



Points of Interest

A Publication of the California Mortgage Association

Fall 2019

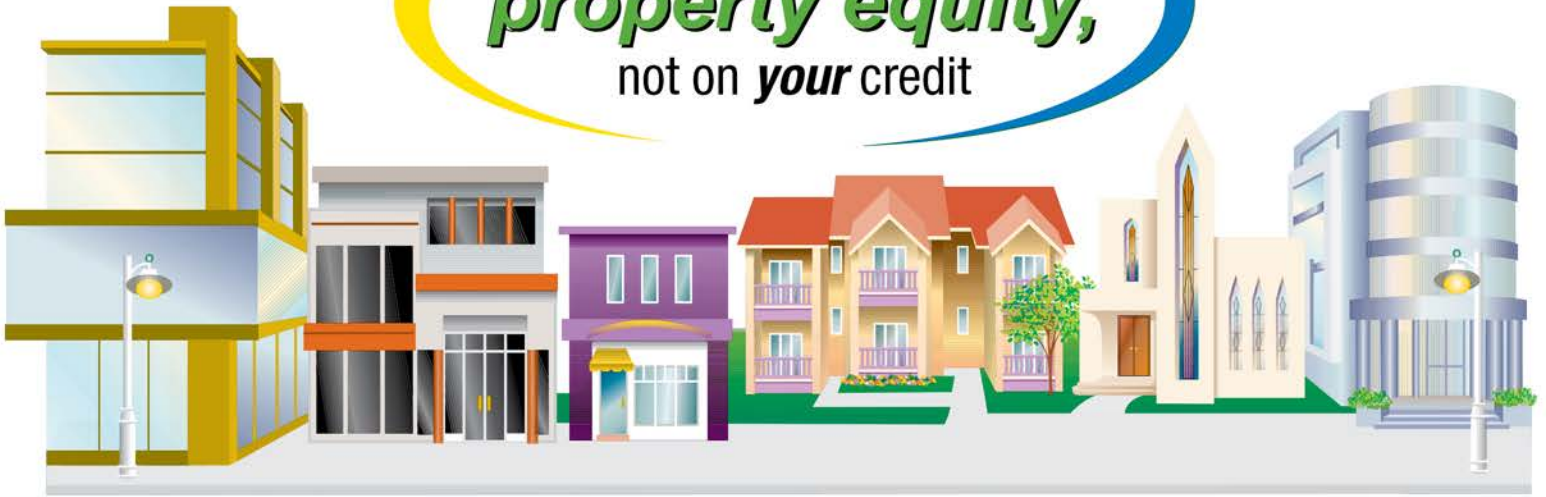


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- **Consumer Laws & Business Loans**
- **Trust Deed v. Fund Investments**
- **Rental Income**
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From the President

By David Herzer • 2019-2020 CMA President

Roll the Dice

This summer has had its ups and downs. The stock market has been very volatile, the yield curve is inverted and real estate prices seem to have peaked in some markets. Of course, CMA has remained steady through all this turmoil!

One of my highlights was the CMA Summer Seminar in San Diego. I understand there was a pretty competitive golf tournament, the Wednesday night mixer was a blast and the seminar provided lots of great materiel. We were privileged to have Chika Sunquist from the Department of Real Estate install our new Board members and officers. Even better was Glen Goldan's tribute to Chuck Herschon (spelling) who received the honor of being appointed as Director Emeritus. The accompanying slideshow by Steve Leidner was hilarious. If you were there you might have even learned some Yiddish! Topping it off with great networking and good friends made for a worthwhile trip to San Diego.

It is great to be among friends and try to make sense of the world around us. From tweets to tariffs to recession warnings the news has been unsettling. As of this writing the yield curve is inverted, the stock market has been very choppy and tariffs have been on and off again. The real estate market has been uneven with some bright spots (decreasing interest rates) and some dark clouds (high-end prices softening, rent control initiatives and over-zealous regulators). The consensus among

our colleagues is that lower interest rates should help to soften the blow of the seemingly pending recession. Furthermore, the lower rates make our asset class more attractive to investors relative to others. So, we can take some solace, but indeed caution is advised.

The 4970 saga is finally over and hopefully, no surprises lie ahead. With the help of the CMA, Dennis Doss's client successfully settled its case, with the DRE agreeing to republish on their website and in the next Quarterly DRE Bulletin their previous and long-standing advice that Civil Code 4970 – aka the Hi-Cost Loan Law – does not cover business purpose loans secured by owner occupied property. Furthermore, and most importantly, the DRE clarified that "consumer loan" is for "personal, family and household purposes." They also dropped all charges against Dennis's client. We are now back to the years-long understanding that business purpose loans are exempt from 4970. Needless to say, the best practice is to carefully document the business purpose.

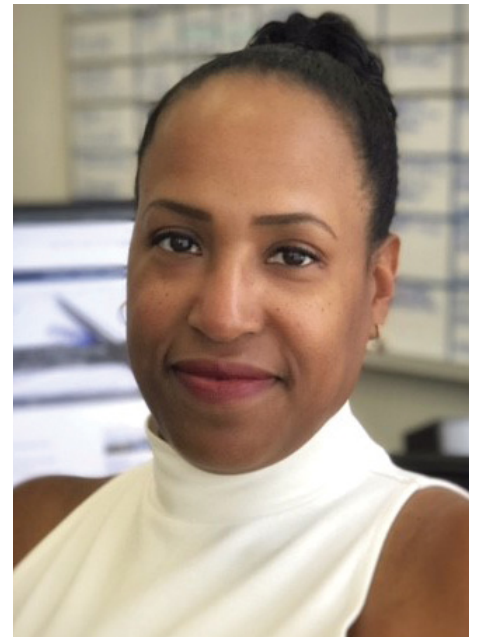
On behalf of the entire Board and CMA membership, I would like to thank Dennis Doss for his steady hand in moving the DRE off their provocative stance. I would also like to thank, CMA General Counsel Robert Finlay and Leslie G. Baird from Wright, Finlay & Zak for all their help with the Dennis' suit, meeting with the DRE and collaborating with the "Mikes" on

legislative solutions. In particular Leslie found the "smoking gun" commentary on the DRE website, where the DRE acknowledged that a "covered loan" is a consumer credit transaction (primarily for personal, family or household purposes," even while the DRE was citing one of our members for NOT treating a business purpose loan on owner-occupied property as a "covered loan"! The DRE's published commentary was likely the reason that the DRE suddenly changed courses and settled the dispute. Lastly, I would like to personally thank all the CMA members who donated their own money to help fund Dennis' client's legal fight. Great teamwork, thank you all!

So, what action should you take? Come to the CMA Seminar in Las Vegas. There will be informative topics to help you prepare for the shifting real estate market, embrace IT solutions for your business and keep up on Legal and Legislative issues. Members can attend the Pool Managers Group and the Construction Focus group, or the DRE Brokers roundtable. And be sure not to miss a great keynote speaker John Wolske, former "Culture Evangelist for Zappos discussing the "Customer Experience"!

I look forward to seeing you in Las Vegas, where you can really roll the dice! 🎲





From the Editor

By Mayumi Bowers • Editor, *Points of Interest*

Change is in the air. The days are getting shorter while the nights are getting longer as we transition from summer to fall. As we enter the 4th quarter I hope that you are close to achieving the goals that were set for the year. While we had a scare with the 4970 rule and the Department of Real Estate, all seems to have been resolved for the time being. But with this recent scare, it is a good time to revisit the foundation of a business purpose loan which may prompt some to improve, and maybe for some, change their policies and

procedures. This is also a good time to make sure to pay attention to details. As Pam Strickland reminds us, the devil is in the details and the only devils and witches that we need to experience are those from Halloween. Last quarter is also a good time of year to consider if there are things to be done differently for the upcoming year and to prepare for the transition into the next year.

As always, I hope that you find the articles in this edition to be beneficial and I look forward to seeing you in Las Vegas. 🌐



Save the Dates:

▶ CMA Fall '19 Seminar ◀

October 23-25, 2019
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Las Vegas, NV

▶ CMA Winter '20 Seminar ◀

January 22-24, 2020
Fashion Island Hotel
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▶ CMA Spring '20 Seminar ◀

April 22-24, 2020
Westin St. Francis
San Francisco, CA

▶ CMA Summer '20 Seminar ◀

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SACRAMENTO SUMMARY

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



2020 a Quiet Year? Nope

On September 13, the California Legislature ended the 2019 legislative year, the first year of the current 2019-2020 two-year session. Inside the Capitol, some called 2019 a quiet year, even boring. It is true that the sort of last-minute shenanigans which have occurred in the past did not occur this year, for a variety of reasons. But it is emphatically *not* true that 2020 was a quiet year in terms of action on major issues, as will be outlined below.

For the second year in a row, the California Legislature has enacted bombshell legislation which will have national implications. Last year it was the package of bills which together enacted the California Consumer Privacy Act (CCPA), arguably the most consumer-protective privacy law in the world. Last year's package delayed implementation of the CCPA until January 1, 2020, in order to provide additional time for refinements and corrections before the complex law goes into effect. In fact, a number of bills are awaiting gubernatorial action which would make narrow, targeted refinements in the CCPA. Most notable is AB 25 (Chau), which clarifies that employees are not "consumers" for purposes of the law. This sensible clarification will prevent employees from demanding deletion of their personnel files!

