad on Seminar App	✔	✔	✔
Logo Printed on Signage Posted Throughout Seminar	✔	✔	✔
Verbal Acknowledgement at Luncheon	✔	✔	✔
Logo Display Ad in CMA Newsletter for 4 issues	✔	✔	✔
Banner Ad on CMA Website	12 Months	9 Months	6 Months
Social Media Posts	2 posts (per seminar)	1 post (per seminar)	1 post (per Seminar)
Seminar Registration Vouchers	4 registrations	2 registrations	1 registration
Listing on Seminar Website	✔	✔	✔
Attendee List Sent After the Conference	✔	✔	✔

Please contact Teresa Excinia at teresa@camgmt.com if you would like to discuss other sponsorship opportunities.

☐ **We are enclosing a check** for $_____ (make check payable to the California Mortgage Association)

☐ **Charge my credit card** $_____: ○ Visa ○ American Express ○ MasterCard

Please do not e-mail contract with credit card information, please fax or mail instead.

Card number: _____ Expiration Date: _____ 3-4 digit CID#: _____

Billing Address: _____ City, State: _____ Zip: _____

Name on Card: _____ Signature: _____

Name/Company (this name will be listed as the sponsor): _____

Contact Person: _____ E-mail: _____

Phone: _____ Fax: _____

Address: _____ City, State: _____ Zip: _____

Thank you for your generous support!

* Exclusive; subject to availability.

California Mortgage Association
2520 Venture Oaks Way, Suite 150, Sacramento, CA 95833 • 916.239.4080 – phone
• *cma@camgmt.com* • *www.californiamortgageassociation.org*

CMA Thanks Our Spring Sponsors

HansonBridgett

IRA SERVICES TRUST COMPANY

— Wednesday Night Mixer —

— Seminar Breakfasts —

S.B.S. TRUST DEED NETWORK · 40 · S.B.S. · SIMPLY BETTER SERVICE

WFZ
WRIGHT FINLAY & ZAK LLP
ATTORNEYS AT LAW

liquid logics

— Thursday Cocktails —

— Wi Fi —

THE Mortgage Office™
Powerful Lending Solutions

Scotsman Guide media

— Name Badge Holders —

— Media Sponsor—

CMA Thanks Our Annual Sponsors

— Platinum Sponsor —

FIDELITY
MORTGAGE LENDERS, INC.
COMMERCIAL • RESIDENTIAL

— Silver Sponsors —

ANCHORLOANS
THE POWER TO CREATE WEALTH™

www.Buchalter.com

CRC
CUSHMAN REXRODE
CAPITAL CORPORATION

fs Herzer Financial Services, Inc.

PrivateLenderLink

ReProp Financial®

Pictures From the Spring Seminar – San Francisco












Pictures From the Spring Seminar – San Francisco

Thank You to Our Spring Exhibitors

Applied Business Software, Inc.
2847 Gundry Avenue
Long Beach, CA 90755
800.833.3348 – p / 562.426.5535 – f
Contact: Elizabeth Morales
E-mail: *elizabeth@absnetwork.com*
Website: *www.themortgageoffice.com*
Product/Service: Loan Servicing Software

Del Toro Loan Servicing, Inc.
2300 Boswell Road, Suite 215
Chula Vista, CA 91914
619.474.5400 – p / 877.826.7834 – f
Contact: Kathy Rayford
E-mail: *kathy@deltoromail.com*
Website: *www.@deltoroloanservicing.com*
Product/Service: Loan Servicing

Evergreen Note Servicing
1016 57th Street East, Suite 100
Sumner, WA 98390
253.848.5678 – p / 253.445.3597 – f
Contact: David Shean
E-mail: *david.shean@escrowessentials.com*
Website: *www.notecollection.com*
Product/Service: Loan Servicing

Geraci LLP
90 Discovery
Irvine, CA 92618
949.379.2600 – p
Contact: Ruby Keys
E-mail: *r.keys@geracillp.com*
Website: *www.geracilawfirm.com*
Product/Service: Legal / Consulting / Media

Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 94105
415.777.3200 – p
Contact: Brad Rogerson
E-mail: *brogerson@hansonbridgett.com*
Website: *www.hansonbridgett.com*
Product/Service: Attorney Services

IRA Services Trust Company
1160 Industrial Road, Suite 1
San Carlos, CA 94070
816.769.6763 – p
Contact: Eric Golub
E-mail: *eric@iraservices.com*
Website: *www.iraservices.com*
Product/Service: IRA Custodial Services

La Mesa Fund Control & Escrow, Inc.
8419 La Mesa Boulevard, #C
La Mesa, CA 91942
619.644.8500 – p / 619.668.4690 – f
Contact: Marcus Carter
E-mail: *marcus@lmfce.com*
Website: *www.lmfce.com*
Product/Service: Fund Control and Escrow

Liquid Logics, LLC
4955 North East Goodview Circle, Suite B
Lee's Summit, MO 64064
816.309.7264 – p
Contact: Sam Kaddah
E-mail: *sam@liquidlogics.com*
Wesite: *www.liquidlogics.com*
Product/Service: FinTech Loan Management System

Mortgage+Care Loan Servicing Soft, Inc.
29222 Rancho Viejo Road, Suite 209
San Juan Capistrano, CA 92675
800.481.2708 – p
Contact: Bob Spier
E-mail: *bob@mortcare.com*
Website: *www.loansoftware.com*
Product/Service: Loan Servicing Software

Thank You to Our Spring Exhibitors

Mortgage Lender Services
11707 Fair Oaks Boulevard, Suite 202
Fair Oaks, CA 95628
408.666.3250 – p / 916.962.1334 – f
Contact: Lori Bradford
E-mail: *lbradford@mtglenderservices.com*
Website: *www.mtglenderservices.com*
Product/Service: Trustee and Foreclosures

PeerStreet
2121 Park Place, Suite 250
El Segundo, CA 90245
949.735.1633 – p
Contact: Jason Harris
E-mail: *jharris@peerstreet.com*
Website: *www.peerstreet.com*
Product/Service: Secondary Market
for Real Estate Debt

PLM Lender Services, Inc.
46 North Second Street
Campbell, CA 95008
408.370.4030 – p / 408.370.5484 – f
Contact: Kevin Hubbard
E-mail: *kevin@plmweb.com*
Website: *www.plmweb.com*
Product/Service: Loan Servicing /
Foreclosure / Loan Doc / Drawing

PM Appraisal
3146 TIger Run Court, #119
Carlsbad, CA 92011
805.990.7900 – p
Contact: Paul Marinkovich
E-mail: *paul@pmappraisal.com*
Website: *www.pmappraisal.com*
Product/Service: Commercial /
Residential Appraiser

Private Mortgage Fund, LLC
23586 Calabasas Road, Suite 100
Calabasas, CA 91302
818.702.2551 – p / 877.547.6750 – f
Contact: Chris Bunce
E-mail: *chris@pmfundllc.com*
Website: *www.pmfundllc.com*
Product/Service: Hard Money Lender

Ross Diversified Insurance Services
12200 Industry Street
Garden Grove, CA 92841
714.379.0163 – p / 714.379.0173 – f
Contact: Mel Babtkis
E-mail: *mbabtkis@ross2.com*
Website: *www.rossdiv.com*
Product/Service: Insurance Products

