



Points of Interest

A Publication of the California Mortgage Association

Spring 2020



**Servicing Loans During the COVID-19 Outbreak:
What Private Lenders Can and Cannot Do! — page 7**

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From the President

By David Herzer • 2019-2020 CMA President

Get Ready for CMA Elections

I hope that you and your families are healthy and safe. It is a strange new world, and challenges abound. There are also opportunities; I have already received a loan application for a 25% LTV first loan! So, hang on tight, it's going to be a rough ride, but keep your eyes open for some silver lining.

CMA will work hard for the Membership. We have already had a conference call on the current state of affairs and we will follow up with several webinars on current topics. Please check the Members Only section of the website for current COVID-19 information relevant to our industry. Don't miss the information about recent title company exclusions to title policies, also on our website; it is very important!

I am telling my investors that we just don't know how long or deep this real estate downturn will be. We will learn a lot in the next 60 days. My company has already received several requests for loan modifications/payment relief, one of which was on a consumer loan. I think it is important to be as responsive as possible,

especially on consumer loans. Be sure to check with your attorney on those.

It was great to see all my CMA friends at the Winter Seminar in Newport Beach. And what a great seminar it was. We enjoyed an excellent presentation by Dr. Christopher Thornberg. We also had informative programs on consumer lending, ADU loans and an important presentation on the changing fire insurance market post-California wildfires, to name a few. I'm sure we all look forward to the time when we can meet again.

On a brighter note, we have a couple of fantastic new committee chairs. Rocky Butani will assume the chairmanship of the Marketing Committee and Angelica Gardner will be the new chair of the Membership Committee. Both replace Steve Belleville who has chaired these committees for the last several years. Many thanks to you Steve for all your hard work and accomplishments!

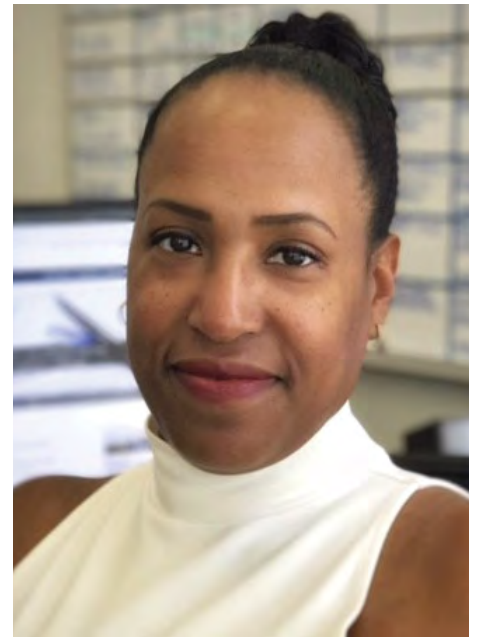
The coming election for the Board of Directors is the first since term limits have been implemented here at CMA. We have

an excellent slate of candidates this year; it is important for you to return your ballots when they are sent out in March. As there will not be an April seminar, we will likely hold our annual official meeting in an online format. Therefore, you will not be able to vote in person. So please return your ballots; Executive Director Teresa Excinia will be sending them electronically as most of us are working from home right now.

The Spring seminar in San Francisco has been canceled and the Board is considering whether we will have the July seminar. If the July seminar is canceled, we will be coming out with presentations in webinar format. Who knows, we may even have some networking opportunities via Zoom! Even as we struggle with our own business's CMA will do its best to continue our top-notch educational presentations.

I hope that you stay safe and find opportunities to further your business in this strange new world! 🌐





From the Editor

By Mayumi Bowers • Editor, *Points of Interest*

Despite these tumultuous times with every day being wildly different than the day before and many unknowns today and going forward, it is important that we stay focused on not only keeping ourselves healthy but keeping our businesses healthy as well. To do that, it is vital to remain focused on staying compliant, following best practices, and staying abreast of new changes. Many of the articles in this

edition cover standard subjects that we need to stay focused on even during these turbulent times. Staying the course with conservative business practices is the key to weather the storm. In addition, to add a ray of sunshine to the newsletter, we have re-introduced our member spotlight section that we will be including in each edition going forward.

Keep safe and stay healthy! 🌍



Save the Dates:

It is with deep regret that we must inform you that we have cancelled the CMA 2020 Spring Seminar at the Westin St. Francis in San Francisco. The coronavirus (COVID-19) outbreak is a public health concern and CMA's primary concern is the welfare and safety of our members.

▶ CMA Summer '20 Seminar ◀

July 15-17, 2020
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San Diego, CA

**This event may be subject to cancellation due to the Coronavirus Pandemic*

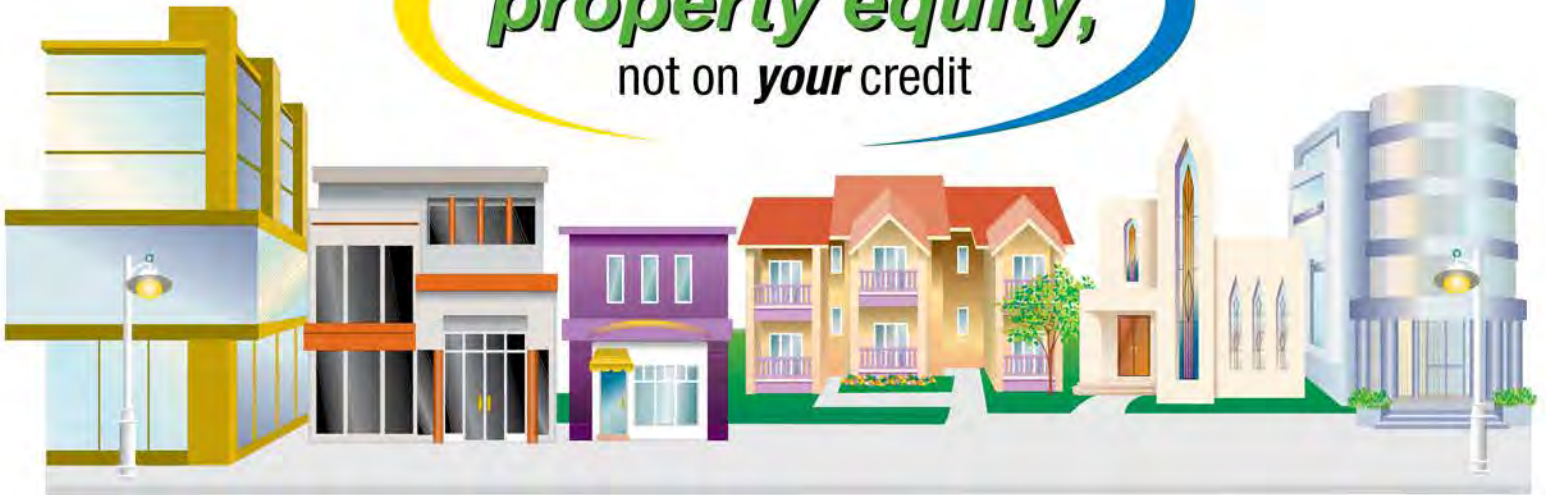
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SACRAMENTO SUMMARY

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



What a Difference a Month Makes

There is evidence that at the highest levels of government, some planning has occurred in the past for potential epidemics. At the same time, there is evidence that both the state and federal systems partially reduced funding for their preparedness units, at precisely the wrong time. There is no level of planning, however, for a true worldwide pandemic. California has fared better than much of the world, at least thus far, but we are working overtime to catch up on testing, hospital beds, and the like.