This year there are at least two stop-the-press bills of interest to CMA. The first is AB 5 (Gonzalez), which both codifies the (in)famous *Dynamex* decision relating to independent contractor classification, and provides a number of exemptions for specific occupations. As many CMA members are aware, *Dynamex* replaced the long-standing *Borello* rule

for independent contractor classification (basically, a common law "control" rule), with an allegedly simple "ABC" test. Under *Dynamex* and now AB 5, a hiring entity must establish that it has met all three of the *Dynamex* tests in order to classify a worker as an independent contractor.

The big problem with the ABC test is the "B" prong, which requires that the worker be performing tasks outside of the usual course of business of the hiring entity. Simple cases illustrate the difficulty: is Uber in the business of providing rides, in which case drivers providing rides are likely employees, or is Uber a technology platform, in which case drivers are outside the usual course of business and therefore potentially independent contractors?

Most significant for CMA members, AB 5 contains an exemption in new Labor Code Section 2750.3 (d)(1) for licensees of the Department of Real Estate, for whom classification is determined pursuant to Section 10032 (b) of the Business and Professions Code. This section, in turn, permits real estate brokers and salespersons to establish by contract the independent contractor relationship. Note that the bill contains no exemptions for unlicensed workers, or for those working under a CFL license.

Because AB 5 contains no broad exemptions, instead relying on a large number of specific exemptions for specific groups, legislative attention to *Dynamex* could go on for a very long time. Legislators have acknowledged already that many more exemptions will be considered, as early as next year. Additionally, Uber and Lyft

have announced plans for an initiative on the November 2020 ballot. Now more states are considering moving towards the *Dynamex* model. The issue will certainly not go away anytime soon.

AB 5 was signed by the Governor on September 18, and goes into effect on January 1, 2020. Importantly, for purposes of employer liability for misclassification, the exemptions are retroactive.

The second bombshell bill relevant to CMA is AB 1482 (Chu). This is the "rent cap" bill which both imposes a cap on residential rent increases to an annual 5% plus changes in the consumer price index, and creates a statewide "just cause" eviction standard. There are various important permutations in the bill, beyond the scope of this column, including a 15-year exemption for new construction.

In theory, AB 1482 is intended to respond to the state's housing crisis, although opponents argue that the bill will stifle the production of new units. Another hope is that the bill will discourage others from pursuing a broader rent control initiative on the November 2020 ballot. Whether this will work or not is unclear: one prominent activist in Los Angeles has indicated that he intends to go forward with an initiative regardless.

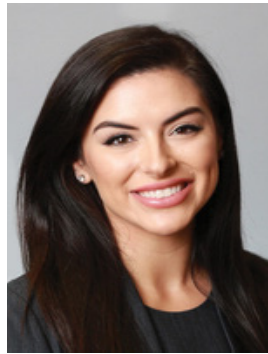
As of this writing, Governor Newsom has yet to act on AB 1482, but a signature is a virtual certainty.

Oh, and Governor Newsom has another 600-700 bills awaiting his signature or veto. More soon. 🌐



Consumer Laws that Apply to Business Purpose Loans

Terms and Conditions



by
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I. AN OVERVIEW OF BUSINESS PURPOSE LOANS

Business purpose loans are nontraditional mortgage loans where a borrower uses loan proceeds for a non-consumer purpose. A non-consumer purpose means any loan in which the proceeds are NOT primarily used for personal, family, or household use. There is a common misconception that the primary question in making these loans is whether the property used as collateral is “owner-occupied.” BUT, the more important question is whether the loan’s purpose is truly a “business purpose,” rather than “consumer” in nature. The purpose of the loan is the decisive factor in whether the loan is exempt from most federal consumer protection regulations. Simply put, if a loan is correctly classified as “business purpose,” it is subject to far less regulation at the federal level.

Notably, business purpose loans are exempt from requirements mandated in the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). However, many mortgage lenders and their counsel fail to understand that other federal consumer protection laws still apply. This article will provide the reader an opportunity to understand which regulations do and do not apply to business purpose loans.

II. TWO MAJOR EXEMPTIONS FOR BUSINESS PURPOSE LOANS: TILA AND RESPA

Most of the federal legislation governing mortgage lending is covered in the TILA¹ and RESPA.² These Acts set mandatory standards, procedures, and disclosures for lenders to follow. Specifically, TILA requires disclosure of certain credit terms, and RESPA requires standards for closings and fee/cost disclosures.³ Business purpose loans are exempt from the requirements imposed by both TILA and RESPA. This is because TILA covers “consumer credit transactions” which are defined as “credit offered or extended to a consumer primarily for personal, family, or household purposes.”⁴ Additionally, TILA and RESPA exempt “[a]n extension of credit primarily for a business, commercial or agricultural purpose.”⁵ Most of the operative provisions of the acts are further limited in their application to “dwellings” which is defined as “a residential structure that contains one to four units, whether or not that structure is attached to real property.”⁶

Practically, because business purpose loans are exempt from TILA and RESPA, when lenders make these loans they do not need to: (i) comply with federal requirements

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to verify the borrower's ability to repay the loan, (ii) issue TRID disclosures, or (iii) comply with RESPA's loan servicing requirements. However, various federal consumer laws still apply. It is important lenders are aware of and comply with the legislation discussed in the following section.

III. THE FEDERAL CONSUMER LAWS OFTEN IGNORED BY LENDERS, BUT APPLICABLE TO BUSINESS PURPOSE LOANS

A. The Equal Credit Opportunity Act (ECOA) (Regulation B)

ECOA prohibits discrimination and sets procedures for extending credit and communication with credit applicants.⁷ Regulation B implements ECOA and contains additional requirements.⁸ ECOA requirements are applicable to business

purpose loans because the statute explicitly states "all creditors"⁹ are within its scope, and the official interpretation notes its applicability to "commercial as well as personal" credit. The notable requirements set standards concerning (i) appraisals, (ii) discrimination, and (iii) adverse action letters.

1. appraisals

Generally, lenders must provide all written appraisals and valuation to a credit applicant, where the applicant is applying for a loan secured by a first lien on a dwelling.¹⁰ This is a requirement whether the lender does or does not approve the applicant's request for credit, or whether the application is incomplete or withdrawn. Lenders must provide applicants with a notice of their right to these copies within three business days of the application's submission. The actual copies must be provided promptly after the valuations are completed, or at least three days

before the loan closes¹¹, and be provided at no additional cost to the applicant.¹² However, applicants may waive the timing requirement, and agree to receive copies at or before account opening.¹³ As a general recommendation, lenders can include a notice of right to appraisal and waiver of the timing requirement in the loan application package, and then provide the borrower with their appraisal either at the closing table or when they are notified they will not be moving forward with the loan. The key takeaway here is that a lender is obligated to provide the appraisal or other valuation without the borrower requesting this information.

2. discrimination

ECOA prohibits discrimination with respect to any aspect of a credit transaction, based on race, color, religion, national origin, sex, marital status, age, and whether an

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applicant's income comes from a public assistance program.¹⁴ Again, because ECOA and Regulation B apply to "all creditors" and "commercial and personal" credit, business purpose loans are within the scope. That being said, the nature of most business purpose lending companies is to evaluate whether to extend credit based on factors like the type of collateral, the borrower's credit score, and the borrower's experience relevant to the use of the proceeds. Lenders should take care to ensure that their underwriting guidelines follow those and other similar non-discriminatory reasons for deciding to extend credit. In addition, lenders should look at the types of loans they have extended and denied in the past to ensure that due to evaluating the location of the collateral that they are not unintentionally redlining or otherwise avoiding lending in areas that could lead to a claim that the lender has discriminatory practices.

3. adverse action letters

An "adverse action" occurs when a lender denies or revokes credit, changes the term of credit, or refuses to grant credit.¹⁵ An "adverse action" does not include a lender's refusal to extend additional credit under a current arrangement where the applicant is delinquent, or when the requested credit is more than a previous credit limit.¹⁶ ECOA requires lenders to provide applicants/borrowers with a notice stating the reasons for an adverse action whenever an adverse action is taken.¹⁷ The notification must be in writing, and received by the borrower within thirty days.¹⁸ For borrowers with gross revenue over one million the prior year, lenders may notify of adverse actions verbally or in writing within a reasonable timeframe, rather than the thirty-day written notice requirement for consumer or small business applicants.¹⁹ The best way to easily implement this requirement is to provide the borrower with a notice upon receipt of an application that if their application is denied they have the right to request the statement of reasons for denial. This will place the onus on the borrower to ask for the reasons of denial, and lender will only need to provide adverse action

letters when requested. Alternatively, the lender can make it a policy to send a formal adverse action letter every time such action is taken in order to comply with the statute.

B. The Home Mortgage Disclosure Act (HMDA)

HMDA requires certain financial institutions to collect, report, and disclose aspects of their mortgage lending activity.²⁰ In 2018, HMDA was amended to modify the types of lenders, transactions, and data included, as well as the processes for reporting and disclosing. Notably, HMDA now applies to closed-end mortgage loans, which are defined as "an extension of credit that is secured by a lien on a dwelling." The definition of "dwelling" is now expanded beyond a 1-4 family residential structure under HMDA, and includes "a detached home, an individual condominium or cooperative unit, a manufactured home or other factory-built home, or a multifamily residential structure or community." Because HMDA's definitions focus on property type rather than loan purpose, HMDA now covers lenders making loans to developers of residential housing.