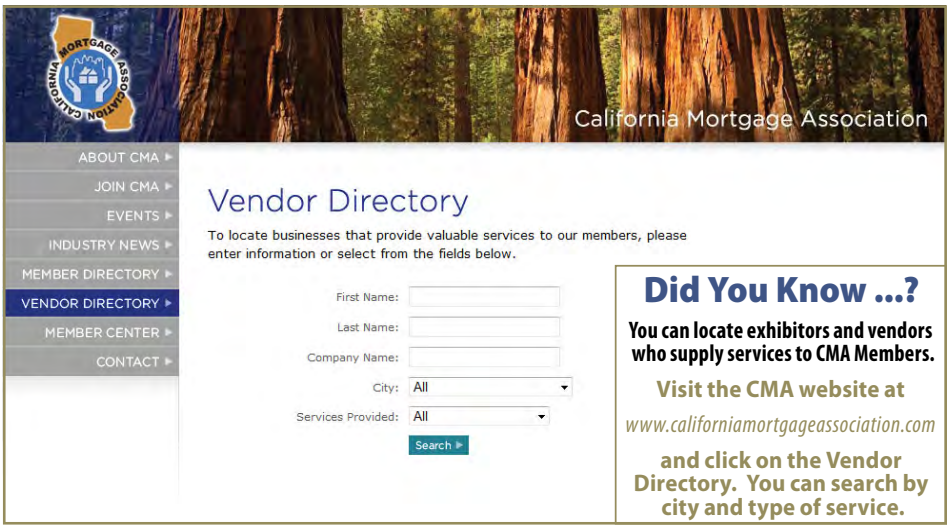
SBS Trust Deed Network
31194 La Baya Drive, Suite 106
Westlake Village, CA 91362
818.991.4600 – p / 818.874.9500 – f
Contact: Rory Cambra
E-mail: *rcambra@sbstrustdeed.com*
Website: *www.sbstrustdeed.com*
Product/Service: Foreclosure Services / REO

Spiegel Accountancy Corp.
2300 COntra Costa Boulevard, Suite 425
Pleasant Hill, CA 94523
925.977.4000 – p / 925.363.3370 – f
Contact: Beeta Lecha
E-mail: *beeta@spiegelcorp.com*
Website: *www.spiegelcorp.com*
Product/Service: Tax and Audit Accounting

Total Lender Solutions
10951 Sorrento Valley Road, Suite 2F
San Diego, CA 92121
866.535.3736 – p
Contact: Randy Newman
E-mail: *randy@tlsemails.com*
Website: *www.totallendersolutions.com*
Product/Service: Foreclosure Services

Thank You to Our Spring Exhibitors

Woodland Hills Mortgage Corporation
21777 Ventura Boulevard, Suite 211
Woodland Hills, CA 91364
818.999.6600 – p / 818.206.2303 – f
Contact: Larry Falk
E-mail: *larry@woodlandhillsmtg.com*
Website: *www.woodlandhillsmtg.com*
Product/Service: Tax and Audit Accounting



DONATE TO THE CMA PAC TODAY!

CMA's positive influence is crucial for our survival. Send your contribution today!

It's easy to donate:

Online at *www.californiamortgageassociation.com*

— or —

Send the additional amount with your monthly CMA dues

— or —

Write a check to "CMA PAC" and send it today to:
2520 Venture Oaks Way, Suite 150 • Sacramento, CA 95833

PROTECT YOUR INDUSTRY – CONTRIBUTE TODAY!

For more information contact:

Richard Wachter, Chairperson, CMA PAC Fundraising Committee
1-800-308-4961

Our PAC and our advocates in Sacramento always operate in full compliance with all laws and regulations relating to efforts to influence the public policy process. We would never engage in any type of quid-pro-quo on public policy issues or entertain contributions in return for access. We support legislators who are philosophically aligned with the interests of our membership and who work to ensure a business environment which allows our members to flourish.

Thank You 2019 PAC Contributors!

$2,000 – $7,300

Anchor Loans, Inc.
Calabasas

Fidelity Mortgage Lenders, Inc.
Los Angeles

Herzer Financial Services, Inc.
Redwood City

PLM Lender Services, Inc.
Campbell

Standard Mortgage Financial Services Inc.
Riverside

Wachter Investments, Inc.
Burlingame

$1,000 – $1,999

Abundance Capital
Milpitas

Alliance Portfolio
Aliso Viejo

Budget Mortgage Corp.
Los Angeles

Equity Funding Resource, Inc.
Sherman Oaks

F.E. Forbes Company Inc.
Berkeley

$1,000 – $1,999 *continued*

FCI Lender Services, Inc.
Anaheim Hills

Mortgage+Care LOAN SERVICING SOFT Inc.
San Juan Capistrano

Redwood Mortgage Corp.
San Mateo

Selzer Home Loans
Ukiah

Stonecrest Financial
San Jose

Sun Pacific Mortgage
Santa Rosa

$500 – $999

A-1 Loans & Investments
Santa Rosa

Del Toro Loan Servicing, Inc.
Chula Vista

Geraci Law Firm
Irvine

Jim Brown Real Estate
Windsor

Kirby & McGuinn, A P.C.
San Diego

Lantern Financial Corp.
Sherman Oaks

LBC Capital Income Fund
North Hollywood

Milestone Financial
Los Altos

$500 – $999 *continued*

Mortgage Securities Inc.
Encinitas

Mortgage Vintage, Inc.
Newport Beach

National Equity Funding, Inc.
Irvine

Residential First Mortgage
Bewport Beach

Total Lender Solutions, Inc.
San Diego

Unitrust Mortgage, Inc.
San Diego

Woody Financial Realty Corp.
Long Beach

$200 – $499

A.S.K. Investments, Inc.
Anaheim

Allstar Financial Services, Inc.
Woodland Hills

Applied Business Software
Long Beach

Asher Evan Investments
Carmichael

BaySierra Financial, Inc.
Santa Rosa

Cal-Pac Capital Advisors
Newport Beach

Church Capital Corporation
Oakland

Creative Realty Marketing & Mortgage
Bakersfield

continued on page 29

Thank You 2019 PAC Contributors!

$200 – $499 *continued*

Cushman Rexrode Capital Corporation
Oakland

Diemer & Wei, LLP
San Jose

Doss Law
Silverado

Grajewski & Blackburn
Pasadena

JMJ Financial Group
Garden Grove

La Mesa Fund Control
La Mesa

Law Office of Benjamin R. Levinson, APC
Campbell

North Coast Financial, Inc.
Carlsbad

Note Servicing Center
Chowchilla

Olympia Mortgage & Investment Co., Inc.
Grass Valley

Pacific Capital Loans, LLC
Calabasas

Pacific Loanworks, Inc.
Covina

Pacific Private Money
Novato

PeerStreet
El Sugundo

PMB Capital, Inc.
Calabasas

PrideCo Capital Management, LLC
Newport Beach

Private Capital Investments
Alamo

$200 – $499 *continued*

Private Financial, Inc.
Sherman Oaks

Private Mortgage Fund, LLC
Calabasas

RCN Capital
South Windsor

Redwood Trust Deed Services, Inc.
Santa Rosa

Ross Diversified Insurance Services, Inc.
Garden Grove

S&L Capital Group
Brea

Security Financial Services
San Francisco

Socotra Capital
Sacramento

Spiegel Accountancy Corp.
Pleasant Hill

Sterling Pacific Lending, Inc.
Watsonville

Sunset Mortgage
Mission Viejo

TaliMar Financial, Inc.
San Diego

The Argus Group
Woodland Hills

The Helvetica Group
Carlsbad

Val-Chris Investments, Inc.
Irvine

Woodland Hills Mortgage Corp
Woodland Hills

Wright, Finlay & Zak, LLP
Newport Beach

$20 – $199

A.C.M. Investor Services, Inc.
Larkspur

Action Funding, Inc.
Calabasas

American Association of Private Lenders
Kansas City

American Heritage Lending
Costa Mesa

Ariah Funding Resources
Toluca Lake

Bridge Capital
San Jose

Buchalter
Los Angeles

California Home Loans
San Jose

Capital Benefit, Inc.
Newport Beach

Cascade Capital Services
Buellton

Century City Mortgage
Los Angeles

Dryden Capital Inc.
Novato

Duner and Foote
Irvine

Empire Trust Deed
Woodland Hills

Equity Mortgage & Investments
Modesto

Equity Wave Lending
Irvine

Evergreen Note Servicing
Sumner

FJM Capital, Inc.
Petaluma

Gasbarro Investments, Inc.
Calabasas

continued on page 30

Thank You 2019 PAC Contributors!