There also is no civics textbook on how to run governments in time of pandemic. Far from a student's understanding of our three-branch system of government, California is now running on about a branch and a half. The legislature has been on joint recess since March 19, and the state courts are mostly closed, so Governor Newsom is in charge. The Governor has been receiving quite positive reviews from members of both parties, but it will soon be necessary for the legislature to resume its oversight and budget roles. Here is a brief rundown of where things stand as of the writing of this column.

Legislature: By joint action, the California Assembly and Senate are in recess until Monday, May 4. Realistically, that date is probably about 50-50, since a return to Sacramento seems unlikely if the state remains under a stay at home order. Interestingly, the two houses in our bicameral legislature are taking slightly different approaches to the recess. The Senate is continuing to amend bills through the recess for example, while the Assembly

is not. Senate consultants are analyzing all bills as if they will be heard in the normal course upon a return to Sacramento, while the Assembly committees have been more open about jettisoning non-essential bills for the year. And the Senate seems more open to potentially pushing the envelope on remote hearings and voting, while the Assembly has pretty much concluded that such actions are not permitted under the state constitution.

At the end of the day, it seems quite clear that 2020 will not be "business as usual" in Sacramento, and the odds of a truncated session obviously increase the longer the session is in recess. Members are quietly being told to reduce their bill packages by perhaps 75-80%, taking the total from around 3000 bills to potentially 600-700. The best guess is that only bills dealing with COVID, other urgent matters, expiring sunset dates, and perhaps truly noncontroversial items will be considered, with everything else put off until next year. It will be interesting to see how if bills dealing with AB 5/*Dynamex* will be considered; these issues are very controversial and both sides of the independent contractor fights are arguing that COVID proves the validity of their positions.

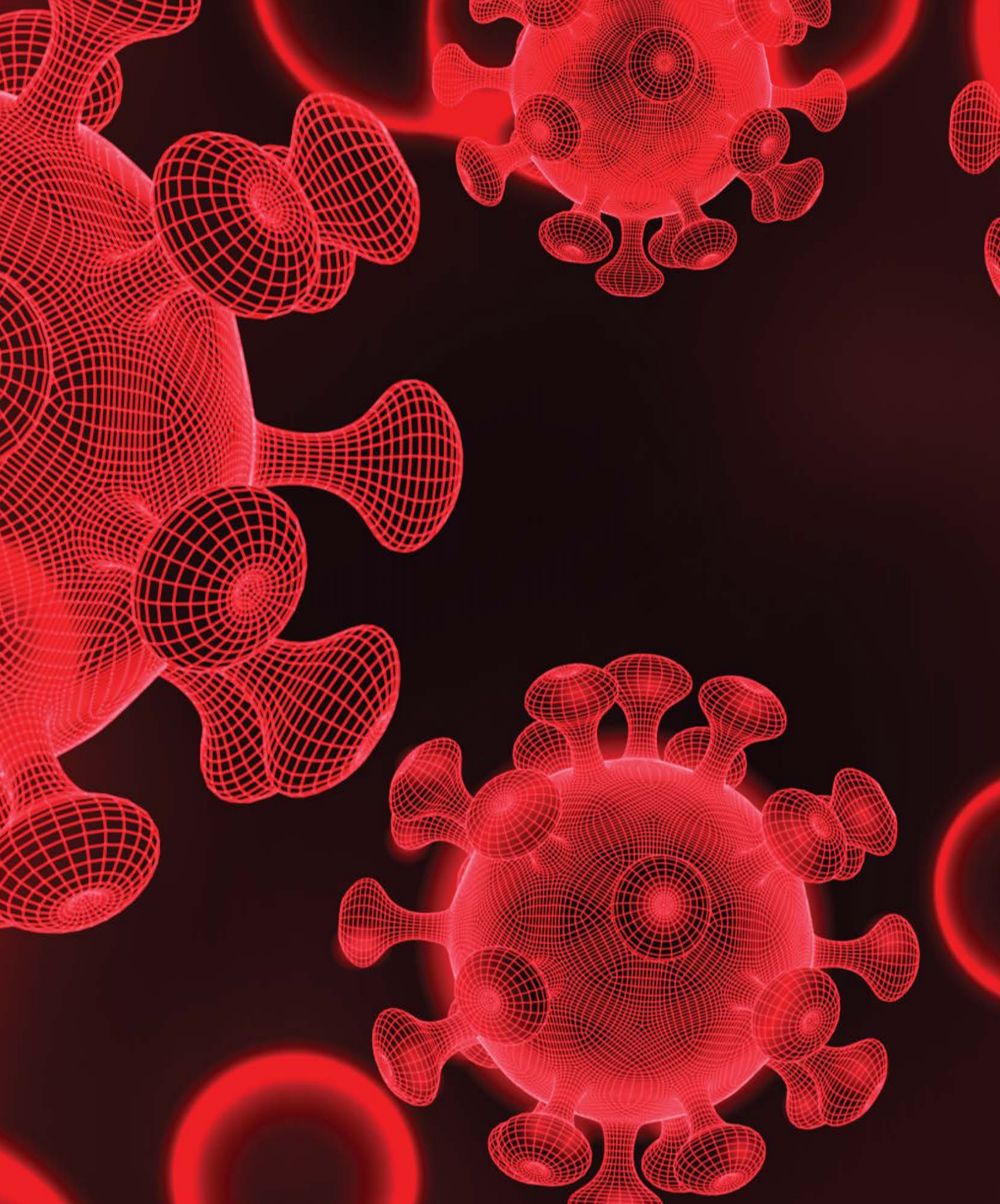
Budget: There really are only two deadlines on the legislature imposed by the state constitution: adopting a balanced budget by June 15, and adjourning the two-year session by midnight, August 31 of even-numbered years. Every other deadline on the legislature is self-imposed, and may be modified or waived by the Senate and Assembly. Adoption of a state budget

for fiscal year 2020-2021 is going to be particularly daunting this year. The Governor has indicated already that the proposed budget he released in January, which was very ambitious, is now "inoperable." Typically the Governor releases a "May Revise" to the January document to reflect tax receipts from April. With the tax filing deadline extended to July 15, however, the state will not have accurate revenue information until a month after the June 15 deadline. What has been clear in Sacramento was acknowledged recently by the Assembly Budget Committee: the legislature will have to adopt some form of pro-forma budget in June based upon this year's spending plan, and then adjust in August when revenue figures are in. And because state revenue tends to lag the economy, and because California is dangerously dependent upon capital gains taxes, it will put enormous pressure on not just the 2020-2021 budget, but at least the next one as well.