Specifically, HMDA applies to lenders who made at least twenty-five closed-end mortgage loans in each of the two the last two years, OR one hundred open-end credit lines in each of the two last years. HMDA requires lenders making the applicable loans to prepare a Loan Activity Register including certain data to the Consumer Financial Protection Bureau (CFPB). There are over one hundred fields that need to be completed and reported to the CFPB for each applicable transaction. The reporting is problematic for private lenders, because it requires data points with certain options that are not applicable to business purpose loans. For example, the ethnicity/race/sex/age of the applicant or borrower must be reported, which creates confusion when a borrower or applicant is an entity. Additional data points to report include the date of application, the type of loan, the property type, and many more.

In order to comply with these requirements, lenders will need to revise their loan applications to ensure they are capturing the relevant field data in the application process, including the ethnicity, gender, and age of the borrower (even when it seems inapplicable). A manual revise of the application to cover those fields is possible. In the alternative, many lenders use a modified 1003 as their base loan application, which is supplemented to better suit business purpose loans. After the revisions to HMDA, an addendum to the 1003 was issued which adds an extra page to the application and requests all relevant HMDA data from the applicant. At a minimum, lenders should include this page in their loan applications to collect the data they will need to comply with annual HMDA reporting. When completing the annual reporting, there are many software providers that can easily collate the data and complete the reports for lenders. An example is QuestSoft, which is software made specifically for HMDA reporting.

C. The Fair Housing Act

The Fair Housing Act prohibits discrimination based on sex, familial status, race, color, religion, national origin, or disability for transactions involving "dwellings."²¹ The Act defines "dwelling" as any building occupied or intending to be occupied as a residence by one or more families, or land sold for the construction of such a building.²² Family includes a single individual.²³ Because the transactions covered are based on property type rather than purpose, business purpose loans are within the scope of the Fair Housing Act. The discriminatory actions prohibited by the Fair Housing Act are also prohibited by the ECOA, with the former focused on housing transactions and the latter including all credit transactions. Therefore, a lender seeking compliance with ECOA requirements will likely comply with Fair Housing Act requirements.

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D. The Fair Credit Reporting Act (FCRA)

The FCRA regulates the preparation, distribution, and use of credit reports.²⁴ Generally, the FCRA applies to consumer credit transactions, but commercial credit transactions involving consumers are also within its scope.²⁵ Under the FCRA, lenders must have permissible purposes before obtaining credit reports, make certifications to credit organizations on their intended use of credit reports, notify consumers when adverse actions are taken, follow procedure pertaining to identity theft, and resolve discrepancies related to a consumer's address.²⁶

A notable point of confusion for lenders making business purpose loans is when and whose credit can be pulled. As mentioned above, a lender can pull an applicant's credit report under certain permissible purposes. This includes if an applicant is a natural person.²⁷ If the borrower or applicant is an entity, the lender has a permissible purpose to pull credit if the principal/officer signing is personally liable for the loan. When the principal is not personally liable, current law does not specify whether it is permissible to pull the principal's credit. For this reason, it is important a lender always has the proper authorization from the individual whose credit they are pulling. If there is ever any doubt, lenders should ensure to obtain authorization forms from all relevant parties to a loan.

E. The Servicemembers Civil Relief Act (SCRA)

The SCRA provides financial protections to servicemembers, and under certain circumstances, individuals related to servicemembers.²⁸ The Act was created to provide relief to servicemembers on active duty, and only applies when a servicemember borrower has a change in military status (i.e. "off-duty" or "reserve" to "active duty").²⁹ Because the SCRA does not distinguish between consumer or commercial credit, business purpose loans are within its scope.³⁰ However,

the servicemember borrower has an affirmative duty to inform a lender of a change in status, in order for the lender to be on the hook for SCRA compliance.³¹



The protections of the SCRA cover various aspects of financial transactions. The notable protections include a six percent cap on interest rates, credit rating protection, judicial relief that can postpone foreclosure, and protections against evictions. Additional protections include the ability to end property and car leases, relief from foreclosure and forced sales, and termination and reinstatement of insurance. Business purpose lenders will find the SCRA most relevant during enforcement proceedings such as modification or foreclosure. While there is an affirmative duty on the servicemember to advise the lender of the change of status, as a general practice it is recommended that prior to any enforcement proceeding a lender complete a search online to verify that their borrower is not an active servicemember.³² If they are, the lender can inquire whether that status is new (in which case SCRA protections apply), or if the status is the same from the time of loan origination (in which case SCRA protections do not apply).

IV. CALIFORNIA CONSUMER PROTECTION LAWS

In addition to the federal laws discussed above, each state has its own body of laws regulating the lending industry. Private lenders must comply with both federal law and the laws of the state in which they operate. In California, there are relevant lending laws that apply to all business purpose loans, and then a few specific laws relevant to the manner in which the loan is originated.

A. General California Consumer Protection Laws

In California, business purpose loans can be originated either by lenders holding a California Finance Lender ("CFL") license or by brokers that arrange the loan that hold a Department of Real Estate ("DRE") license. Many California laws will apply regardless of how the loan is originated. In particular, many of these California consumer protection laws only apply when the property securing the loan is a 1-4 family property. That being said, there are many other regulations which apply regardless of the type of collateral. This list is not exhaustive, but instead provides an overview of the regulations affecting private lenders making business purpose loans that are often times forgotten.

1. owner-occupied business purpose loans

The first of these regulations which applies to all business purpose loans in California is a limitation on the prepayment penalty that can be charged on owner occupied business purpose loans. California Civil Code provides, "a prepayment charge may be imposed on any amount prepaid in any 12-month period in excess of 20 percent of the original principal amount of the loan which charge shall not exceed an amount equal to the payment of six months' advance interest on the amount prepaid in excess of 20 percent of the original principal amount."³³ In other words, even though it is permissible to

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make business purpose loans secured by a borrower's residence, a lender may not enforce a prepayment penalty equal to greater than six months' advance interest. This is meant to protect homeowners from aggressive prepayment penalties and to allow the ability to easily refinance loans secured by a borrower's residence.

2. per diem interest restrictions

Another restriction which applies when the property securing a loan is a 1-4 family residence is a restriction on when per diem interest can start to accrue. Often times, lenders will send loan proceeds into an escrow a few days before the loan closes and funds to the borrower. For commercial and multifamily properties, the lender could start charging per diem interest as soon as they send proceeds to the escrow company. For loans secured by 1-4 family residences, the lender may not charge per diem interest until the day before the loan funds to the borrower.³⁴

The statute allows for additional per diem interest to be charged in very limited circumstances. In particular, the borrower must have requested the loan fund on a day following a weekend or a holiday, requiring the lender to have funded the escrow several days before. In this case, there is a mandatory document to provide to the borrower which demonstrates the borrower requesting funding on a date certain. Some loan document packages will include this form as a boilerplate document included on every loan transaction. This is NOT recommended practice, and instead should only be provided to the borrower for completion if it is actually relevant in the loan transaction at hand.

The DBO in particular has issued various guidance on this issue in the form of educational materials and advisory opinions. This is often times the subject of many audits and when an auditor has determined that a lender has overcharged per diem they must review all loan files and reimburse their borrowers accordingly. It is recommended that lenders do not make

a practice of overcharging per diem, or making sure they only do so when the property securing the loan is a commercial or multifamily property.

3. hazard insurance requirements

Most states include a restriction on hazard insurance and California is no exception. Per California Civil Code, "no lender shall require a borrower, as a condition of receiving or maintaining a loan secured by real property, to provide hazard insurance coverage against risks to the improvements on that real property in an amount exceeding the replacement value of the improvements on the property."³⁵ In other words, a lender can only require hazard insurance in an amount equal to the replacement costs of the improvements at the property. Sometimes lenders will push back on this, stating that the loan amount is greater than the hazard insurance coverage available. The purpose of this kind of insurance is to be able to replace any structures at the property in the event of a total or partial loss to the structure. The land and its value will remain, which is oftentimes why the amount of hazard insurance coverage may not fully align with your valuation of the property. A recommendation here would be to determine both the value of the property as a whole as well as the specific value of the structures to confirm you have hazard insurance in the proper amount.

4. fair lending

Similar to the federal Fair Housing Act and the anti-discrimination section of ECOA discussed above, California like many states also has anti-discriminatory legislation in place. Specifically, lenders may not discriminate based on geographic or neighborhood conditions or characteristics or based on an applicant's race, color, religion, sex, marital status, domestic partnership, national origin, or ancestry.³⁶ This applies particularly to loans secured by 1-4 family properties. That being said, if lenders are careful to make sure they comply with federal standards, they will be

covered on a state level as well. A similar analysis with regards to ensuring accidental discrimination would apply here as well, as post-audits of loan files and applications will be helpful to make sure a lender's practices are above board.

B. California Laws Applicable to Loans Arranged by DRE Licensed Brokers

In addition to the various CA regulations above that apply to all lenders in California, there are several regulations which apply specifically to loans that are brokered by a California DRE licensed broker. Of course, relevant loans disclosures like the MLDS, LPDS, and other investor disclosures will apply on all transactions. In addition to those, the following are several regulations which additionally apply to business purpose loans arranged by a licensed California broker.