$20 – $199 *continued*

Hamilton Ridge Asset Management
San Jose

HML Investments
Los Angeles

IRA Services, Inc.
San Carlos

James Baron
Saratoga

Keswick Financial Corporation
Cerritos

Law Offices of David B. Epstein
Pasadena

Lending 7 LLC
Diamond Bar

Liquid Logics
Lee's Summit

Louie Loans
San Diego

McCormick & Co
Santa Rosa

Mid Valley Services, Inc.
Fresno

Mortgage Lender Services, Inc.
Fair Oaks

Mount Saber
Fresno

Murphy Austin Adams Schoenfeld LLP
Sacramento

N. Mitchell Feinstein, Esq.
El Segundo

PacFunding Group, LLC
San Diego

$20 – $199 *continued*

Pacific Capital Funding Corp.
Calabasas

Pelorus Equity Group
Laguna Hills

Perkins Coie LLP
San Francisco

Phoenix Financial
Sherman Oaks

Pivotal Capital Group II, LLC
Ladera Ranch

Private Funding Solutions, Inc.
Pleasanton

R.C. Temme Corp
Woodland Hills

Red Tower Capital, Inc.
San Francisco

Roebuck & Company
Alameda

S.B.S. Trust Deed Network
Westlake Village

$20 – $199 *continued*

Salas Financial
San Diego

Sequoia Mortgage Capital, Inc.
San Anselmo

Sonoma Equity Lending, Inc.
Petaluma

The Norris Group
Riverside

Trilion Capital
San Diego

Triumph Capital Partners, LLC
Solana Beach

United Security Investors
Beverly Hills

Valley Mortgage Investments, Inc.
Bakersfield

Watsonville Mortgage
Watsonville

Williams & Associates
Los Angeles

PLEASE SEND PAC CONTRIBUTIONS TO ...

CMA PAC
2520 Venture Oaks Way, Suite 150
Sacramento, CA 95833
— 916-239-4080 —

PAC Announcements:

THURSDAY WINNERS:

- **AirPods:** *Kevin Kim & Pam Sosa*
- **Apple Watch:** *James Perry & Lexi Howard*

FRIDAY WINNERS:

- **AirPods:** *Mark Forbes & Liz Knight*
- **Apple Watch:** *Randy Newman & Mark Forbes*

If You Charge Default Interest, You'll Want to Read This!

by
Taylor E. Hubbard, Esq.
Wright, Finlay & Zak, LLP

by
T. Robert Finlay, Esq.
Wright, Finlay & Zak, LLP

Default interest is intended to compensate a lender for the additional cost and delay resulting from a borrower's default on the loan. Default Interest Rate provisions come in all sizes and are found in many different types of mortgage loans. While these provisions are not prohibited, courts often view them with a suspicious eye. As discussed in this article, Bankruptcy courts in particular, do not like Default Interest Rate provisions. Fortunately, this one has a happy ending.

On March 6, 2019, in *East West Bank v. Altadena Lincoln Crossing, LLC* (C.D. Cal., Mar. 6, 2019, No. 2:17-BK-14276-BB) 2019 WL 1057044, the United States District Court for the Central District of California reversed the Bankruptcy Court, holding that California's liquidated damages statute does not apply to, or invalidate, a lender's Default Interest Rate ("DIR") provision. The Court then upheld the DIR provision, finding that there was a reasonable relationship between the default interest charged and the anticipated damages to the lender caused by the default. While this is a very positive result for California lenders, the decision is on further appeal. So stay tuned!

By way of background, in 2005, Altadena Lincoln Crossing, LLC ("Altadena") obtained a loan from East West Bank ("EWB") to finance a construction project, repayment of which was secured by a deed of trust on the property. The heavily negotiated loan agreement contained an industry standard generic provision increasing the annual interest rate by 5% in the event of Altadena's default. While the loan agreement was heavily negotiated, the DIR provision was not discussed. Ultimately, Altadena failed to repay the loan upon maturity in 2009, triggering the DIR provision. After eight years and thirteen forbearance agreements, EWB commenced foreclosure proceedings, resulting in Altadena filing for Bankruptcy.

In its objections to EWB's proof of claim for its loan, Altadena argued that the DIR provision constituted an unreasonable and unenforceable penalty under California's liquidated damages statute found in California *Civil Code* § 1671(b). *Civil Code* § 1671(b) provides that "a provision in a contract liquidating the damages for the breach of the contract is valid unless the party seeking to invalidate the provision establishes that the provision was ***unreasonable*** under the circumstances existing ***at the time*** the contract was made."

The Bankruptcy Court ruled that the DIR provision was unreasonable and, as a result, was an unenforceable penalty under § 1671(b). The Bankruptcy Court noted that a liquidated damages clause is considered unreasonable if the clause bears no reasonable relationship to the actual damages which the parties could have anticipated would result from a breach at the time the contract was made. Additionally, the amount of liquidated damages must represent the result of a reasonable endeavor by the parties to estimate a fair average compensation for any loss that may be sustained. Here, because EWB used an industry standard and generic DIR provision and did not even discuss the provision during negotiations, the Bankruptcy Court concluded that the DIR provision was not included in the loan agreement pursuant to "reasonable endeavor" by the parties to estimate the actual damages EWB would suffer as a result of Altadena's default.

EWB wisely chose to bypass the Bankruptcy Appellate Panel ("BAP") and, instead, appealed the decision to the Federal Court's Central District. On appeal, the Central District Court overturned the prior decision, holding that not only is § 1671(b) inapplicable, even if it was, its application would not invalidate EWB's DIR provision.

continued on page 32

Relying on California Supreme Court precedent dating back to the 1894 case entitled *Thompson v. Gorner* (1894) 104 Cal. 168, which held that a lender was entitled to charge the higher post-default interest rate that the parties had agreed upon at the time of the origination of the loan, the Court agreed with EWB's position that a prospective increase in interest rate of a fully matured loan upon default is not subject to a § 1671(b) analysis. Additionally, the Court refused to view the DIR provision as a penalty and instead likened the provision to an additional contract or agreement for an alternative performance (pay a higher interest rate upon default) in the event that the original anticipated performance (repay the full loan amount upon maturity) does not occur. Specifically, the Court stated:

> This case is similar to Thompson in all material respects. In each case, at issue was a loan where the borrower had paid the interest due monthly, but when the loan matured and the principal was due, the borrower did not satisfy the full obligation under the note. In both cases, pursuant to the loan agreement, the interest rate increased upon the failure to pay the principal amount when due. These are the materials facts upon which the California Supreme Court found no unenforceable penalty and instead found that the agreement provided for an alternative performance that was not subject to the § 1671(b) analysis.