An issue of great significance to CMA is a proposed trailer bill creating a state level-CFPB in California, housed within the Department of Business Oversight, which would be renamed the Department of Financial Protection and Innovation. The 34-page draft of the proposed trailer bill makes clear that virtually all providers of financial products and services would be covered by the new program, *even if the person or entity already possesses a state license, such as a real estate broker*. CMA has been involved with a host of meetings in the Capitol on this proposal. It is unclear

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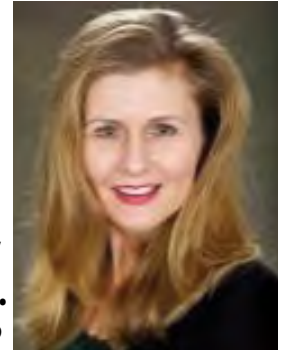




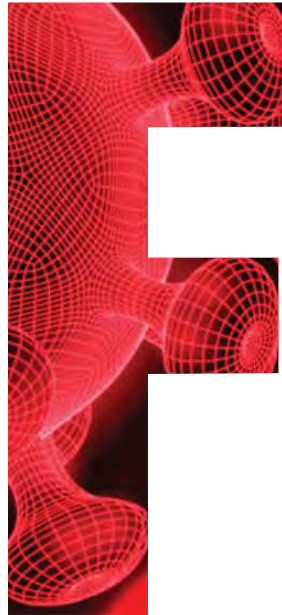
Servicing Loans During the COVID-19 Outbreak: What Private Lenders Can and Cannot Do!



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



by
Michelle A. Mierzwa, Esq.
Wright, Finlay & Zak, LLP



or those of you who have been receiving our firm's daily COVID-19 updates, you know that there are new orders, rules and regulations coming out seemingly by the hour! Keeping track of all the information can feel mind-numbing and, then putting it into practice, can almost seem impossible. The purpose of this article is to take much of the information floating around and answer some of a private loan servicer's core questions: ***Can we keep our doors open, charge late charges or default interest, initiate foreclosure, record a NOS, go to sale, evict the occupants post-foreclosure, etc.?***

A few important notes to keep in mind before proceeding:

1. Please keep in mind that new federal, state and local regulations are in the works. In fact, there is currently a bill pending with the California Legislature that would bar all foreclosures and evictions during the remaining period of any statewide or local state of emergency declaration. As a result,

the information provided below is ever-changing. Before taking any of the actions discussed below, please reach out directly to our office or discuss with your own counsel.

2. The below analysis is intended for private lenders. Different rules apply to loans owned or insured

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by Fannie Mae, Freddie Mac, the Department of Housing and Urban Development (“HUD/FHA”), the Veterans Administration and the U.S. Department of Agriculture.

3. The article does not analyze every local ordinance. As a result, additional restrictions could apply in a particular County or City. Please consult counsel before proceeding with any action discussed herein.
4. Regardless of specific regulations, we expect Courts to look unfavorably on foreclosure efforts against those whose income was negatively affected or medical expenses substantially increased by COVID-19.

Are private lenders exempt from California’s Stay at Home Order?

Likely. On March 19th, Governor Newsom issued a statewide Stay at Home Order. The Order requires “all individuals living in the State of California to stay home or at their place of residence **except as needed to maintain continuity of operations of the federal critical infrastructure sectors** as outlined at <https://www.cisa.gov/critical-infrastructure-sectors>. As of the date of the Order, federal critical infrastructure sectors included the Financial Services Sector, defined as “thousands of depository institutions, providers of investment products, insurance companies, **other credit and financing organizations and the providers of critical financial utilities and services that support these functions.**” [Emphasis added.] Moreover, on March 28, 2020, the CISA updated its guidance in the sector of “Financial Services” to include the following:

- “Workers who are needed to provide, process and maintain systems for processing, verification, and recording of financial transactions and services, including payment, clearing, and

settlement; wholesale funding; insurance services; **consumer and commercial lending**; and capital markets activities).”

- “Workers who are needed to provide business, commercial, and consumer access to bank and non-bank financial services and lending services, including ATMs, **lending and money transmission**, and to move currency, checks, securities, and payments (e.g., armored cash carriers).”

Amendments in “Other Community- or Government-Based Operations and Essential Functions” included the following:

- “Staff at government offices who perform title search, notary and recording services in support of mortgage and real estate services and transactions”
- “**Residential and commercial real estate services, including settlement services.**”

One could make a very good argument that private lenders and loan servicers, as well as the businesses that support them, fit under the above definitions included in the Financial Services Sector. **However, since the Governor’s order has not been tested, no one can be sure how a court would rule on the scope of the “financial services” exception.**

In addition, there are several county-specific Shelter in Place Orders that provide specific exemptions for operation of financial and legal services as essential businesses. But, again, the exceptions have not yet been tested or confirmed by a court.

Based on the above, it is our belief that companies like law firms, loan originators and servicers, foreclosure trustees, auction companies and auctioneers and the employees, contractors and vendors that carry out the statutory and necessary functions governing the creation, maintenance and enforcement of

financial products like real property loans are essential businesses in the Financial Services Sector because they are “other credit and financing organizations . . . and services that support these functions” as defined in the Financial Services Sector by the Cybersecurity & Infrastructure Security Agency. But, again, nothing has been tested at this point so there is always some risk that a court could find otherwise.

One practice point worth mentioning – if you decide to rely on the financial services exceptions to any state or local stay at home orders, you may want to consider providing any employees who are coming to work with a letter that they can use to articulate why they are going to work, should they get stopped for any reason. While the CMA was asked to prepare a general letter to that effect, it is not practical since the landscape is constantly changing. That said, most CMA members can read the order and draft their own letters or consult with counsel.

Can a private lender charge late charges or default interest right now?

Yes, but ... Currently, there is no prohibition on private lenders charging late fees or default interest. However, doing so in today’s climate may be viewed negatively by a court. The Governor’s Press release dated March 25, 2020 announced that certain “financial institutions will waive or refund at least the following for customers who have requested assistance: Mortgage-related late fees...” In addition, the Department of Business Oversight (“DBO”) provided similar guidance to its licensees in correspondence issued that same day. While these communications did not comprise mandatory or statutory bans, they indicate recommendations by the Governor and the DBO, and would likely be cited in court by borrowers seeking to challenge the fees. In particular, we would be concerned with charging default interest on a borrower whose default was “caused” by COVID-19.