1. late charges

A loan arranged by a licensed broker must include a minimum 10 day grace period for payment of monthly installment payments.³⁷ In addition, when assessing a late charge, the charge is capped at the greater of 10% of the installment owed, or \$5.00.³⁸ Often times lenders will ask whether they can charge a late charge on a late balloon payment. California prohibits a late charge from being charged on a balloon payment, so while a lender could charge a late charge on any additional installment payment that was due on the maturity date, the lender could not apply that late charge on to the remainder of the principal balance that is due. The reasoning behind this is that late charges must be "reasonably related" to the harm caused to the lender for having to manage the late charge. This would typically include mailing notices, preparing demand letters, and other means of contacting the borrower to remind them to make their payments, all of which are likely reimbursed by the 10% fee on the installment payment. When a maturity date payment comes due

continued on page 12

and is missed, the same procedures would apply to managing the late charge, and do not cost exponentially more. Therefore, the 10% charge is not applicable to the principal amount to be repaid at that time.

2. LTV limitations

California Business and Professions Code provides various loan-to-value (“LTV”) limitations for loans arranged by licensed brokers.³⁹ These regulations are in place to protect the lender’s interest, and when a broker decides to exceed such limitations they must thoroughly document the evidence for doing so. CFLs do not have the same restriction as they are the lender and therefore able to competently determine for themselves whether the increased risk is worth it on that particular file.

3. construction loans

Similar to the LTV limitations above, DRE arranged loans have additional regulations in place for construction loans when the LTV is based on the after-repaired-value of the property AND there is a holdback of loan proceeds.⁴⁰ If the holdback is less than \$100,000.00, the following restrictions apply: (i) the lender must fully fund the loan and may not net fund any part of the proceeds; (ii) there must be an actual appraisal done of the property completed by a licensed appraiser, not a BPO or other similar valuation; (iii) the loan documents must include specific instructions for what happens when there is a default under the loan; (iv) there must be a detailed draw schedule in place for administering the holdback; and (v) the loan amount may not exceed \$2,500,000.00, meaning loans for more than this amount should be split into a loan for the purchase price and another for the construction.⁴¹ In addition to the previous restrictions, if the holdback is greater than \$100,000.00 there are two additional restrictions: (i) a third party funds control must be used to administer the holdback, and (ii) licensed parties must inspect the various work completed at the property throughout the disbursement process.⁴² Often times the same

funds control party is able to manage the inspections at the property as well.

C. CFL licensed lenders: Borrower/Broker Statement

California Finance Lenders do not have nearly as many restrictions on their loans as DRE licensed brokers. That being said, CFLs are restricted on the number of brokers they may pay out on a particular transaction. A great way to ensure compliance with this section is to include a “Borrower/Broker Statement” in the loan document package which provides a summary of the loan terms and includes any fees paid to any non-CFL parties.

V. CONCLUSION

The legal framework governing business purpose loans is expansive and at times difficult to navigate. While business purpose loans are exempt from two major bodies of federal lending law, a multitude of federal consumer laws still apply. Accordingly, private lenders should adopt procedures that comply with both state and federal requirements. Private lenders with questions about compliance should consult with an attorney versed in federal and state lending laws, who can provide further expertise on these issues. 🌐

Geraci LLP is the nation’s largest law firm which focuses on the representation of non-conventional lenders. Victoria Wyatt is a graduate of the University of California, Irvine School of Law and will be joining the firm as a full-time associate in the fall of 2019. She can be reached at V.Wyatt@GeraciLLP.com. Melissa Martorella, Esq., is a senior Banking and Finance attorney with the firm and focuses on representing nationwide private lenders transact throughout the country. She can be reached at M.Martorella@GeraciLLP.com. Nema Daghandan, Esq., is a partner and the chair of the Banking and Finance practice group and advises nationwide mortgage lenders on compliance and transactional matters. He can be reached at Nema@GeraciLLP.com.

Endnotes

- 1 12 C.F.R. 1026 *et seq.*
- 2 12 C.F.R. 1024 *et seq.*
- 3 15 U.S.C.A. §§ 1601 *et seq.*, 12 U.S.C.A. §§ 2601 *et seq.*
- 4 12 C.F.R. 1026.2 (a)(12)
- 5 12 C.F.R. 1026.3(a)(1); 12 C.F.R. 1024.5(b)(2).
- 6 12 C.F.R. 1026.2 (a)(19)
- 7 15 U.S.C.A. § 1691
- 8 12 C.F.R. §§ 202.1 *et seq.*
- 9 *Id.*
- 10 15 U.S.C.A. § 1691(e)(1)
- 11 *Id.*
- 12 15 U.S.C.A. § 1691(e)(4)
- 13 15 U.S.C.A. § 1691(e)(2)
- 14 15 U.S.C.A. § 1691(a)(1)
- 15 15 U.S.C.A. § 1691(d)(6)
- 16 *Id.*
- 17 15 U.S.C.A. § 1691(d)
- 18 *Id.*
- 19 12 C.F.R. §1002.9(a)(3)(ii)(A).
- 20 12 U.S.C.A. § 2801
- 21 42 U.S.C.A. §§ 3603 to 3606, 3617.
- 22 42 U.S.C.A. § 3602(b)
- 23 42 U.S.C.A. § 3602(c)
- 24 15 U.S.C.A. § 1681
- 25 *Id.*
- 26 *Id.*
- 27 15 U.S.C.A. § 1681(b)
- 28 50 U.S.C.A. § 3901
- 29 50 U.S.C.A. § 3902
- 30 50 U.S.C.A. § 3953
- 31 50 U.S.C.A. § 3931
- 32 <https://scra-w.dmdc.osd.mil/scra/#/home>
- 33 Cal. Civ. Code § 2954.9(b)
- 34 Cal. Civ. Code § 2948.5
- 35 Cal. Civ. Code § 2955.5
- 36 Cal. Health & Saf. Code § 35800, *et. seq.*
- 37 Cal. Bus. and Prof. Code § 10242.5
- 38 *Id.*
- 39 Cal. Bus. & Prof. Code § 10232.3(a)
- 40 Cal. Bus. & Prof. Code § 10232.3(a)(4) & (5)
- 41 *Id.*
- 42 *Id.*





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Former Culture Evangelist for Zappos
"The Customer Experience"

Underwriting to a Shifting Market

Technology Corner: How 'E' Can You Be?

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2019 Legal and Regulatory Review

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FALL SEMINAR OCTOBER 23-25, 2019

LAS VEGAS



GENERAL INFORMATION

LOCATION:

The CMA Fall Seminar will be held October 24 and 25, 2019, with a pre-party Wednesday October 23, at the Aria Resort and Casino, located at 3730 Las Vegas Boulevard South, Las Vegas, NV 89158. For room reservations, call the hotel at (866) 359-7757 or (702) 590-7757. Use code "CMA Fall 2019." Room rate is \$209 (Wednesday/Thursday) and \$259 (Friday) per night Single/Double (plus a \$35 resort fee) through September 23, 2019 or until sold out.

SEMINAR FEES:

Full registration includes all seminar events, materials, cocktail/networking receptions and Friday lunch, but *does not include* Pool Manager's Focus Group and Luncheon, which require separate registration.

	Registration received on or before October 10, 2019	Registration received from October 11, 2019 to date of seminar
CMA Member	\$495	\$595
Additional Attendee Same Company	\$395	\$495
Non-Member	\$695	\$795
Pool Manager's Focus Group/Luncheon*	\$ 65	N/A
Registration Total	\$ _____	\$ _____
PAC Raffle Tickets (voluntary; \$20 or more)	\$ _____	\$ _____
TOTAL ENCLOSED	\$ _____	\$ _____

*Must register by 10/10/19. Limited to regular CMA members who pre-register and who are Pool Manager's Focus Group Members.

REFUND POLICY:

Cancellations received in writing on or before October 10, 2019 will receive a credit toward a future seminar. Cancellations not received in writing by October 10, 2019 will not receive any 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.

FALL SEMINAR OCTOBER 23-25, 2019





Wednesday, October 23, 2019

6:00 pm – 8:00 pm

Wednesday Night Mixer Separate RSVP Required

Get your Las Vegas groove on at CMA's now-classic Wednesday night get-together! Enjoy cocktails and appetizers in a luxury suite at the ARIA. Take in the view while catching up with your colleagues. This event is so much fun, you'll want to schedule your flight early so you make it! See you in Vegas, baby!



Thursday, October 24, 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

SPECIAL "MEMBERS ONLY" SESSIONS

8:30 am – 10:00 am

Construction Lending Focus Group

Dave Herzer, CMA President | K. Bradley Rogerson, Esq., Partner, Hanson Bridgett LLP

How do you compete in today's construction loan marketplace? If you're operating under a DRE license, you might want to consider shifting to a CFL. Dave Herzer and Brad Rogerson will cover how loans are structured, how to get a CFL license, the best operating structure and the costs involved. Brad will also discuss what you need to have in your PPM. Don't know what that is? Join us and find out! Lots of Q & A time also, so **bring your most difficult questions**. The answers you get here will help you Monday morning when you're back in the office! **Attendance limited to CMA members only.**

10:15 am – 11:45 am

Broker Knowledge Round Tables

Moderated by Sandy MacDougall, President, Mortgage Vintage

Back by popular demand is the informative and lively Broker Roundtable Session. Join fellow CMA non-fund operators in a moderated roundtable format to discuss relevant and meaningful topics that will help you improve your business and results. Topics will include: Coping with the new 4970 guidelines; How Do You Fund Your Loans? What Business Problems Keep You Up at Night? Do You Charge Default Interest? And more ... Each table will have an experienced practitioner and an attorney present to lend guidance. **Attendance limited to CMA members only.**

— or —

10:30 am – 12:30 pm

Pool Manager's Focus Group

Glenn Goldan, President, ReProp Financial | Stephen Pollack, CEO, Anchor Loans | K. Bradley Rogerson, Esq., CMA Securities Counsel
Doors lock at 10:45. Lunch is included. (Separate registration required.)