Moreover, the Court found that "[i]n *Thompson,* higher interest was assessed ... only on the amounts in default," and therefore, because Altadena, like the borrower in *Thompson,* defaulted on a fully matured obligation, the higher interest rate was assessed only on the defaulted amount, making the present case indistinguishable from *Thompson.* As such, the Court concluded that§ 1671(b) was not applicable to the default interest rate provision at issue in on appeal.

Notwithstanding the fact that § 1671(b) was found to be inapplicable, the Court also took issue with the Bankruptcy Court's legal conclusions with respect to its application of § 1671(b) to the DIR provision in question. Notably, the Court pointed out that the Bankruptcy Court misinterpreted the "reasonable endeavor" language as a requirement that the DIR provision actually be subject to negotiation by the parties prior to contract formation. This misinterpretation ultimately led to Bankruptcy Court's improper conclusion that the industry standard and generic DIR provision was unenforceable because the parties never engaged in any negation regarding its inclusion in the loan agreement. The Court expressly held that:

> There is no requirement that the parties negotiate a liquidated damages provision for it to be enforceable; instead, the "reasonable endeavor" requirement means only that a liquidated damages provision must be reasonable in light of the potential harm that could result from a breach, as that harm could be anticipated at the time of contract formation.

After finding that § 1671(b) did not apply, the Court focused its analysis on whether Altadena met its burden of establishing that the 5% DIR increase was not, at the time of contract formation, a reasonable estimate of the potential harm to EWB if Altadena defaulted.

In concluding that Altadena failed to meet its burden, the court looked to the expert testimony provided by the parties. The Court was ultimately convinced by EWB's uncontradicted expert testimony that detailed how a borrower's default reduces the value of the lending bank's asset (i.e., the "loan") in a measurable economic way. The expert testimony led the Court to conclude that the diminution in value of the loan as an asset held by EWB was within the range of actual damages that the parties could have anticipated would flow from a breach and that such increase in the interest rate upon default is a common method of recouping the type of loss incurred by a lender upon a borrower's default.

The Bankruptcy Court's Order may have initially felt like a blow to lenders throughout California, however, thanks to the Court's opinion on appeal, those feelings were short lived. However, before running out to include DIR provisions in every loan, please keep in mind that (1) the DIR must be a "reasonable estimate" of the potential harm to the lender caused by the default; and (2) Altadena has appealed the decision to the 9th Circuit Court of Appeals. Stay tuned for more once the 9th Circuit rules.

Disclaimer: The above information is intended for information purposes alone and is not intended as legal advice.

Taylor Hubbard is an Associate in Wright Finlay & Zak's California office. Robert Finlay is a founding Partner of WFZ.

IRA SERVICES TRUST COMPANY

Our Clients Trust Us With Over $10 Billion in Assets.

Self-Direct Your Future.

Here's Why IRA Services Trust Company Stands Alone:

Direct customer service assistance from our highly trained in-house staff.

The highest level of information security you'll find in any of our competitors.

User-friendly online access to all your accounts 24 hours a day, 7 days a week.

Reasonable and competitive pricing without any hidden fees.

Smooth process for all your administrative transactions.

A name you can trust in an industry it helped start.

800.248.8447 **info@IRAServices.com** **www.IRAServices.com**

New California Assembly Bill Adds Challenges for California Lenders

by
Dennis Baranowski
Garaci LLP

The California legislature introduced Assembly Bill No. 642 on Feb. 15, which would make sweeping changes to how both licensed and unlicensed finance lenders operate in the state.

California Financial Code provides for the licensing and regulation of finance lenders, brokers, and administrators by the Commissioner of Business Oversight. The California Financial Code prohibits engaging in the business of a finance lender or broker without first obtaining a license.

Presently, the Financial Code defines a broker as anyone who is engaged in the business of negotiating or performing any act of a licensed broker in connection with loans made by a finance lender. AB 642 would make significant changes to this definition.

This new bill would change the definition of a broker to include anyone who is in the business of performing "specific acts" in connection with loans made by a finance lender. These specific acts include:

1. Any person who is transferring confidential data about a borrower or prospective borrower to a finance lender with the expectation of receiving compensation.
2. Any person making a referral of a loan prospect under an agreement with a finance lender that meets specific requirements with the expectation of compensation contingent on whether the finance lender enters into an agreement with the borrower.
3. Any person who participates in the preparation of loan documents, counseling prospective borrowers, advising, making recommendations about a specific loan product based on the borrower's private data, communicating lending decisions or inquiries to a borrower, or charging a fee to any borrower in relation to taking an application for a loan from a finance lender.

Collecting Application Data

The bill would also prohibit a licensed broker from performing any specific act that falls within the new definition of a broker, without the express consent of the borrower. This rule is likely to include transmitting what is considered confidential data, such as finances, credit reports, bank statements, and other personal information to a financial lender for the purpose of obtaining a loan. Again, these new rules should be especially concerning for those preparing or gathering loan documents.

The bill provides exemptions for persons performing these specified acts five or fewer times in a calendar year, and those performing administrative or clerical tasks in support of a licensed lender or broker.

The amount of information regulated under the new bill is quite substantial. Section 22337.5 defines "confidential data" as meaning the following:

- Bank account number
- Bank statement
- Credit or debit card number
- Credit score or report
- Social security number (including partial number)
- Personal or business financial information
- Government issued ID numbers
- Personal employment data or history
- Date of birth
- Mother's maiden name
- Medical information
- Health insurance information
- Insurance policy number
- Taxpayer ID

continued on page 36

The term "confidential data" does not include name, phone number, address, email address, desired loan amount, stated purpose of the loan, borrower's self-reported estimated credit score or income, and other information that is knowingly made publicly available by a prospective borrower.

Compensation

While existing law prohibits a finance lender, broker, or mortgage loan originator licensee from paying any fee or other compensation to an individual for undertaking an activity related to a loan that requires a license, the new law expands that prohibition.

The new bill would now prohibit a finance lender from compensating a person for any of the acts listed above unless the compensation is in connection to a referral of a borrower when specific conditions are met. Namely, the law would prohibit an unlicensed person who receives compensation from collecting a prospective borrower's private information, unless that person first obtains express consent, and would require that person to provide written disclosure information to a prospective borrower before making a referral. The disclosure must show the method of compensation to the licensed broker, even if it is presented by an unlicensed affiliate.

Of more concern, is that the bill would require any broker who compensates an unlicensed individual to create, maintain, and implement policies and procedures to ensure that individual does not engage in activity which violates the California Financial Code, had those acts been committed by a licensee. These responsibilities partially include:

- The licensee is responsible for ensuring an unlicensed person does not collect confidential data from a prospective borrower unless specified disclosure is provided and the unlicensed person obtains the borrower's express consent.
- The licensee is required to post the policy and procedures in specified locations.
- Prohibits a licensee from engaging in business with a person who demonstrates repeated, uncorrected failures to adhere to the policies and procedures.
- Requires a licensee who compensates an unlicensed person for referrals to maintain books and records documenting the identities of all persons that the broker compensates and all unlicensed persons that the broker severs a relationship with due to that individual's failure to adhere to the broker's policies and procedures.

It does provide an exemption of sorts, in that a licensed broker will not be considered in violation of the California Financial Code solely based on working with an unlicensed person who the broker compensated, wherein that person commits isolated acts in violation of the California Financial Code.