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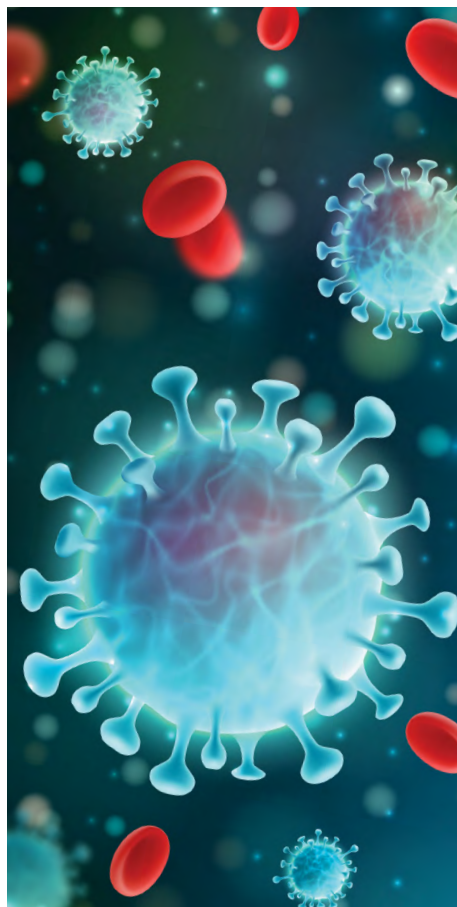


Can a private lender record a Notice of Default in California?

Yes. Loans owned by non-government and private investors are not subject to express governmental prohibitions regarding foreclosure at this time (the Governor's Order is only a "request" and the DBO Letter is "guidance") and can direct their own portfolios, even where the default was "caused" by COVID-19. However, consideration should be given to legitimate requests from borrowers for relief. That said, it may be difficult to determine the extent to which loan defaults and inability to pay or cure are "caused" by COVID-19, such that borrowers could challenge the validity of a Notice of Default and subsequent foreclosure on equitable grounds. Each loan should be evaluated on a case-by-case basis to determine whether it is prudent to proceed. In addition, there may be other practical considerations, such as whether the title company will issue a Trustee Sale Guaranty (we have been told that some title companies are hesitant to issue TSGs given the limitations on County Recorder services).

Can a private lender record a Notice of Sale on a pre-existing default?

Yes. Because loans owned by non-government and private investors are not currently subject to express governmental prohibitions regarding foreclosure, there is no direct prohibition on recording Notices of Sale. In addition, since the Governor's "request" and DBO's "guidance" only related to defaults "caused" by COVID-19, one could argue that recording a Notice of Sale on a pre-COVID-19 default does not fall within the purview of the government's recommendations. Nevertheless, there are several practical considerations. In light of the various Shelter in Place Orders in many local jurisdictions, it may be difficult for local vendors to complete the necessary posting of the Notice of Sale on the subject property in those areas. Our firm has received reports of local sheriffs prohibiting private process servers and posting agents from completing service or postings in some areas. Moreover,



based on media coverage of "moratoria," borrowers may be under the mistaken impression that all foreclosure activity is banned, and it may be difficult to determine the extent to which loan defaults and inability to pay or cure the default is "caused" by COVID-19 impacts, such that borrowers could challenge the validity of a Notice of Sale and subsequent foreclosure on equitable grounds. Lastly, as explained below, a lender may be unable to complete the actual foreclosure sale. If one cannot complete the sale, then recording the Notice of Sale may be pointless.

For defaults arguably "caused" by COVID-19, there are no specific restrictions on recording notices of sale. As a result, the same analysis provided above applies (both as to the NOD and NOS). However, please keep in mind that recording the Notice of Sale on a virus-related default would be subject to even more scrutiny than proceeding on a non-COVID-related default.

Can a private lender proceed with the foreclosure sale?

Completion of a foreclosure sale with respect to private lenders (if the default was caused, or the cure of the default was prevented, by COVID-19-related issues) controverts the **intention** of the Governor's Orders issued March 16 and 19, his March 25 Press Release and any local Shelter in Place Orders, even if the Orders are arguably not binding on the essential business operation of a private lender. In the current environment, a private lender should appreciate and evaluate the risk that a borrower may file litigation challenging the validity of a foreclosure sale conducted during the pendency of such orders. Theories could include, among others: (1) the sale was conducted in violation of the Governor's Executive Order requesting foreclosure and eviction moratoria or the Governor's Stay at Home Order; (2) COVID-19 caused or contributed to the Borrower's inability to cure the default or payoff the loan; (3) the sale was conducted in violation of a local Shelter in Place Order prohibiting public gatherings in excess of the specified number of people; (4) the sale was invalid due to the restraint or lack of robust competitive bidding due to the foregoing Orders in violation of Civil Code section 2924h(g); (5) equitable arguments involving the borrower's "reasonable" belief due to media coverage that no sale would occur under the circumstances. Even if the private lender ultimately prevails in the litigation, the delay and cost may not be worth the upside with going to sale.

Moreover, lenders may be unwillingly forced into the role of landlord if the eviction process cannot promptly be completed, as discussed in further detail below. Being unable to evict the occupants and sell the property could cause added financial concerns if the property is subject to a 1st lien! Thus, care should be taken in evaluating whether proceeding with a foreclosure sale in a particular jurisdiction is warranted in light of these risks. **In addition, even if a lender opts to proceed with the foreclosures sale,**

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some foreclosure auctions are being prohibited by local law enforcement for violating maximum public meeting restrictions.

Can a private lender proceed with a post-foreclosure eviction?

The post-foreclosure eviction process is likely the most impacted by the recent Stay at Home Order, Shelter in Place Orders, government moratoria and court closures.

The Governor’s March 16th Order requested a moratorium on foreclosures and related evictions where caused by COVID-related loss of income or increase in expenses. The Order also authorized local jurisdictions to take action to limit foreclosure and eviction activity as needed to address local COVID-19 impacts. At least 50 local jurisdictions have taken action to delay or prohibit evictions in some way, while few have expressly prohibited completion of foreclosures. Since the eviction process results in the displacement of persons from

their homes, these jurisdictions have limited the availability of eviction judgments and the enforcement of writs of possession by sheriffs in light of the risk of exposing evicted tenants to COVID-19, which the Stay at Home Order and Shelter in Place Orders were principally designed to prevent. **Moreover, on March 27, 2020, the Governor subsequently issued an Executive Order banning the enforcement of eviction orders for renters affected by COVID-19 through May 31, 2020. The order prohibits landlords from evicting tenants for nonpayment of rent and prohibits enforcement of evictions by law enforcement or courts. It also requires tenants to declare in writing, no more than seven days after the rent comes due, that the tenant cannot pay all or part of their rent due to COVID-19. Even following the termination of this Order, process servers may face challenges serving the eviction complaint; courts may not be available for hearings; judges will be predisposed to ruling against evicting lenders; and some Sheriff offices are refusing to serve lockout notices or**

conduct lockouts based on remaining local orders.