NOTE: Meeting only open to qualified Pool Manager's Focus Group members who pre-register by 10/10/19

Attention Pool Managers! Mark your calendars for the next meeting of the PMFG. To REIT or not to REIT? Many of you are grappling with this question. We'll feature one fund that opted to move forward. The fund manager and key business advisors will walk the group through their decision tree. Also covered will be selling loans from a fund – how to do it and what to watch out for. Finally, topics of interest to the group will be covered in a lively and informative exchange. **Attendance limited to Pool Manager's Focus Group members who pre-register.**



Thursday, October 24, 2019

11:45 am – 1:00 pm

Lunch, On Your Own

1:00 pm – 2:30 pm

**Keynote Speaker: JON WOLSKE, Former Culture Evangelist for Zappos
"The Customer Experience"**

Introduction by Stephen Pollack, CEO, Anchor Loans



Not your typical button-down business speaker, Jon Wolske is passionate about service ... and rock and roll! He uses his life experience, and nine years in the Zappos Family, to speak with a focus on culture, customer experiences, and branding, and their importance in business today. Jon worked in customer service, sales, training, manufacturing and show production before finding a home at Zappos. Now facilitating training events with executives, managers and team members from a wide range of industries and companies, Jon enjoys tailoring presentations to suit the needs of the group/industry he is addressing, making each talk insightful and inspiring. Zappos is world famous for its customer experience. Meet one of the key team members responsible for this.

2:30 pm – 3:00 pm

30 Minute Networking Break

3:00 pm – 4:30 pm

2019 Legal and Regulatory Review

T. Robert Finlay, Esq., Founding Partner, Wright, Finlay & Zak | Michelle R. Rodriguez, Esq., General Counsel, Woodland Hills Mortgage Corp. | Joffrey Long, President, Southwest Mortgage

Get the critical legal updates that impact your daily business – all in one fast-paced, comprehensive session. A blend of overviews, updates and explanations on case law and regulations affecting private lending and servicing, combined with useful examples and discussion on how they fit into your daily business. Of particular importance are practical tips on the Financial Code 4970 issue, and the ongoing debate over the independent contractor vs employee issue under the recent CA Supreme Court decision. A well-known and highly-attended part of CMA Educational Programs, the Legal and Regulatory Review is a must-attend.

4:30 pm – 6:00 pm

Extended Cocktail/Networking, sponsored by SBS Trust Deed Network





Friday, October 25, 2019

7:30 am – 8:30 am
7:30 am – 4:00 pm
7:30 am – 4:00 pm

Continental Breakfast in Exhibitor Area
Registration
Exhibitor Fair Open

8:30 am – 10:00 am

Underwriting to a Shifting Market

Glenn Goldan, President, ReProp Financial | **Shafiq Taymuree, Executive Vice President, Stonecrest**

Do you know which direction the real estate market is heading? The answer may depend on where you are lending, what you're lending on, and to whom. **Will the fundamentals of today's underwriting criteria hold up when the market shifts?** Which property types are the first to fall? What are the canaries in the coal mine that signal downturns? Glenn Goldan and Shafiq Taymuree will explore these questions and more, to help you prepare for any market, including the one you're worried about.

10:00 am – 10:30 am

30 Minute Networking Break

10:30 am – 11:45 am

California Legislative Report

Michael Arnold, CMA Legislative Advocate | **Noah Furie, CMA Legislative Chair** | **Michelle R. Rodriguez, Esq., General Counsel, Woodland Hills Mortgage Corp.**

2019-2020 are critical years for CA private lenders. CMA's semi-annual Legislative Report provides information on the key public policy issues affecting mortgage brokers and real estate in California. Addressing 2019 legislation, and looking forward to 2020 – including the 2020 elections and Propositions – our top Legislative Team will share the outcome of the debates over rent control, land use, accessory dwelling units, employee status (employee vs. independent contractor), online privacy, and the DRE's application of 4970 to business purpose loans. Stay informed on what's happening in your industry.

11:45 am – 1:15 pm

Luncheon and General Business Meeting

1:15 pm – 2:30 pm

Technology Corner – How 'E' Can You Be?

Brian Boike Vice President, Product Management, Simplifile | **Moderated by Sandy MacDougall, President, Mortgage Vintage**

In a time when full e-closings and e-signings are not yet possible, the question becomes, "How does a hard money lender get in the game?" Today, every loan can be executed digitally to a certain extent, and there are plenty of benefits in even a partially digital mortgage execution to make it worth the effort. Brian Boike is an expert in tackling this question. Find out the elements of a **Hard Money Digital Mortgage** and logical places to implement these cost-saving, volume-increasing and customer experience-enhancing techniques.

2:30 pm – 3:00 pm

30 Minute Networking Break

3:00 pm – 4:30 pm

Save the Loan | Protect the Investor! Loan Forbearance and Modification Agreements

Nema Daghbandan, Esq., Partner, Geraci LLP | **Stephen Rexrode, Principal, Cushman Rexrode Capital** | **Lori Randich, Executive Vice President, Redwood Mortgage Corp.**

You've had **borrower defaults** ... or are you one of the lucky ones who hasn't? Either way, you should attend this session. (Talk to the experienced ones – they'll tell you why.) Loan extension, modification and forbearance agreements, including important **key clauses**, are the tools you'll need to negotiate a path to a successful, performing loan. Let Nema, Stephen and Lori take you through what you need to know when dealing with borrower defaults, and the next loan that doesn't go as planned.

4:30 pm

Seminar Concludes

CMA LAS VEGAS 2019 REGISTRATION FORM

	Registration received on or before October 10, 2019	Registration received from October 11, 2019 to date of seminar
CMA Member	\$495	\$595
Additional Attendee Same Company	\$395	\$495
Non-Member	\$695	\$795
Pool Manager's Focus Group/Luncheon*	\$ 65	N/A
Registration Total	\$ _____	\$ _____
PAC Raffle Tickets (voluntary; \$20 or more)	\$ _____	\$ _____
TOTAL ENCLOSED	\$ _____	\$ _____

*Must register by 10/10/19. Limited to regular CMA members who pre-register and who are Pool Manager's Focus Group Members.

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

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

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

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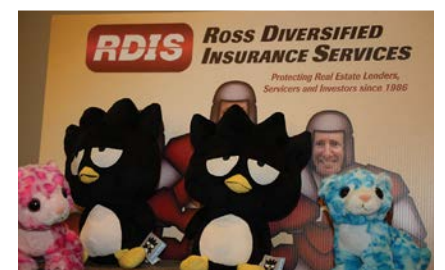
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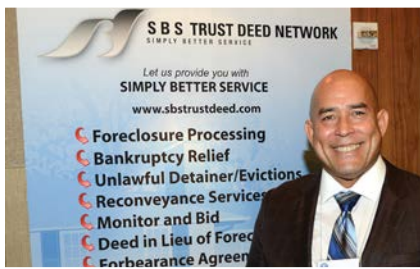
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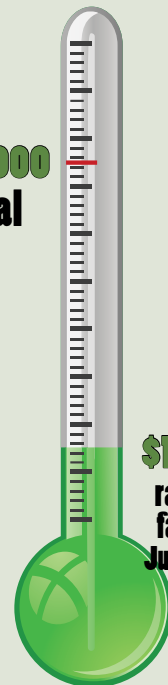
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Trust Deed v. Fund Investments

Securities Exemption in Private Lending



by
Tae Kim
Geraci LLP

In the private lending industry, there are two common categories of investments an investor can make: Direct Investments which are made by investing in a Trust Deed or Indirect Investments which are made by investing in a Fund. This article discusses the securities exemptions related to both types of investments, and potential trade-offs, limitations, and legal implications among the securities exemptions that managers and servicers should be aware of when facilitating these types of investments.

DIRECT INVESTMENTS:

Investors can make direct investments through what is sometimes called “trust deed” investments. It generally occurs in the form of investing in fractionalized interests of a loan (i.e., multi-beneficiary loans), or whole notes. The investor generally becomes the lender of record under the promissory note and related loan documents. As a lender of record, the investor has enforceable remedies and rights from the loan documents, including, among others, the right of payment of principal and interest and the right of foreclosure on the loan. The lender (i.e., investor) can control the outcome of the loan and has the ability to enforce the terms.

Are Direct Investments still securities?

Generally, yes, Direct Investments are securities. Under the Howey Test, a

transaction is considered a security if: (1) it is an investment of money; (2) with expectation of profits from that investment; (3) to a common enterprise; and (4) profits are derived from a promoter or a third party. The Howey test is reiterated in the multi-beneficiary loan settings in *People v. Schock*, which clearly indicates that fractional interest in a promissory note constitutes a security because the investor is “committing relatively modest sums” with the expectation of a profit based on the reliance of “skill, services, and solvency” of a promoter or a company. The promoter goes out to the market to seek investors to arrange the loans funded to borrowers. In these instances, Direct Investments are generally constituted as purchase of securities. On the other hand, if the lender also actively controls the Direct Investment, it is arguable whether the interests are considered securities. The key element of determining if an investment is a security is whether the investor controls such investment.