Providing Disclosures

The bill clarifies existing disclosure law to include requiring a licensed finance lender to obtain a signed statement from the borrower of a consumer loan, which details specified information relating to the arrangement in a "clear and conspicuous manner," including information about fees, rates, and any prepayment penalties or policies.

The bill would require a licensed broker, before making a referral to a finance lender in connection with a consumer loan, to provide the prospective borrower a statement that includes information as to the arrangements between the broker and finance lender, in a clear and conspicuous manner, and then obtain the borrower's express consent with regards to those acts.

Compliance

Existing law authorizes the commissioner to examine specified records of every person engaged in the business of being a finance lender, broker, or program administrator of consumer finance, for the purposes of violations of the California Financial Code or securing information otherwise required in the administration and enforcement of the California Financial Code.

AB 642 requires the commissioner to examine the affairs of each finance lender licensee for compliance with California Financial Code and related regulations once every 48 months. The bill authorizes the commissioner to conduct the examination under oath.

continued on page 37

By expanding the crime of perjury, the new law would impose a state-mandated local program for violators. The law requires the commissioner to provide a written statement of the findings of the examination, to issue a copy of that statement to the licensee's principals, officers, or directors, and to take appropriate steps to ensure correction of any violations.

The commissioner also may subject an affiliate of a licensee to examination on the same terms as the licensee, but only when reports from an examination of a licensee provides documented evidence of unlawful activity between a licensee and the affiliate benefitting or affecting the licensee, or arising from any other activities regulated by the California Financial Code.

Dennis Baranowski is the Vice-Chair of the Banking and Finance group at Geraci LLP. He has extensive experience in helping banks, credit unions, mortgage funds, private lenders, brokers, developers, and loan servicers navigate through complex transactions, including negotiation of terms, transaction review, and drafting of documents. He developed and manages Geraci's cannabis lending and compliance practice and has regularly presented on cannabis lending, as well as had articles on the topic published in national trade publications. Mr. Baranowski believes in dedicated, constant communication, and providing swift, custom, effective, and efficient solutions to client problems. He understands that his role is not to stand in the way of a transaction, but to be a trusted guide in all lending matters.

California Court of Appeals Expands a Borrower's Right to Attorneys' Fees Under HOBR: *Hardie v. Nationstar*

by
T. Robert Finlay, Esq.
Wright, Finlay & Zak, LLP

Although it has been effective since January 1, 2013, California's Homeowner's Bill of Rights (HOBR) is still working its way through the trial and appellate courts, with parties searching for clarification on many of its unclear provisions. One issue ripe for interpretation is under what circumstance is the borrower the prevailing party and entitled to attorneys' fees. *Civil Code* Sections 2924.12(i) and 2924.19(h)[1] give the court the discretion to award reasonable attorney fees and costs to the "prevailing borrower," who is defined as a borrower that "obtained injunctive relief or was awarded damages." There is no question that borrowers who prevail on their HOBR claims at trial are entitled to their fees. Likewise, under the Court of Appeals' 2015 decision in *Monterossa v Superior Court*,[2] it is equally as clear that borrowers obtaining a preliminary injunction under HOBR are entitled to their fees in bringing the injunction even if the borrower does not ultimately prevail on the merits of their lawsuit. But, until recently, servicers have often successfully argued that borrowers who obtain a temporary restraining order ("TRO") are NOT entitled to attorneys' fees just for obtaining the TRO as it was not within the scope of the term "injunctive relief." Unfortunately, the Court of Appeals recently published decision in *Hardie v Nationstar*[3] determined that borrowers prevailing on a TRO hearing are eligible for attorneys' fees and costs under HOBR because a TRO should be considered a form of injunctive relief. This decision will undoubtedly increase the motivation for borrowers claiming violations of HOBR to seek TROs.

A TRO is an injunction in the sense that it enjoins a particular act pending a hearing on preliminary injunction. *Chico Feminist Women's Health Center v. Scully*, (1989) 208 Cal.App.3d 230, 237, fn. 1. However, it is distinguishable in the following ways:

1. A TRO may be issued **"ex parte"** and, sometimes, even without notice (e.g. where a foreclosure sale is just days or even hours away) as its purpose is to preserve the status quo;

2. In contrast to the ex parte TRO proceeding, a hearing on the preliminary injunction is a full evidentiary hearing giving all parties the opportunity to present arguments and evidence. Civ. Proc. Code (CCP) § 527;

3. A bond is not essential for a TRO unlike a preliminary injunction which is not effective until the undertaking is filed. *CCP* § 529;

4. The TRO is transitory in nature and terminates automatically when a preliminary injunction is issued or denied. *Landmark Holding Group v. Superior Court*, (1987) 193 Cal.App.3d 525, 529. When issued without notice, the TRO is only supposed to last for 15 days, though, for good cause, the Court can set the expiration for up to 22 days from the date of issuance. CCP § 527(d).

The most troubling aspect of the TRO is the short notice required prior to the *ex parte* hearing. In California State courts, a borrower need only provide telephonic notice by 10:00 am the day before an 8:30 am TRO hearing and, as noted, in emergency situations, no notice might need to be given at all. With less than 24 hours' notice required, most telephonic, email or fax TRO notices do not make it to the right internal personnel to hire counsel in time to appear at the hearing. Even if counsel is hired, he or she often does not have sufficient information to effectively oppose the TRO. Making matters worse, many judges "rubber stamp" TROs to stop foreclosure sales, believing that a short continuance until the Preliminary Injunction hearing, will not cause the servicer significant harm.

continued on page 39

How Can Servicers Avoid Being Subjected to Attorneys' Fees and Costs Under the *Hardie* Rule?

The *Hardie* decision highlights the servicer's need for internal procedures to quickly identify when a TRO is being noticed and to immediately funnel it to the legal department or other appropriate person so that they can hire counsel. With the referral to outside counsel, we suggest including (1) the status of any current loss mitigation discussions; (2) if possible, copies of loss mitigation notes, applications, denials, etc.; (3) any known bankruptcy information; and (4) contact information for the person responsible for postponing the sale. With this information, outside counsel can then quickly determine whether the TRO is likely to be granted, in which case counsel may recommend postponing the foreclosure sale. Postponing the sale will allow counsel to argue that the TRO should be denied because there is no risk of "immediate" harm.

Most California lawsuits include, in addition to the typical HOBR claims, causes of action for negligent loan modification review, promissory estoppel, wrongful foreclosure, etc. A TRO based on non-HOBR claims does not trigger the borrower's immediately right to attorneys' fees. With that in mind, if the court is inclined to grant the TRO, counsel should ask the court to clarify that the TRO is based on the non-HOBR claims. Judges often blindly grant TROs thinking there is no harm to the lender. If the distinction is pointed out, some judges may still grant the TRO but NOT on the HOBR claims to avoid trigger Borrower's right to attorneys' fees. Along the same lines, if the servicer cannot hire counsel in time to oppose the TRO, counsel can later argue, in opposition to the Preliminary Injunction, that the TRO was granted based on the non-HOBR claims.

Final Thoughts and a (Small) Silver Lining:

In recognition of the obvious negative implications of its ruling, the *Hardie* Court did provide one important, positive constraint on potential abuses. Specifically, the Court confirmed that an attorney fee award under HOBR is *not mandatory* just because injunctive relief was granted: "Furthermore, the award of attorney's fees under section 2924.12 is discretionary. (§ 2924.12, subd. (h) [fees "may" be awarded].) By permitting, rather than requiring a court to award attorney's fees, section 2924.12 allows courts to avoid awards that would be inequitable or unconstitutional. The *ex parte* nature of the proceedings, the relative merits of the TRO application, and a party's ultimate ability to obtain statutory compliance through imposition of an injunction are relevant factors the court may consider in determining whether to award fees."