In sum, while there is not currently a blanket prohibition on foreclosures in California, we strongly recommend consulting with counsel before recording a NOD, NOS, going to sale or considering an eviction.

As mentioned at the outset of this article, new regulations are coming out almost daily. Before taking any of the actions discussed above, please check all federal, state and local regulations or consult with counsel.

Thank you and if you have any questions regarding a particular loan, your servicing policies during these challenging times or would like to be added to our COVID-19 updates, please feel free to contact Robert Finlay at rfinlay@wrightlegal.net or Michelle Mierzwa at mmierzwa@wrightlegal.net.

Robert Finlay is a founding Partner of WFZ. Michelle Mierzwa is a Partner at WFZ.

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CANDIDATE CLOSE-UP

CMA Board of Directors elections are under way. Ballots have been e-mailed to Regular (voting) Members, and are due back to CMA Headquarters no later than April 20, 2020.



Name: Huy Do

Company: PrideCo Capital

Company Location: Newport Beach, CA; Oakland, CA; Minnesota, MN

Years in the Industry: 15

Years CMA Member (Including CTDBA, MAC, CIMBA, or MI memberships): 9

Describe Your Business: We started as a family office; managing the wealth (core and non-core) and estate for a single family. In 2010, we started a family fund to buy/fund 1st trust deeds. We originate 1st TD's, business purpose, residential and commercial loans.



Name: Angelica Gardner

Company: Asher Evan Investments

Company Location: Carmichael, CA

Years in the Industry: 15

Years CMA Member (Including CTDBA, MAC, CIMBA, or MI memberships): 6

Describe Your Business: Asher Evan Investments is a California Private Money Lender providing high quality loan products for investors, while simultaneously working with borrowers during the life of their loan to improve their business financials.



Name: Don Herbert

Company: Private Funding Solutions, Inc.

Company Location: Pleasanton, CA (Alameda County in SF Bay Area)

Years in the Industry: 33

Years CMA Member (Including CTDBA, MAC, CIMBA, or MI memberships): 13

Describe Your Business: Originate and broker privately funded business purpose and entity loans using the 10 or less beneficiaries exemption.



Name: Elizabeth Knight

Company: PLM Family of Companies

Company Location: Campbell, CA

Years in the Industry: 43

Years CMA Member (Including CTDBA, MAC, CIMBA, or MI memberships): 30+

Describe Your Business: Document Drawing Services, Loan Servicing, Foreclosure Services.



Name: Bradley Laddusaw
Company: S&L Capital Group
Company Location: Brea, CA
Years in the Industry: 7
Years CMA Member (Including CTDBA, MAC, CIMBA, or MI memberships): 6
Describe Your Business: Hard Money Lending.



Name: James Perry
Company: Alliance Portfolio
Company Location: Aliso Viejo, California
Years in the Industry: 30
Years CMA Member (Including CTDBA, MAC, CIMBA, or MI memberships): 25
Describe Your Business: Full service private money lending company.



Name: Michelle Rodriguez
Company: Woodland Hills Mortgage Corp
Company Location: Woodland Hills, CA
Years in the Industry: 16
Years CMA Member (Including CTDBA, MAC, CIMBA, or MI memberships): 16
Describe Your Business: Private Mortgage Lending.



Name: Richard Selzer
Company: Selzer Home Loans
Company Location: Ukiah CA
Years in the Industry: 44
Years CMA Member (Including CTDBA, MAC, CIMBA, or MI memberships): 30+
Describe Your Business: A small loan office doing \$5 to \$8 million origination per year with about \$40 million servicing. A full service real estate office with 38 salespeople.



Name: Richard Wachter
Company: Wachter Investments, Inc.
Company Location: Burlingame, California
Years in the Industry: 41
Years CMA Member (Including CTDBA, MAC, CIMBA, or MI memberships): 36
Describe Your Business: We originate, sell, and service private money loans in California.



Joffrey Long

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The Phillip M. Adleson Education Award

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

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

CMA congratulates the 2019 recipient of the award,

Dennis Doss

The Current State of Data Privacy in the United States and Your Data Privacy Program



by
Leslie G. Baird, Esq.
Wright, Finlay & Zak, LLP



[T]he volume of privacy and data security laws is so extensive – and the reach so pervasive – that virtually every company in this country has material obligations related to privacy and data security.

— Privacy and Data Security is for Everyone,
Kirk J. Nahra, IAPP Whitepaper.

The United States does not have a central privacy law. Rather, there are a number of federal laws that either directly or tangentially address privacy. While not a comprehensive list of all federal legislation, the following are existing federal privacy laws:

- a. US Privacy Act of 1974
- b. Gramm-Leach-Bliley Act
- c. Health Insurance Portability and Accountability Act
- d. Children’s Online Privacy Protection Act
- e. Fair Credit Reporting Act
- f. Electronic Communications Privacy Act
- g. Computer Fraud and Abuse Act
- h. Telephone Consumer Protection Act

The Federal Trade Commission (“FTC”) is the primary federal agency that regulates privacy in the United States. When acting as an enforcement agency in cases that allege *violations of consumers’ privacy rights, of significant consumer injury, or of misleading consumers by failing to maintain security for sensitive consumer information*, the FTC has often charged the defendants with violating Section 5 of the FTC Act. Section 5 of the FTC Act bars unfair and deceptive acts and practices in or affecting commerce. The FTC also enforces other federal laws relating to consumers’ privacy and security.

In addition to patchwork of federal laws, all 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands each have at least one privacy-related law. Those laws cover a variety of areas which include but are not limited to website privacy

policies, consumer data privacy, minors, and data breach notifications.

In California, the California Consumer Privacy Act, the first state-level legislation of its kind, brought landmark and sweeping changes to consumer data privacy. Looking forward, many other states are taking a cue from California and are also exploring the implementation of consumer data privacy legislation. As of late February 2020, Maine and Nevada have enacted comprehensive privacy laws. Additionally, the following states have bills in various stages of the legislative process: Florida, Hawaii, Illinois, Maryland, Minnesota, Nebraska, New Hampshire, New York, South Carolina, and Washington. There are also a number of states that have created privacy task forces as a substitute for a comprehensive bill

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including Connecticut, Hawaii, Louisiana, North Dakota, and Texas.