Are there any exemptions Direct Investments from the securities laws?

The first question is what are you seeking an exemption from? The securities laws generally require that an issuer of securities (the “Issuer”) register with the government body regulating the securities laws – either with the Securities and Exchange Commission (“SEC”) or a state counterpart, for example, in California, Department of Business Oversight (“DBO”). However,

the registration process is extremely burdensome and cost prohibitive. Think of the stock market – S&P 500 companies must register with the SEC before going to the public to raise money. In order to avoid this registration process, agencies have provided several exemptions from registration:

California Corporations Code Section 25102(f):

In California, a manager or a company may rely on a 25102(f) exemption. California Corporations Code section 25102(f) exempts an Issuer for up to 35 investors who have pre-existing or business relationship with the Issuer; provided, that, the investor is making an investment for its own account and that the Issuer has not made any advertisement to offer the security. California requires the Issuer to file a 25102(f) notice with the DBO and pay a filing fee.

Many other states provide similar exemptions. For example, in Delaware, the Issuer may be exempted from registration if the Issuer complies with, among other things, and ensures that the Issuer has sold its securities to no more than 25 persons in the state during any 12 consecutive month period. The Issuer must also reasonably believe all investors are purchasing for investment using its own account.

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California Business & Professions Code Section 10237 and California Corp Code Section 25102.5:

California has a unique real estate investment exemption for real estate brokers issuing securities – California Business & Professions (B&P) Code Section 10237. The broker-issuer must have a California real estate brokers license from the California Department of Real Estate, and must generally comply with the following:

- File a notice provided in Business & Professions Code Section 10238(a) within 30 days from the date of closing
- Ensure advertising complies with California law;
- Real property securing the interests is located in California;
- Notes or interests must be sold by or through a real estate broker;

- There are no more than 10 investors securing the fractionalized interests;
- The rights of these investors are identical in terms, including foreclosure rights, interest rate, etc.; and
- Loan-to-value ratios comply with Section 10238(h).

In addition, because California law governs this transaction, the real estate broker cannot rely on this exemption in the event an investor resides outside of California. All transactions – investment funding, loan closing, real property location – must be conducted in California.

Limitations on State Exemptions

As an Issuer gains additional experience and positive reputation among investors, word travels and the Issuer gains traction

and obtains more investor funds for fractionalized interests and whole note investments. This creates a new issue: how far can the Issuer rely on state exemptions?

One-off transactions (or limited transactions) appear to be the target of these limited state securities exemptions. However, when multiple deals with numerous investors across the United States come into play, there is a higher risk of violating state securities laws. The Issuer must conduct due diligence in any state an investor resides to determine whether the Issuer is in compliance with the securities laws that state. Along with the possible integration doctrine that may be applied, establishing a fund is likely the proper route to take.

INDIRECT INVESTMENTS – FUND INVESTMENTS:

On a long-term basis, investments by way of establishing a fund would be more

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feasible for both the Issuer and investors. The most popular and cost efficient rule that an Issuer generally relies on is Rule 506 of Regulation D. From securities laws perspective, the reason a fund should be created is two-fold – it creates an exemption from registration with the SEC, and it preempts state laws, in that the fund manager is not concerned about state regulations. In the event an investor resides in a different state than the Issuer, the manager need not be concerned about out-of-state securities laws compliance.

Fund investments also have practical implications. First, investor funds are more centralized. They are all in one account, and deployment of capital becomes much easier and more efficient to fund loans. The Fund becomes the lender of record, and the control of the loans and the underlying property is all within the control of the Fund and its manager. The investors become “passive” because of limited control on the governance of the Fund, as reflected in the governance documents. On the other hand, investors

have certain remedies under the securities laws, including, allegations of violation of Rule 10b-5. The SEC, as a matter of public policy, disallows Fund managers from circumventing Rule 10b-5 violations.

What Happens when the Issuer Violates Securities Laws?

Penalties for violation of securities laws are generally draconian. Penalties are harsh for the Issuers and managers. Fraud (whether intentional or negligent, or whether malicious or not) are at the crux of these penalties. As a historical context, the penalties, in one form or another, originated from the 1929 stock market crash, which led to severe economic consequences for the United States. During this time, fraudulent practices were rampant, and the SEC (and state regulators) took on the role of safeguarding investor money. An exemption rule violation may require the issuer to register with the SEC or a state government agency. Rescission of investor money and/or fines may also be required.

Conclusion:

As discussed above, there are various securities laws implications when making Direct and/or Indirect Investments, and securities laws pertaining to exemptions vary widely. In certain instances, securities laws may not apply, as “control” appears to one of the main aspects in determining whether an investment is a security. When making these types of investments, issuers and investors alike should be cognizant of the securities implications, and consult with securities counsel for assistance. 🌐

Tae Kim is a Corporate and Securities Attorney at Geraci LLP whose practice involves advising clients on securities compliance in private and public offerings, fund designing, and preparing offering documents. Tae and the Corporate and Securities team work closely with clients to establish mortgage funds, real estate acquisition funds, syndications, real estate investment trusts (REITs), and Qualified Opportunity Funds.

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Rental Income: Passive v. Non-Passive



by
Derrick Foote
Duner and Foote



Introduction

Investing in real estate rentals is a passive activity under Internal Revenue Code (IRC) § 469(c)(2). The general rule is passive income is currently taxable and passive losses (including suspended loss carryforwards) are deductible up to the amount of passive income recognized during the year. For purposes of deducting passive losses other income from interest, dividends, annuities or royalties not derived in the ordinary course of a trade or business¹ cannot be used to offset passive losses. Therefore, if passive losses are being generated and there is no corresponding passive income, the passive losses will become suspended. Unused passive losses are suspended until passive income is generated or the activity associated with the suspended loss is disposed of in a taxable transaction.² These suspended passive losses begin to accrue in the form of passive loss carryovers that carryover indefinitely until used. It's frustrating when losses are generated and go unutilized due to the passive loss rules.

There are certain criteria, if met, where a taxpayer can treat their rental activity as non-passive. By meeting the criteria, a taxpayer can treat their activity as non-passive and not be subject to the limitations under the passive rules. This

article is specifically focused on real estate investors receiving rental income and the steps needed along with the documentation to substantiate that the real estate activity is non-passive; thereby making losses deductible against ordinary income. This article is for individual taxpayers, but it should be noted these rules may also apply to a trust.

Real Estate Professional

The first key part is that an individual needs to qualify as a real estate professional which then allows the real estate activity to be treated as non-passive. The rules for treating rental real estate activities of real estate professionals as non-passive are complex and often misunderstood. The criteria needed to treat a real estate activity as non-passive³ is as follows:

1. More than 50% of the personal services performed by the taxpayer in all trade or businesses during the tax year are performed in real property trades or businesses in which the taxpayer materially participates, and
2. The taxpayer performs more than 750 hours of services during the tax year in real property trades or businesses in which the taxpayer materially participates.

The Internal Revenue Code requires both criteria to be met to qualify as a real estate professional. The first criteria attempts to make it difficult for full-time professionals in different businesses from qualifying. Pursuant to the first criteria, a full time professional would need greater than 1,000 hours of real estate services based on spending approximately 2,000 in an existing occupation. If the taxpayer's only profession is as a real estate investor/manager, then meeting the 750 hours requirement of the second criteria would satisfy the first criteria. If the taxpayer is engaged in other trades or businesses, the taxpayer will need to do the math to determine if they qualify under the first criteria. Most likely if a taxpayer is not involved in a different trade or business on a full-time basis and can meet the 750-hour rule then they should meet the 50% test under the first criteria.

Real property trade or business, under IRC Section 469(c)(7)(C), means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business. This definition is very important, as not all a taxpayer's activity in their real property trade or business can be used meeting the 750 hours or 50% requirement. What

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explicitly does not qualify as real property trade or business activity are those services performed by an individual in their capacity as an investor⁴. The Treasury Regulations under IRC § 469 specifically list work performed by an individual as an investor to include (1) studying and reviewing financial statements or reports on operations of the activity, (2) preparing or compiling summaries or analyses of the finances or operations of the activity for the individual's own use, and (3) monitoring the finances or operations of the activity in a non-managerial capacity⁵. Also, personal services performed as an employee in a real property trade or business will not qualify unless the taxpayer is a greater than 5% owner in the activity. It's important when quantifying the time spent in a real property trade or business that a taxpayer account for the time that meets the criteria. If time associated with being an investor is included in the taxpayer's analysis of meeting the criteria for non-passive treatment, there could be an adjustment under examination.

It's possible to have one spouse qualify as a real estate professional when the other spouse is a full-time professional in a different occupation. In the case of *Birdsong*⁶, the taxpayers were a married couple where one spouse was a full-time emergency room physician and the other spouse maintained the couples' rental properties. Mrs. Birdsong's duties included the day-to-day management of their rental properties. The court did not specifically address ownership issues in community property states compared to separate property states. In this case, the taxpayers were residents of California, a community property state. The significance of this case is only one spouse needs to meet the two criteria to treat a real estate trade or business as non-passive.