Prior to the *Hardie* decision, many courts viewed an attorney fee award as mandatory under HOBR. At least now, servicers can cite to *Hardie* for reasons why, even if a TRO or Preliminary Injunction is granted, the court should still deny the borrowers request for attorneys' fees.

Despite this "saving" clause, the *Hardie* decision increases the likelihood that borrowers will seek TROs and, if they prevail, move for fees. Again, the best recourse is to immediately hire counsel to oppose the TRO and, if it is going to be granted, seek to clarify that the TRO is based on the non-HOBR claims. In addition, counsel should always push the court to condition the TRO or Preliminary Injunction on the posting of a bond. That way, if the borrower fails to timely post the bond, counsel can argue that the injunction never took effect and, therefore, the borrower is not the prevailing party under Section 2924.12(i) or 2924.19(h). Another option, if subsequent facts are developed to show that the TRO was improperly granted (e.g. based on misrepresentations by the borrower that the short time frame for response did not allow the servicer or investor to present at the hearing, or where the TRO was issued without notice of the hearing), is to move to dissolve the TRO or Preliminary Injunction. If all that fails, counsel can still argue that the court should exercise its "discretion" to deny all or a part of the borrower's fee request.

In conclusion, servicers and investors should make sure that their staff is trained on what constitutes *ex parte* notice in California and what to do when they receive notice. That is the first line of defense in seeking to avoid the risk of attorneys' fees and costs under HOBR.

If you have any questions regarding this article, a particular case or California's Homeowner's Bill of Rights (HOBR), please feel free to contact Robert Finlay at *rfinlay@wrightlegal.net*.

Endnotes

1 *Civil Code* Section 2924.12(i) applies to servicer's who conduct more than 175 qualifying foreclosures a year. Section 2924.19(h) applies to those under 175 annual qualifying foreclosures.

2 *Monterossa v Superior Court*, (2015) 237 Cal. App.4th 747.

3 *Hardie v. Nationstar Mortgage LLC*, 2019 WL 947085 (5th Dist., Feb. 27, 2019)

T. Robert Finlay, Esq. is a founding partner of Wright Finlay & Zak LLP.

Stricktly Strickland

Mortgage Industry Information, Opinions & Tips

The Horror of a Hard-Money Audit

I am actually sitting with the DRE auditor as I type this column (she can't see my screen) and I'm going to try to give you a play-by-play of the violations she is finding and the citations she is citing. Hold on, it isn't going to be pretty, unfortunately.

First and foremost, she has now spent three (3!) days trying to reconcile the trust account that was already reconciled by the broker's CPA. To make matters worse, there was bank fraud from outside hackers and a change of banks (the original bank was acquired by another bank) during the audit period. Every adjustment that was made by the CPA to account for these two events has been questioned by the auditor to make sure they adhered to DRE requirements (and, unfortunately, some of the ways the CPA made the adjustments met generally accepted accounting requirements but not the DRE's strict requirements for trust accounting). Even though the CPA showed the trust account as IN BALANCE, the auditor is insisting that the account is $5,000 short. This still hasn't been resolved, but we are working fervently to show her that it isn't short. The confusion and perceived shortage was caused by the unfortunate timing of the changed banks and hackers, which makes it hard to show the DRE the absolute linear paper trail that they demand.

Next, she started working on specific loans (chosen at random) and asked the broker to choose a construction loan for her to review (which is unusual, since the auditor usually picks the loans to review, but since this is a "routine" audit as opposed to an investigative/complaint driven audit, she let the broker choose the construction loan and she chose the rest from the list of paid off loans from the last year). After discussing with the broker in his office with the door closed and the auditor not in attendance the fact that a DRE broker cannot originate a construction loan with a principal amount of over $2,500,000 (until and unless the pending legislation is approved to raise that limit), we began to review his construction loans closed during the audit period. Fortunately, this broker was well aware of the $2,500,000 limit and none of his construction loans violated that provision of the law (as you can imagine, there are brokers I have encountered who are unaware of the limitation).

Once we provided a copy of the construction loan, the first thing she noticed was that there was no fund control company holding the construction funds, but that the broker had opened a single use trust account for the holdback. It was a multi-lender loan and the rule is that there is no threshold for holdback in the broker's trust account (single use or otherwise) for any amount of holdback (even though on a single-bene loan the broker can hold back up to $100,000). The fund control company handled the inspections and approved the draws, but the broker controlled the funds. This is a big hurdle that we are still trying to get over.

She noted that there were rollovers from the investors into this loan, even though there was nothing in writing from the investors to allow the broker to hold the funds from a paid off loan to roll into this loan AND the fact that no rollovers are allowed on multi-lender loans. The only time an investor's money can be held past the 25 days by regulation is in the case of a single investor who wants to roll over their payoff into another loan that is identified in writing (loan amount and property address).

The new bank that the trust accounts are now held in has Analysis Accounts, which means that bank fees are offset by the deposits in the account (either eliminating or reducing the charges to the broker). This is allowed, as long as there is a disclosure in writing signed by each investor or included in the loan servicing agreement disclosing the fact that the broker receives this benefit from the bank. She asked for proof of this disclosure, which we provided.

She asked for copies of the signature cards for the full audit period (18 months) for all bank accounts from both banks. Luckily, their bank provided these, as most banks DO NOT agree to provide copies of signature cards. This creates a problem,

as the DRE then has to subpoena the bank and wait for the copies. (Note: If you have trust accounts, try to get your bank to provide a copy of the signature cards NOW. Don't wait for an audit and then try to convince them to give them to you in a timely manner.)

The good news here is that the accounting software they are using gives the right reports, the reconciliations are done on a monthly basis (with some changes in how they are done going forward now that the CPA has sat with the auditor for three days and has seen where he was making errors), the signer on the trust accounts is only the broker, they are giving the MLDS and LPDS on all loans and having them personally signed by the borrowers/investors and broker (no electronic signatures), their dba's are filed correctly, and their agents are properly licensed and have compliant contracts with the broker.

Now we finish the exhausting in-office fieldwork with the auditor reviewing files and payoffs (hopefully today is the last day), she writes her report and submits it to her supervisor, and the supervisor decides whether to send it to legal or cite and fine. Now is the waiting period (months, perhaps) to see how the DRE decides to proceed. They will either file an accusation or issue a cite and fine (I'm thinking the latter).

I will let you know what happens.

Pam Strickland is a compliance consultant who helps brokers prepare for and survive a DRE audit. Call her long before the DRE calls you so you will be prepared. Remember, they can go back three years (usually twelve to eighteen months), so now is the time to get prepared for the future. She can be reached at *pam@pamstrickland.com*

California Mortgage Association
"Points of Interest" Magazine
Advertising Policies & Agreement to Advertise

CMA Headquarters
2520 Venture Oaks Way, Suite 150, Sacramento, CA 95833
(916) 239-4080 - phone • (916) 924-7323 - fax
www.californiamortgageassociation.com • cma@camgmt.com

Unless otherwise stated, a ds for this publication may be Black & White ("Grayscale") or Full Color.

AD SIZES AND RATES

Ad Size (WxH)		1x Rate	4x Rate
Full Page	(8½"x11")	$525	$450
½ Page Horizontal	(7¼"x4½")	$335	$285
¼ page	(3½"x4½")	$175	$150

PLEASE NOTE: if the artwork you provide does not conform to the above specifications, we reserve the right to alter the ad to fit these dimensions.