Given the current privacy law environment, businesses must take appropriate steps to protect data. To be effective, businesses should understand that data protection must permeate all aspects of the business and each business, no matter what size, should have an effective privacy program. The following, although not an exhaustive list, discuss how to develop and access your data privacy program.

1. Leadership Buy-In

The place to start developing an effective privacy program is at the top – executive leadership must make data security a priority. Furthermore, leadership must be prepared to dedicate the resources necessary to develop a strong data security program. Leadership buy-in is also necessary to cultivate a culture of data security.

2. Where is Your Data?

As you develop or assess your data security program, you should understand where your data is stored and what types of data you store. You should also consider how accessible and sensitive your data is.

3. Monitor Your Data

You must understand where your data is going, who has access to your data, and how that data is being used. You should also consider the sensitivity of your data and evaluate how the varying levels of sensitive data is being used and/or communicated.

4. Develop and Assess Your Program

Your data privacy program should be constantly evolving as you continually develop and assess your data security needs. It is important to develop policies and procedures to address data security, regulatory compliance, and intellectual property issues. These policies should be

flexible, match your business model, and address any risky behavior on the behalf of employees. If you are doing business in California, be sure that your program addresses each of the recommendations from California Attorney General's 2016 Data Breach Report.

5. Employee Training

Once you've developed your program, you need to train your people, train your people, and then train your people some more. Your employees must know what behaviors they should avoid every day whether they are sending emails, printing, uploading documents to the cloud, using other portable devices, etc., and they must be reminded often.

6. Address Loss Prevention

In 2019, the Verizon Data Breach Investigation Report showed that 43% of data breaches involved small business victims with 10% of data breaches in the financial industry. The Report also showed the 34% of data breaches involved internal actors.

Your privacy program must include some kind of data loss prevention that will enable you to monitor and control the transfer of your data from desktops and

laptops, even when not connected to the corporate network.

7. Consider Cybersecurity Insurance

Depending on the needs of your business, size, and risk associated with your business, consider obtaining a cybersecurity insurance policy to round out your data privacy program. If you do purchase a policy, be sure that you understand the coverage and reporting requirements.

Data privacy legislation in the United States will continue to evolve in the coming years. As we see more state legislation and potentially legislation at the federal-level, businesses of all sizes must make compliance with privacy laws a top priority. The worst thing a small business can do is to ignore the various privacy laws, assuming it does not apply to them.

If you have any questions about data privacy issues, please do not hesitate to contact Leslie Baird at lbaird@wrightlegal.net.

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

Leslie Baird is an Associate Attorney at WFZ's Utah office.



Will Proposed Federal Laws Take Cannabis Lending to New “Highs”?



by
Leslie G. Baird, Esq.
Wright, Finlay & Zak, LLP



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

Cannabis businesses are just like most businesses out there – they need financing to facilitate growth. However, the cannabis industry has historically faced challenges associated with obtaining financial services, challenges that other industries do not face. Notwithstanding these challenges, and given the current environment, the cannabis industry is hungry for financial services and making loans to businesses in the industry could prove beneficial to both the cannabis industry and lenders who choose to venture into the cannabis lending space.

While the availability of financial services for cannabis businesses was limited earlier in the decade, there has been a significant uptick in the number of financial institutions that are engaging with cannabis business. For example, by the end of June 2019, the Financial Crimes Enforcement Network (“FinCEN”), in a Marijuana Banking Update, reported that 553 banks and 162 credit unions were providing banking services to businesses related to marijuana. Compare those figures with the 438 banks and 113

credit unions providing banking services to such businesses as of December 2018.

As it currently stands, a majority of states have legalized the use of marijuana in some form. However, when considering whether to lend to the cannabis industry, it is important to remember that cannabis remains illegal at the federal level and is classified as a Schedule I drug. Given the conflict between state and federal law, and despite the increase in the number of financial institutions providing financial services to cannabis business, most lenders are understandably hesitant to pursue lending activities in the space.

Filling this vacuum, many private lenders have stepped into the cannabis space, lending these businesses the necessary capital to grow their businesses. If a lender can stomach the risks, lending to the cannabis industry can be very lucrative.

Looking forward, competition for lending in the cannabis industry may significantly increase if the Secure and Fair Enforcement (SAFE) Banking Act passes. The SAFE

Banking Act is pending federal legislation which would provide financial institutions with certain safe harbors and protections if they choose to lend to cannabis companies. The stated purpose of the Act is “to increase public safety by ensuring access to financial services to cannabis-related legitimate businesses and service providers and reducing the amount of cash at such businesses.” The Act would protect depository institutions by prohibiting federal banking regulators from penalizing those institutions for providing financial services to legitimate cannabis-related businesses.

If the Act passes and if traditional financial institutions opt to enter the cannabis space, cannabis businesses could suddenly have access to a wide array of financial services that were previously unavailable. Increased competition from the financial institutions could also significantly reduce private money’s role in the cannabis lending market or, at a minimum, reduce the available return on investment. Only time will tell!

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Financial institution or not, all lenders should take certain precautions when lending to a cannabis business. Many of these precautions are exactly the precautions that lenders already take when making any business loan. Lenders should consider the following, which should not be considered an exhaustive list, when considering whether to make a cannabis business loan:

- Thoroughly evaluate operational history;
- Thoroughly vet the owners of the cannabis business;
- Request financial projections and review the basis for those financial projections;
- Review licensees;
- Request operating agreements;
- Understand the business' outstanding financial obligations;
- Review lease(s);

- Insist on collateral, whether it be real property or personal property; and
- Consider requiring a personal guaranty.

Additionally, before making a cannabis loan, lenders should have policies and procedures in place designed to protect the institution. The lender should also be sophisticated enough to understand the legal obligations related to cannabis lending and to meet those requirements.

Lenders should also remember that, because cannabis is illegal at the federal level, there is the risk that the federal government may seize the product, shut the business down, put the owner/operator/borrower in jail, and/or seize the property. Additionally, and although it seems unlikely at this point in time, the federal government may also pursue lenders making loans to the cannabis industry. These risks increase the chance of default and, in the event of seizure of the property, tie it up thereby

preventing foreclosure. These risks do not make lending to the cannabis industry impossible, but they must be considered and adequately addressed before making a lending decision.

Ultimately, until cannabis is legal in all 50 states and at the federal level, lenders lending to the cannabis industry are going to face certain uncertainties and potential risks. 🌿

If you have any questions about cannabis lending and the SAFE Banking Act, please do not hesitate to contact Leslie Baird at lbaird@wrightlegal.net or Robert Finlay at rfinlay@wrightlegal.net.