This article isn't drawing any conclusions on what activities or services the taxpayer must perform to qualify for the real estate professional status, however, it should be noted that each task should be analyzed to determine whether it meets the criteria detailed in the tax code and regulations. The point to be made is that contemporaneous logs and details need to be maintained by the taxpayer. These logs should note the date, time spent, and the tasks performed by the taxpayer to document the activity necessary to meet the criteria to qualify as a real estate professional.

Material Participation

Qualifying as a real estate professional doesn't mean that all losses from rental properties are automatically deductible against non-passive income. After the taxpayer qualifies as a real estate professional, the taxpayer must then meet the material participation tests for the rental properties to be able to deduct the losses against non-passive income.

The tax code section 469(c) is specific to real estate. The general purpose of the material participation rules is to limit losses of taxpayers who are merely investors. Specifically, for real estate

investors, proving material participation is an uphill battle when their real estate activities are located out of state or if they employ a management company to manage the day-to-day operations. In two Tax Court cases (*Madler & Keonig*⁷) the court held the taxpayers failed to show they and not the management company they hired materially participated.

To determine if there is material participation the Treas. Reg. 1.469-5T (a) has created seven tests. Fortunately, the taxpayer must only meet one of the tests. The first of these tests is if the individual participates in the activity for more than 500 hours during the year⁸. If you compare the hour's requirement of the material participation and the hour's requirement for real estate professional – the real estate professional requirement of 750 hours would, therefore, meet the criteria for material participation. The confusing part of these two subsections is, if a taxpayer meets the material participation test but does not meet the real estate professional test then the real estate activity is considered passive. This can happen if the taxpayer spends less than 50% of their time in a real property trade or business. Without getting too far off-topic this article does not touch on the \$25,000 special allowance for rental real estate with an Adjusted Gross Income limitation of \$150,000. This allowance has a standard of "active participation"⁹

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with different participation standards than both real estate professionals and material participation. The other differences between real estate professionals and material participation criteria that an individual can sum the hours spent by both spouses for material participation but not for real estate professionals. The regulations state work performed by the taxpayers' spouse in a trade or business is treated as work performed by the taxpayer under Treas. Reg. § 1.469-5T(f)(3) the material participation regulations.

Grouping Election

The material participation rules are applied on a property-by-property basis¹⁰. Therefore, if the taxpayer doesn't meet this standard for a particular property then that particular property remains a passive activity. The solution available is to group all the rental properties into one group and thereby eliminate the property-by-property standard of the material participation rules. The election to treat all interests in rental real estate as a single rental real estate activity is made by filing a statement with the taxpayer's original income tax return for the current tax year. The grouping election allows the taxpayer to combine their activity for all properties for purposes of measuring their hours spent in the activity. It should be noted that a taxpayer can only group rental activities for purposes of determining material participation, meaning, other non-rental trades or businesses cannot be grouped with rental activities. The statement must state the taxpayer is a qualifying taxpayer and is making the election under IRC § 469(c)(7) to treat all rental real estate activities as a single real estate activity. It should also be noted that there is late election relief to taxpayers without any user fees and the relief is automatic under Rev. Proc. 2011-34.

Once an election is made to group all real estate activities into one group the election is binding for the year the election is made and for all future years in which the taxpayer is a qualifying real estate professional, even if there are intervening

years in which the taxpayer is not a real estate professional. When the election is made any previously suspended losses in the taxpayer's rental real estate portfolio can be totaled into one single activity and can be used to offset future non-passive income from the activity. Once all of the taxpayer's real estate activities are grouped into a single activity and if the group is operating at an overall loss then the losses can be used to offset income from other non-passive trades or businesses, assuming that the investor meets the two criteria to treat the grouped activity as non-passive. Once an election is made, revoking the election can only be made when there is a material change in the taxpayer's facts and circumstances. While the regulations do not provide a definitive answer as to what is a material change; they state a material change does not occur if an election is less advantageous to the taxpayer in a particular year, or if there is a break in the taxpayer's status as a real estate professional.

Net Investment Income Tax

An additional tax benefit to be considered by taxpayers is if it is possible to convert passive income to non-passive income is the non-imposition of the net-investment tax. This tax is in addition to the income tax levied on passive income. The tax rate is 3.8% on incomes greater than \$250,000 for married filing jointly and \$200,000 for single filers. The deductions from the Net Investment Income Tax base are very limited and with the new state tax deduction, the taxpayer is limited to the \$10,000 limit for state and local income tax.

Summary and Practical Application

There are tax benefits to being treated as a non-passive investor in real estate. To treat your real estate activities as non-passive, a taxpayer needs to meet the two criteria mentioned above. An important component in demonstrating real estate activities are non-passive is documentation. Documentation is essential to demonstrate a taxpayer's real estate activities are non-

passive. The burden is on the taxpayer to substantiate their activity qualifies as non-passive. Also, grouping real estate activities can be advantageous for meeting the non-passive criteria. For taxpayers who have an extensive portfolio of rental properties, the elimination of Net Investment Income Tax would be a significant tax benefit. Since this article is limited in scope you should discuss your tax situation with your tax professionals to any potential tax opportunities.

Disclaimer:

The purpose of this article is to provide background information regarding passive activity rules under IRC §469 and should not be relied upon as written tax advice. The rules under this section are very complex and your tax situation should be discussed with your tax professionals on the application of these rules and how they apply to your tax situation. 🌐

Endnotes

- 1 IRC §469(e)(1)(A)(i)
- 2 IRC §469(g)(1)(A)
- 3 IRC 469(c)(7)
- 4 Treas. Reg. § 1.469-9(b)(4)
- 5 Treas. Reg. § 1.469-5T(f)(2)(ii)(B)
- 6 Roberta Birdsong, et ux. V. Commissioner, TC Memo 2018-148
- 7 James R. Madler, et ux v. Commissioner, TC Memo 1998-112 & Ronald I. Koenig, et ux v. Commissioner, TC Memo 1998-215
- 8 Treas. Reg. § 1.469-5T(a)(1)
- 9 IRC § 469(i)
- 10 Treas. Reg. § 1.469-9(e)(1)

Derrick Foote is the owner of Duner and Foote a full-service CPA firms that is located in Irvine, California. He has been in public accounting for almost 20 years and has spent most of his career with two National top ten firms; RSM US, LLP and CBIZ, Inc. Over the course of his career Derrick has assisted clients with tax, auditing and consulting services.



Social Media Posting Plan & Tips



by
Rocky Butani
Private Lender Link, Inc.

Many people in our industry know, or have been told, that using social media is an essential and vital marketing channel for business. Most private lenders have a social media profile, but it seems like less than half are actively using social media to promote their business. Having a profile and lots of connections is a good start, but there is much more you can do on social media to market yourself, grow your network, and ultimately generate new business opportunities. This includes posting, sharing, messaging and commenting on other people's posts.

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It's free advertising! While you can get a big boost by sponsoring/promoting your posts, you can grow your network and get lots of exposure organically without spending any money. You just have to participate and post content, which will take a little bit of your time every day. Even five minutes per day will contribute to the growth of your business. Just adding a comment to someone else's post will give you lots of additional exposure and new connections that may eventually convert to a deal or referral.

Social Posting Plan

While sharing or commenting on other people's posts will get you lots of exposure on social networks, creating your own posts is even more powerful. It's very easy to create a post, but the challenge is determining a strategy and plan. Your content should be varied; posting the same thing multiple times is not going to be effective and may cause people to unfollow you. There is no exact formula for how often to post or what time of day to publish your post. I recommend posting once a day to start.

Day 1 – What You Do

Post one short statement about the services or loans you offer. You can mention the types of private mortgage loans you offer – bridge, cash out, fix & flip, construction, long-term rental, etc. Specify your lending guidelines – property types, loan amounts, LTV, LTC, loan term, lien position. And don't forget about geography. If you do business throughout California clarify if that only includes coastal markets, or specific counties. Take one or a few of these items to create a post for one week, then use the rest in future posts so that you have a variety of content every week.

Day 2 - Photo

Take a few seconds to snap a photo with your smartphone, or use an old one. This should be work-related. Post a photo of yourself: sitting at your desk, shaking hands with a client or vendor, posing next to the company logo sign at your office, visiting a property that you are funding, attending an industry event. When posting for the company, there are lots of other options: group shot of people working together, company meeting, people having fun at the office, team-building activities, booth at an industry conference, photo of your company's advertisement in a publication. Don't forget to tag everyone in the photo.

Day 3 – Completed Transaction

Post a photo or aerial image of the subject property along with some basic details – city/state, loan amount, loan type, LTV, property type. If you can post more than just a tombstone, your post will be much more effective. Write a short paragraph to tell a story. Why did the borrower choose to do business with you? What problem did you solve? It doesn't have to be a recent transaction; a deal you funded a year ago

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is still relevant content. Tag people and companies that contributed to closing the transaction – loan officer, loan processor, broker, attorney, appraiser, title/escrow officer. Tagging is an easy way to get your post more exposure, especially if the person you tagged shares the post or adds a comment.

Day 4 – Article or Blog Post

Share the link to an article which is relevant to the private lending industry. If you have your own blog, share blog posts you’ve written in the past. If you don’t have any of your own articles, it’s very easy to find articles written by others. Some content sources only have articles in a printed magazine, but there is always an online version that can be shared. When sharing an article, it’s absolutely essential to add a comment or your thoughts about it, even if it’s one sentence. If you listen to podcasts, share a podcast episode that you liked. Below are some industry content sources.