ARTWORK SPECIFICATIONS

Please submit ads digitally where possible (PC format, not Mac) either on CD, zip disk, floppy disk, or via E-mail. Such electronic submissions should be in EPS, TIF, or PDF format, including all fonts where applicable, and should be compatible with Adobe Photoshop, Illustrator, PageMaker, InDesign, or Acrobat. We will also accept camera-ready (printed) full-sized images suitable for scanning, at either 133 or 150 line screen. Please see above for specific ad sizes and dimensions. Artwork should be e-mailed to "Advertising c/o **CMA**" at *teresa@camgmt.com* or mailed to:

Advertising c/o **CMA**
2520 Venture Oaks Way
Suite 150
Sacramento, CA 95833

I will be submitting my ad:
☐ **Camera-ready by mail**
☐ **Digitally on disc** ☐ **Via E-mail**
☐ **I need assistance designing a new ad (we will discuss design rates separately)**

PAYMENT TERMS

Advertisers are billed after their ad appears. A frequency discount is given to those who agree in writing (ie. this signed contract) to advertise in every issue of the calendar year, or in an equal number of consecutive issues. If the written agreement is not fulfilled, the advertiser is liable for the one-time rate charges. Advertisers who submit an ad contract but fail to submit artwork by the publication deadline will be invoiced.

CONDITIONS

1. Advertisers and advertising agencies are liable for all content (including text, representations, and illustrations) of advertisements and are responsible, without limitation, for any and all claims made thereof against *CMA Points of Interest,* the association, its officers, agents, or vendors.
2. No advertiser is guaranteed placement, but every attempt will be made to provide the desired position.
3. Publisher reserves the right to revise, reject or omit any advertisement at any time without notice.
4. CMA accepts no liability for its failure, for any cause, to insert advertisement.
5. Publisher reserves the right to publish materials from a previous advertisement if new materials are not received by material deadline.
6. The word "advertisement" will appear on any ad that resembles editorial material.
7. Drawings, artwork and articles for reproduction are accepted only at the advertiser's risk and should be clearly marked to facilitate return.
8. No verbal agreement altering the rates and/or terms of this rate card shall be recognized.
9. All advertisements, layout and designs produced for the advertiser by CMA's Graphic Staff will remain the property of CMA.
10. All requests for advertising must be in writing, in the form of this signed contract, for the protection of both the advertiser and CMA.
11. Once an order for advertising is placed, it cannot be withdrawn or cancelled in whole or in part.
12. By signing this contract, advertiser agrees to pay in full for reserved space, even if the ad is not run due to lateness or absence of materials.

PLACING YOUR AD

To place an ad, complete the form below and mail or fax to: CMA, 2520 Venture Oaks Way, Suite 150, Sacramento, CA 95833 • (916) 924-7323 - fax. ***Do not e-mail.*** CMA will not run your ad without this contract.

Name of Company/Organization Being Advertised: _____
Billing Contact: _____ Billing Address: _____
Phone: _____ Fax: _____ E-mail: _____

Agency or Advertising Representative (if different from above): _____
Phone: _____ Fax: _____ E-mail: _____

Person to Contact with Artwork-specific Questions (if different from above): _____
Phone: _____ Fax: _____ E-mail: _____

I agree to place a _____ size ad in the following issue(s), and to be billed at a rate of $_____ per issue: (note: The multiple-issue rate can apply to *any* consecutive series of issues starting at any point in the year. If you choose the multi-issue rate, please number your first issue "#1" below, and the other issues as they occur chronologically. See condition #5, above.)

	_____Fall '19	_____Winter '19	_____Spring '20	_____Summer '20
Material Deadlines:	**8/16/19**	**11/1/19**	**1/31/19**	**5/3/20**

METHOD OF PAYMENT

Total $_____ Please check one:
☐ Send me an Invoice ☐ Enclosed is check #_____(Payable to California Mortgage Association) ☐ Charge my Card ○ MC* ○ Visa* ○ AmEx*
Last 4 digits of card: _____ Billing Address: _____
Print Cardholder's Name: _____ Signature: _____
*Do not e-mail credit card information; mail or fax only.

(rev. 6/19)

Full Credit Card# _____ Exp: _____ CVV#: _____

Return completed form and payment by mail or fax to: **California Mortgage Association, 2520 Venture Oaks Way, Suite 150 • Sacramento, CA 95833 • (916) 924-7323 – fax**
For more information, contact us at: (916) 239-4080 – phone • (916) 924-7323 – fax • *www.californiamortgageassociation.org*

MEMBERSHIP APPLICATION

Name: _____

Company: _____

Address: _____

City: _____ **State:** _____ **Zip +4:** _____

Day Phone: _____ **Mobile Phone:** _____ **Fax:** _____

E-Mail: _____

Annual Gross Closings: $ _____ **Referred by:** _____

PLEASE LIST ALL LICENSES HELD:

License No.	Regulator/Issuer (i.e., DRE, NMLS, etc.)
_____	_____
_____	_____
_____	_____
_____	_____

Has your license or that of an affiliated company ever been suspended or revoked or have there been any complaints within the last ten years? If yes, please provide details:

_____

_____

Tell us about your professional work history:

_____

_____

_____

Tell us about your current company history and business focus, branches, employees, and other pertinent details:

_____

_____

_____

How did you become aware of CMA?

_____

_____

Do you know other CMA members? If yes, who?

_____

_____

PROFESSIONAL REFERENCES

Name _____ **License Number** *(if a licensee)* _____
Firm Name _____
Relationship _____
Phone _____ **E-mail** _____

Name _____ **License Number** *(if a licensee)* _____
Firm Name _____
Relationship _____
Phone _____ **E-mail** _____

Name _____ **License Number** *(if a licensee)* _____
Firm Name _____
Relationship _____
Phone _____ **E-mail** _____

(revised 8/11/16)

Power of Membership

Mission Statement

The California Mortgage Association is committed to providing legislative advocacy, legal resources and education programs for our members to enhance their professionalism. We believe that the public good is served when professionals serve the public.

Regular Member

Any reputable individual, sole proprietorship, corporation, limited liability company, or partnership primarily engaged in the Mortgage Business in the state of California.

Affiliate Member

Any reputable individual, sole proprietorship, corporation, limited liability company or partnership who regularly provides services or products to persons engaged in the Mortgage Business.

Educational Member

Any reputable individual, sole proprietorship, corporation, limited liability company or partnership engaged in the Mortgage Business who is not subject to the provisions of Business & Professions Code § 10232(a)-(b) ("threshold broker"), or under any successor statute.

In which CMA Committee or Committees are you interested?

☐ **Membership** ☐ **Dodd-Frank** ☐ ***Points of Interest* Magazine** ☐ **Advertising/Vendor** ☐ **Education**
☐ **Continuing Education** ☐ **Legislative** ☐ **Other**

I would be interested in participating in the following focus group:

☐ **Commercial:** For those members whose interest is commercial finance. While we meet as a whole, we have organized into two chapters – Northern and Southern California. Select the location where you do the most lending.

☐ **Northern CA** ☐ **Southern CA**

☐ **Securities:** For those members who are using "non-DRE" methods of raising capital for your loan investments or would like to learn more about securities like pools and permits.

☐ **Consumer:** For those members who are arranging owner-occupied 1-4 unit loans, want to stay up-to-date on the laws and invent new possibilities in this lending arena.