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Leslie Baird is an Associate Attorney at WFZ. Robert Finlay is a founding Partner of WFZ.

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The Hazards of Hazard Insurance



by
Ed Babtkis
Ross Diversified Insurance Services

Hazard insurance, or fire insurance, is one of the most rudimentary loss-mitigators for lenders and borrowers to protect their investment in real property. But what happens when that piece fails to protect from one of California's most common perils, fire? Between 2017-2018 over \$26 Billion in wildfire-related insurance claims were paid by insurers. In 2019 there were more than 46,000 wildfires and over 2 million homes in California are considered to be in high or extreme fire risk areas. This number is expected to grow as more and more new housing communities are sprouting up in high-risk areas such as San Diego, Temecula and Marin county.

How do insurance companies respond to these losses and growing risks? Typically, by non-renewing insurance, not accepting new policies in fire-prone areas or outright omitting fire insurance altogether in their policies. This leaves borrowers scrambling for insurance and lenders in the dark as to whether their collateral is appropriately insured. Borrowers can turn to California's FAIR Plan, last-resort option for borrowers funded by California's insurers that only covers fire-related damages, usually at

Actual Cash Value (not Replacement Cost). Having a FAIR Plan policy still requires borrowers to obtain a second policy to cover all other risks.

How do lender's keep up with these changes? The first step for lenders is to make sure that their insurance requirements at origination are clear and complete. At minimum, the requirements should include:

- List hazards required to be covered
- Amount of insurance equal to replacement cost of building(s)
- Deductible of no more than 5% of loan
- Loss of Rents Endorsement if rental
- Builder's Risk Endorsement if fix/flip
- Carrier should have AM Best Financial Rating of B++ or better

These insurance requirements should carry over to the servicing of the loan throughout the life of the loan. If an insurance policy is non-renewed, lenders should be able to provide to their borrowers a trusted insurance agency as a recommendation.

Lenders should also have an account with an insurance agency set-up in order to quickly acquire Lender-Placed Insurance as a last resort to protect the property if the borrower cannot obtain their own insurance policy. Lender-placed, or force placed, insurance is insurance of last-resort for lenders. It is typically more expensive than if a borrower obtains their own insurance policy and is often less comprehensive. However, it is a necessary tool in a lender's toolbox to protect a property that is not insured. 🌐

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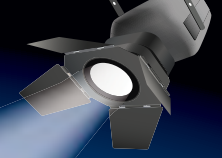
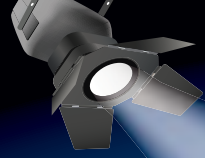


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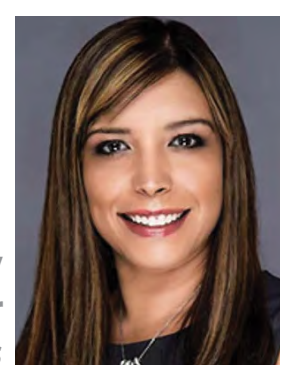
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MEMBER SPOTLIGHT: Steve Belleville



by
Angelica Gardner
Asher Evan Investments

The California Mortgage Association turns the spotlight on members who are making an impact in their professional field and around the Association. These members exemplify the Mission of the California Mortgage Association. Each quarter, we will feature one of these members in the Member Spotlight. It's a great way for you to meet your colleagues and find members with similar interests. This quarter, we have chosen Steve Belleville, MBA with Redwood Mortgage. In addition to being a longtime member, Steve has served on the Board of Directors, acted as the Membership Committee Chair, is a member of the Marketing Committee and has served as a mentor to many professionals in the industry.

A I have been attending CMA Seminars since 2003 and became a member of CMA in 2006. Joined Primarily for the educational content, networking and building lasting business relationship.



Q Tell us a little about you, your family, hobbies, what do you do in your time off?

A My wife and I have four kids, two girls and two boys. Age range; 23 to 14. My oldest daughter, Lexi, recently graduated from Loyola University Chicago and lives and works in Chicago. Oldest son John is a junior at Arizona State University majoring in Urban Planning and Sustainability. Younger son Greg is a senior in high school, he enjoys sports, has done stand-up comedy and works at the pizza parlor down the street and my youngest daughter Nicole is a freshman in high school and does competitive gymnastics. My wife is a full-time teacher. As a family we enjoy snow skiing, water skiing and hiking. Great trails in the Bay Area. We also enjoy road trips and large family gatherings with

Q What is your favorite thing offered by the California Mortgage Association?

A The information and educational content of leading processes and practices.

Q How long have you been a member of the CMA? Why did you join the CMA?

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extended family. In my spare time, my son and I enjoy working on my old 1970 Chevy, getting it back on the road after having been in cold storage for 20 years.



years in tech, my wife and children and I took corporate assignments in Salt Lake City and in San Diego. During that time, the San Jose division I was from closed. After four years, to get back to the Bay Area (where our extended family is) and to travel less, for my growing family, I left high tech, moved back to the Bay Area and started working for a medium-sized Mortgage Banking company. I worked my way up at the mortgage banking company and within a few years I was managing a team of more than forty loan officers, five processors and three offices (before the great recession).

Q How did you end up / start in this industry?

A Mortgage Bank / Mortgage Lending is a second career for me, I started in 2003. Prior to that, I worked in computer electronics (Intel, Polycom, Iomega) for eighteen years. Where I traveled and managed teams across the U.S. and around the world in Asia and Europe. I am blessed to have had the opportunity to travel for business and work with so many fantastic business colleagues and develop professional relationships around the world. During my last four

Q Who is your ideal / target customer?

A Ideal target customer is brokers/bankers and CRE Investors. Loans up to \$10M.

Q What goals are you hoping to accomplish in 2020?

A Continue to grow, motivate and provide inspiration to my sales team and those I work within the lending community and continue to grow the companies I am a part of. Additionally,



I believe I am learning each day and look forward to learning new things. And try to keep a healthy work/life balance.

Q What is the most challenging thing you find in this industry?

A This industry is growing and evolving throughout California and across this nation. Non-bank lending / private lending is becoming "mainstream." And it is happening at light speed.

Q What sets your company apart from others?

A Perspective, Knowledge, performance and well capitalized.

Q What is your favorite part of your job?

A The favorite part of my job is adding to others success.

Q What is the last app you downloaded on your phone and why did you download it?