- Private Mortgage: California Mortgage Association, Scotsman Guide, American Association of Private Lenders, Geraci Media
- Commercial Real Estate: Connect Media, Bisnow
- Residential Investment Real Estate: Think Realty, REI INK

Day 5 – Testimonial or Review

Post a full quote or snippet of praise you’re received from a client, vendor or peer. If posting for a company, copy a review from Google or Yelp. If you don’t have any online reviews, send some emails out to request testimonials from people you’ve worked with. Ask for permission to tag them in your posts. You may not want to tag or even publish the full name of a borrower or investor, but always tag people and companies when appropriate.

Day 6 – Recognition

Take a day to promote another person or company. Think of all the people that send you referrals, or vendors that contribute to closing your loan transactions – mortgage broker, attorney, appraiser, software provider, etc. Write something nice about that person or company, and tag them. If posting for your company, create a post to recognize a different employee every week.

Day 7 – Video

This does not have to be a video recording of yourself, but it should be work-related. Use your smartphone to record a short (10-60 seconds) video of some sort of activity at your office or a networking event you’ve attended. Tag anyone who appears in the video. If you’re comfortable being on camera, talk about the types of loans you fund. Tell a story about a recent transaction. Share something you’ve learned that may

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help others. If posting for a company, get some of your employees to introduce themselves. It's not necessary to add your company logo or name on top of the video. The additional branding is nice, but the extra time to edit the video may not be worth it.

Day 8 – Event

Tell everyone in your network that you'll be attending an industry conference or networking event. If it's an event you've attended in the past, mention what you like about it and why you continue to attend. If you have any photos of yourself at a past event, add that to your post. Don't forget to tag the event organizer.

Tips

- Schedule your posts in advance to auto-publish to all your social networks. There are several apps that can publish all of your posts to all of your social networks in advance – Zoho Social, Hootsuite, Sprout Social, Buffer.
- Create a graphic for some of your posts to include your branding. There are several free apps you can use to design your graphics – Canva, Adobe Spark, Pixlr, Pablo.
- Outsource your social media posting. We recently hired an agency to handle our posts. For a reasonable monthly fee, they design the graphics and schedule from our Zoho Social account. We just have to provide the content every month or week.
- Post business-related content on LinkedIn. Try to keep your personal and business content separate across your social networks. On LinkedIn, don't post family or vacation photos. And do not post anything related to your political or religious views on LinkedIn. Use Facebook and Instagram for your personal life.
- Use hashtags in some of your posts. These will vary depending on your post, but think of what other people

in the industry will use to view content they are interested in. Some examples for industry include #privatelender, #privatemoney, #hardmoney, #mortgagebrokers, #realestateinvesting, #commercialrealestate, #cre.

- Tag people and companies that are included in your posts. Just type the @ symbol along with the name, and the social platform will show matches. This is the easiest way to get more exposure for your post. The people you tag will hopefully like, share or comment on your post. This in turn shows your post to their entire network.
- Comment on other people's posts, frequently. Try doing this once a day, and you'll start seeing an increase in profile views as well as new connection requests. You don't always have to put a lot of thought into your comments. Even typing something like "Well done!" or "Nice!" will give you more exposure. Your comment should support the post and its author; don't use comments to promote yourself.

- Include a message along with a connection request on LinkedIn and Facebook. If the person does not know you, mention what you do and how you can help them. Or send a short message after someone accepts your connect request.
- Include your DRE or CFL license number in posts that promote your lending services. Regulators may consider some of your social posts as solicitations. Even if your licensing info is shown on your profile, and it's one click away, just add it to the bottom of your post description to be safe. If you post a video on YouTube, add your license number in the description field. 📍

Rocky Butani is the Founder and CEO of Private Lender Link, Inc., an online marketplace that promotes private mortgage lenders, capital providers and industry service providers. Rocky is a member of the CMA Marketing Committee and hosts the video booth at CMA Seminars. If you have any questions about marketing or technology, contact Rocky Butani at rbutani@privatelenderlink.com or call 650-226-4277 x102.



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STRICKTLY STRICKLAND



MORTGAGE INDUSTRY INFORMATION, OPINIONS & TIPS

DRE Special Investigations

If you read the Summer, 2019, Real Estate Bulletin (available online at www.dre.ca.gov under Publications) you are aware that the DRE has ramped up their office visits by Special Investigators. These 2-3 hour visits are used to determine if the Broker is supervising the activities of the company and the licensees working for the company.

There are some things that will trigger a visit and you should be aware that these practices could cause a call from a Special Investigator.

Restricted Broker-Associate or Salesperson:

If you employ an agent who has a restricted license, for whatever reason, expect to get a call from a Special Investigator asking to meet with both you (the broker) and the agent. The DRE will review the agent's transaction files for generally the last 24 months, ask to see the agent's broker/licensee agreement, and question the broker and the agent separately regarding supervision, fair housing and fair lending.

Advances on Private Money Loans:

The Mortgage Lending Activities section of the DRE is currently looking into annual reports (RE-881) that show advances being provided by the broker on payments, taxes, etc. They are trying to determine if this activity violates the prohibition toward guarantees. Specifically, they are

looking at BPC 10248 (k) 2 which states (in part): If the source for the payment is not the maker of the note, the agent shall inform the purchasers or lenders in writing of the source for payment. A broker or servicing agent who transmits to the purchaser or lenders the broker's or servicing agent's own funds to cover payments due from the borrower but unpaid as a result of a dishonored check may recover the amount of the advances from the trust fund when the past due payment is received. However, this article does not authorize the broker, servicing agent, or any other person to issue, or to engage in any practice constituting, any guarantee or to engage in the practice of advancing payments on behalf of the borrower.

For brokers who are advancing payments on behalf of the borrowers, the DRE is concerned that this not become a way of doing business (i.e. ongoing payments) and that when it does happen (on the rare occasion that it should), the investors are made aware, in writing, of the broker's payment and the reason for the payment.

At a minimum, all brokers should take a careful look at their Loan Servicing Agreement to make sure the topic of advances is covered, as in when and why they will be made and how they will be repaid.

Shortages or Questionable Charges In Quarterly/Annual Report:

The DRE will call for an office visit or an audit for even minimal shortages in the quarterly or annual reports. I have even seen an audit triggered by a \$9.00 bank fee that caused the trust account to be short by \$9.00 (I kid you not!). Questionable charges could be something as simple as a land-line phone to an alarm system on an REO (yep, seen that, too). Make sure that anything out of the ordinary is explained by either yourself or your CPA when the report is filed. And, for heaven's sake, keep \$200 of your own money in the trust account at all times to cover bank fees!

Note: Trust Account, is it or isn't it? I cannot tell you how many times I visit an office and find that what the broker thought was a trust account is NOT a trust account. Call your bank today and get a copy of the signature card for your trust account and make sure that the title of the account includes the words TRUST ACCOUNT and that the bank has coded the account as a TRUST ACCOUNT in their internal records. Make sure the bank statement shows TRUST ACCOUNT in the account title. Make sure your checks show the words TRUST ACCOUNT in the account name. 📍

Pam Strickland is a compliance consultant who helps you prepare for the calls from the DRE. You can reach her 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, ads for this publication may be **Black & White** ("Grayscale") or **Full Color**.

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 (i.e. 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.

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.)

_____ Winter '19 _____ Spring '20 _____ Summer '20 _____ Fall '20

Material Deadlines: 11/1/19 1/31/20 5/3/20 8/14/20

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.

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.

CONDITIONS

- 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.
- No advertiser is guaranteed placement, but every attempt will be made to provide the desired position.
- Publisher reserves the right to revise, reject or omit any advertisement at any time without notice.
- CMA accepts no liability for its failure, for any cause, to insert advertisement.
- Publisher reserves the right to publish materials from a previous advertisement if new materials are not received by material deadline.
- The word "advertisement" will appear on any ad that resembles editorial material.
- Drawings, artwork and articles for reproduction are accepted only at the advertiser's risk and should be clearly marked to facilitate return.
- No verbal agreement altering the rates and/or terms of this rate card shall be recognized.
- All advertisements, layout and designs produced for the advertiser by CMA's Graphic Staff will remain the property of CMA.
- All requests for advertising must be in writing, in the form of this signed contract, for the protection of both the advertiser and CMA.
- Once an order for advertising is placed, it cannot be withdrawn or cancelled in whole or in part.
- 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.

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



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.

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 _____	
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Phone _____	E-mail _____

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: _____

Cardholder'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:

Jeffrey Joseph

Coastline Lending Group

528 Palisades Drive, #150
Pacific Palisades, CA 90272
(310) 230-4111
jeff@CoastlineLG.com
Regular Member

Ted Spradlin

First Capital Trust Deeds

593 NW York Drive
Bend, OR 97703
(503) 891-4205
ted@fctd.com
Regular Member

Chris Smith

ProDeal

300 Park Avenue, 12th Floor
New York, NY 10022
(214) 380-9991
chris@prodeal360.com
Affiliate Member

Josh Youngblood

Alfred Technology

5627 Kanan Road, Suite 190
Agoura Hills, CA 91301
(424) 230-3081
josh@kumotechnology.com
Affiliate 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 Fall Educational Seminar in Las Vegas in October, 2019 is the next program being offered.

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

Duner and Foote

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