I hereby make application for membership in the California Mortgage Association and pledge myself, if accepted, to abide by the requirements of their By-Laws and Code of Ethics as they are now and as they may be amended. Applicant acknowledges that the use of the Association logo is exclusive to members only, and applicant agrees to cease utilizing the logo upon termination of membership. By becoming a member, applicant authorizes CMA to send information on products and services by phone, fax or e-mail under U.S.C. 47 sec. 227. Applicant certifies that the foregoing information and annual gross closings are correct.

Signature *(required)* _____

DUES PAYMENT OPTIONS: Dues are based on your annual gross closings. Please select one:

☐ **Regular Member —** ($1 million and above per year): $125/month

☐ **Affiliate Member —** Billed Annually (No voting privileges): $500/year

☐ **Educational Member —** (Open to non-threshold and sales individuals. No voting privileges): $75/month

Mail Application with Payment to:

2520 Venture Oaks Way, Suite 150 • Sacramento, CA 95833

If paying by credit card, you may fax to: (916) 924-7323 • Questions? Call (916) 239-4080 or visit *www.californiamortgageassociation.com*

Contributions or gifts (including membership dues) to CMA are not tax deductible as charitable contributions. Pursuant to the Federal Reconciliation Act of 1993, association members may not deduct as ordinary and necessary business expenses, that portion of association dues dedicated to direct lobbying activities. Based upon the calculation required by law, 18% of the dues payment only should be treated as non-deductible by CMA members. Check with your tax advisor for tax credit/deduction information.

MAKE CHECKS PAYABLE TO: CALIFORNIA MORTGAGE ASSOCIATION

Credit Card Authorization: ☐ VISA ☐ MasterCard **Amount to Charge: $**_____ **Last 4 Digits of Card:** _____

Cardholder's Name:_____

Carholder's Signature: _____

Billing Address *(if different)*:_____

City: _____ **State:**_____ **Zip +4:**_____

CMA offers a convenient automatic payment plan for your membership. Dues will be charged to your credit card on the 1st of each month. The first month's payment or annual dues payment is required to activate your CMA Membership. By signing below you authorize the California Mortgage Association to initiate credit card charge(s) to remain in full effect until written notification from you is received by CMA, in accordance with the terms and conditions contained herein.

Monthly Payment: $_____ **Signature:** _____ **Date:**_____

Full Credit Card Number:_____ **3-4 Digit CVV:**_____ **Expiration:**_____

WELCOME NEW MEMBERS

The California Mortgage Association welcomes the following members who are new to the association:

Chuck Campagnet
La Maison Properties Inc.
26 Justin Circle
Alameda, CA 94502
(925) 788-8738
LaMaisonProperties@gmail.com
Regular Member

Jackie Cuneo
Exception Lending
2 Embarcadero Center, 8th Floor
San Francisco, CA 94111
(415) 948-5390
jackie@exceptionlending.com
Regular Member

Philip Dryden
Evergreen Note Servicing
1016 57th Street East, Suite 100
Sumner, WA 98390
(253) 848-5678
phil@notecollection.com
Affiliate Member

Moe Essa
Mount Saber
2350 W. Shaw, Suite 140
Fresno, CA 93711
(714) 976-6057
messa@mtsaber.com
Regular Member

Rich Fenske
Altus Capital
P.O. Box 6787
Santa Rosa, CA 95406
(707) 326-9828
rfenske@altusequity.com
Regular Member

Derrick Foote
Duner and Foote
18952 Macarthur Boulevard, Suite 400
Irvine, CA 92612
(949) 263-0030
derrickfoote@dunercpa.com
Affiliate Member

Kate Magladry
Conventus LLC
111 Potrero Avenue
San Francisco, CA 94103
(415) 923-8069
kate@cvlending.com
Educational Member

Brett McClure
Frandzel Robins Bloom & CSATO, L.C.
1000 Wilshire Boulevard, 19th Floor
Los Angeles, CA 90017
(323) 852-1000
bmcclure@frandzel.com
Affiliate Member

Jessie Rodriguez
Vintage Flip
2065 N. Indian Hill Boulevard
Claremont, CA 91711
(904) 559-0815
jessie@vintageflip.com
Regular Member

Ron Sentchuk
Logan Investments
12725 Ventura Boulevard, #B
Studio City, CA 91604
(818) 755-0880
ron@loganinvestments.com
Regular Member

BENEFITS OF MEMBERSHIP

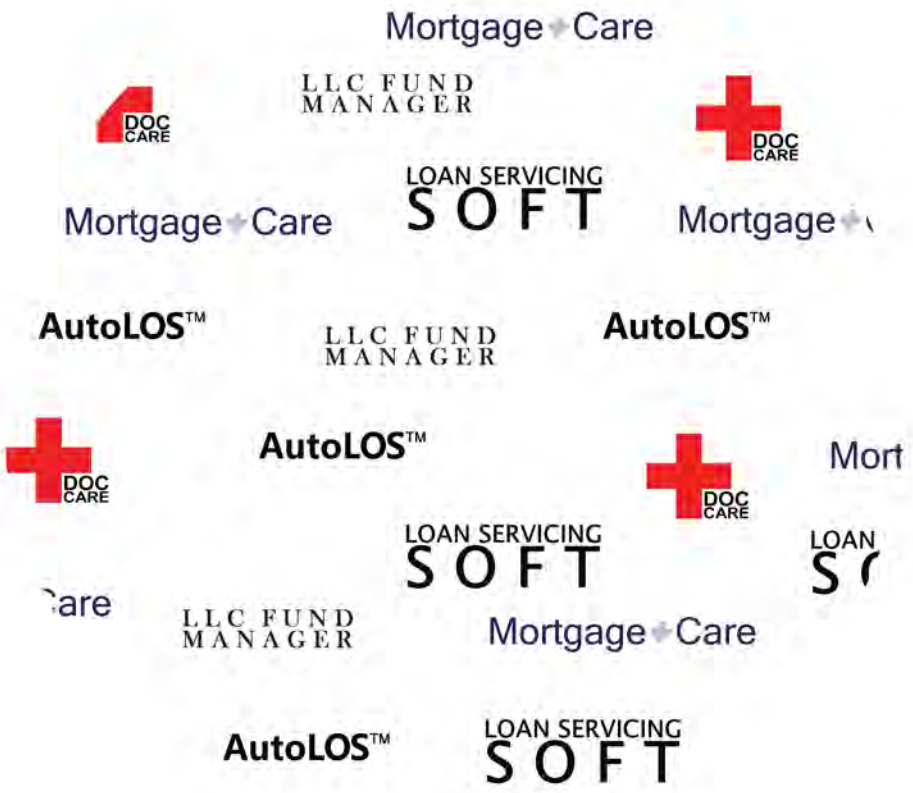
CMA is one of the fastest growing statewide associations and we thank all our members for their support! You are encouraged to share with your nonmember colleagues all of the membership benefits and reasons you belong to the association. Encourage them to join – applications can be found on the CMA Web site – *www.californiamortgageassociation.com,* or by calling the headquarters office at (916) 239-4080.

Please remember to share information about the Focus Groups that are provided to members only.

Additional information can be found on the CMA website. There are many exciting educational programs being planned and the Summer Educational Seminar in San Diego in July, 2019 is the next program being offered.

Thank you again for all of your support and contributions to CMA and the private loan industry!

California Mortgage Association
2520 Venture Oaks Way
Suite 150
Sacramento, CA 95833



www.loansoftware.com