A Last app downloaded on my iPhone (family) was Amazon app and on my android (work) phone was the American Express app. 📱



Pictures From the Winter Seminar – Newport Beach, CA



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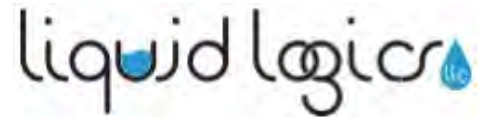
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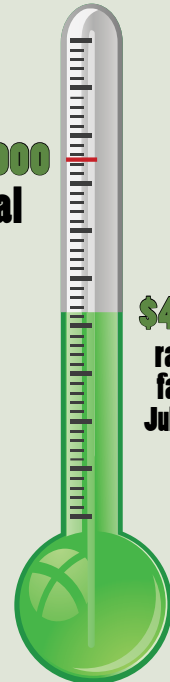
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\$20 – \$199 *continued*

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**MORTGAGE INDUSTRY
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DRE Audits and You: Part 1 What Triggers It, What Happens Next

You receive the call from a DRE auditor or a letter from a Special Investigator, and after your heart rate returns to something that approximates normal, you start wondering: “Why me? What caused this? Now what?”

There are several things that can cause a DRE audit or a visit/letter from a Special Investigator. The most likely is a complaint from a member of the public. That public consists of borrowers, past employees, competitors, lenders, investors, appraisers ... you get the picture here: anyone who knows you or knows about your company. Another trigger can come from the fact that your threshold reports (quarterly or annual) are filed late, filed incorrectly, or include negatives or suspicious looking activities. When the reports are reviewed by the Mortgage Loan Activities section and potential problems are found (or their letters to you regarding incomplete or absent filings are ignored), you can expect a call from the auditor to follow. In my experience, the chance of getting a “random” audit without a triggering complaint is unlikely.

Of course, you want to know “Who ratted me out?” You may never know. The auditor often has no idea where the complaint originated and, if he or she does know, they don’t have to tell you. Sometimes you will instinctively know, and other times you will discover the

reason just from the questions that are asked or the files that are chosen. If the audit results in an accusation, your attorney will find out through the discovery phase. But, at the end of the day, it really doesn’t matter where it came from ... you still have to go through the process!

If the Department determines that a Special Investigator should take a look at your operations prior to or instead of sending in an auditor, the visit is referred to as a “Broker Office Survey.” The Special Investigator (or Investigators, since sometimes up to four will come together!) will visit your office, ask questions about your operation, and review transaction files, salesperson contracts and trust account information (not a full-blown audit, more like a simple review to look for irregularities). The Special Investigator will likely ask for specific information about a particular transaction and may ask for your affidavit explaining the circumstances of the transaction. An office visit such as this is usually a few hours at most. This can end in a Corrective Action Letter (CAL), a Cite and Fine or even lead to an accusation, but it can also end in the Special Investigator shaking your hand and thanking you for your time and cooperation and that’s the end of that.

If, however, the appointment is made by an auditor, you should expect a complete routine or investigative audit. This is hardly ever a

one-day visit, and can actually take many days over several weeks or even months. I recall one Northern California audit that started in August and ended in December (well, it was the same year, fortunately!). At the hearing in front of the Administrative Law Judge (ALJ) many months later and after the accusation was filed, the attorney for the broker who was the subject of this audit cross-examined the DRE auditor on the stand and said “Sir, you were in my client’s office from August to December. You listed 13 items that he did wrong. Surely, during that time, you found hundreds of things that he was doing right. Where are those listed?” Without missing a beat, the auditor said “I wasn’t there to find what he was doing right, I was there to find what he was doing wrong.” Ouch.

The auditor checks salesperson and broker-associate contracts, commission agreements, supervision policies and procedures, transaction files, bank signature cards, bank statements, bank reconciliations, and asks question after question about your company, its ownership and business practices.

In future columns, I will go into each part of the audit process in more detail. Stay tuned. 📍

Pam Strickland is a compliance consultant who helps DRE brokers prepare for and survive DRE audits and office surveys. She can be reached at pam@pamstrickland.com.



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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:

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Material Deadlines: **5/15/20** **8/14/20** **11/13/20** **2/12/21**

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.

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For more information, contact us at: (916) 239-4080 – phone • (916) 924-7323 – fax • www.californiamortgageassociation.org

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Full Page	(8½"x11")	\$525	\$450
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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.

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



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

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Day Phone: _____ Mobile Phone: _____ Fax: _____

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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 _____

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In which CMA Committee or Committees are you interested?

- Membership Dodd-Frank Points of Interest Magazine Advertising/Vendor Education
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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:

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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.

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

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Western Alliance Bank

2701 E Camelback Rd, Suite 110
Phoenix, AZ 85016
(213) 362-5237

lalberti@westernalliancebank.com

Affiliate Member

Laura Benetti

Brentwood Finance Company (BFC)

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South San Francisco, CA 94080
(650) 583-2164

lbenetti@brentwoodfinance.com

Educational Member

Jim Castellanos

Casco Financial

15700 Winchester Boulevard
Los Gatos, CA 95030
(408) 799-3392

jim@cascofi.com

Regular Member

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EnCircle Labs, Inc.

400 Concar Drive, 4th Floor
San Mateo, CA 94402
(650) 291-4022

dave@encirclelabs.com

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Santa Ana, CA 92705
(818) 599-6748

debrac@octitle.com

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Newport Beach, CA 92660
(949) 340-5452

andrew.fielder@backbayig.com

Educational Member

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Soaring Falcon Mortgage Corporation

7041 Koll Center Parkway, Suite 270
Pleasanton, CA 94566
(925) 201-1877

aliu@soaringfalconmortgage.com

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Cheryl Mehelua

E.F. Foley & Co., Inc.

1660 E. Hamilton Avenue, Suite 100
San Jose, CA 95125
(408) 264-9000

cheryl@foleymg.com

Regular Member

BENEFITS OF MEMBERSHIP

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

Please remember to share information about the Focus Groups that are provided to members only. Additional information can be found on the CMA website. There are many exciting educational programs being planned.

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

Sacramento Summary – continued from page 5

at this point whether the Newsom administration will continue to pursue this proposal when the legislature returns.

Initiatives: Not surprisingly, virtually all signature-gathering efforts ceased upon the state and local stay at home orders. It now appears that unless sufficient signatures were collected prior to the orders, the proposed initiatives are dead, at least for 2020. Signatures submitted after the deadline for 2020 could still qualify an initiative for 2022.

With regard to the “split roll” proposal, the first version submitted by proponents has already qualified for the November ballot, and recently proponents submitted signatures for a second version which they believe has a better chance of passage. Presumably the first version will be withdrawn from the ballot, but it certainly appears likely that at least one split roll initiative will be placed before voters in November.

As to the proposed initiative to modify the California Consumer Privacy Act (CCPA), it is unclear presently how many signatures have been gathered. With little time left to gather signatures, and a statewide stay at home order in place, this proposal may not “make the cut” for 2020. Your CMA staff will continue to keenly monitor public policy developments during these difficult times and will keep the CMA Board and CMA membership closely apprised. 📍





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