



POINTS ^{OF} INTEREST

Summer 2021

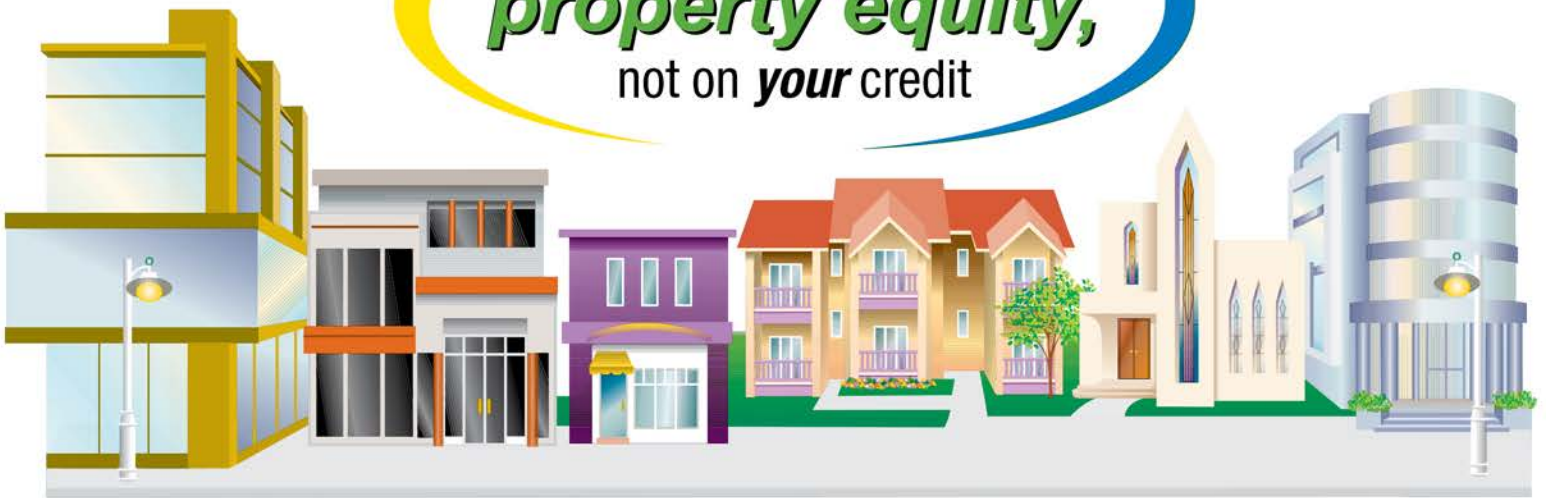
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FROM THE PRESIDENT



Elizabeth M. Knight
2021-2022 CMA President

I hope as of this writing you are all doing well; taking time to be with your families, taking time to take care of yourself, staying healthy and enhancing and protecting your businesses from the ongoing changes to the market and the enactment of new legislation.

As I had mentioned in the last *Points of Interest* President's Message, I enjoy sharing quotes from famous people. This edition's quote best described my thoughts about CMA as a group since we are strong and bold:

Yeah, life is complicated, but if it wasn't complicated, it would be a roller coaster on a flat track. Wouldn't be a ride worth taking.

— *Suspense writer*
Dean Koonz

Many of the CMA members consist of small enterprises which allow (or make) the owners to perform and perfect so many different functions of their business. Where a large company has a team of loan officers, processors, underwriters, loan committees for different types of loans, funders, closers, post-close auditors, HR teams, accounting departments, marketing departments and a myriad of other departments, our CMA

members perform many or all of these functions themselves. Could any of you imagine simply performing one function all day, every day? For the entrepreneurial CMA members, it would be a "roller coaster on a flat track."

Sometimes, although we ride a roller coaster ride every day, we want to make it wilder than it already is. Perhaps, it is not a conscious choice. It is just something that wants us to feel bolder, more creative, just ... more. But, when looking back we think, "What was I thinking? Why did I work with that borrower? Why did I let them push me into closing so quickly without performing as much due diligence as I normally do? Why did I step outside my knowledge base without further review or consult on this loan?" Maybe it is because we want a bit of the shrieking highs and lows of any great roller coaster to rise to the precipice, free fall and then soar again.

Currently, the real estate market is, in many areas, rising in value very quickly. Properties that sold last month for \$1,250,000 are now selling for \$1,450,000. We are seeing not just multiple offers but unprecedented numbers of multiple offers causing offers to exceed list price by as much as 10%, maybe more in some areas. I was talking to one agent who had 85 offers come in on one property and the final accepted offer

exceeded the list price by 12%, all cash, and, the original list price was at market. There are four driving forces that create such an occurrence: Low inventory, low interest rates, people who feel they need to jump into the market, people with cash.

But, as any of us know who have been in this business many years, this is a cyclical market and every time there is a downward adjustment in the market it follows an accelerated uptick. My message here today is to be especially cautious when writing your loans in this type of market. Be careful of the roller coaster rush of being able to write a loan today because of the lower LTV that you wouldn't have written six months ago.

Really get a feel of the values in your area, where they were and where they are going and how quickly. Perhaps you always were writing at 70% LTV. Today, you may want to be more conservative. Although the market seems like it won't be adjusting anytime soon since the rates are staying low for at least a year or more, so say the feds, and the building of homes hasn't caught up with demand, the building will catch up and unless you are writing very short term loans, your loan could get caught up in that. In some areas, tens

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FROM THE EDITOR

Mayumi Bowers
Editor, POINTS OF INTEREST

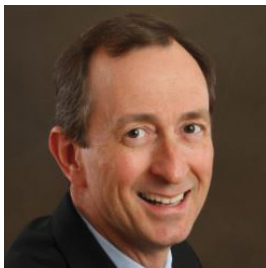
I hope that the first half of 2021 was fruitful for your business. I know that I was incredibly busy this year and my busyness didn't just come from new loans coming. A lot of it came from making improvements to our current processes and procedures, implementing the new rules and regulations that have come as a result of COVID-19, and

shoring up the things that we should have been doing but had not had the time to do. These things alone have made us incredibly busy on top of dealing with new loans coming in.

The articles in this edition, touch on a couple of things that aren't necessarily new but are

always good to revisit. It is a nice reminder of those things that you should be doing, but that may have slipped to the back burner. I hope that the second half of 2021 will be great for everyone, and I look forward to seeing everyone at the Fall Seminar in Las Vegas. As another reminder, we are always looking for new articles and newsletter ideas. 🌐

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SACRAMENTO SUMMARY

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

The Legislature is scheduled to adjourn this first year of the 2021-2022 two-year legislative session on September 10th. Thus, it is a sprint to the end of the session. In many respects, this is the most dangerous period of the Legislature. Bills are often “highjacked” at this time of year and a bill on garbage trucks can suddenly become a bill on mortgage lending. It is for that reason that your lobbyists in Sacramento read every amendment to every bill daily. Amendments can transform a bill in our “watch” category into a measure we must strongly oppose – and on short notice.

COVID-19 has made this session of the Legislature the strangest one ever! Members and staff have been difficult to reach, and lobbying committees has required considerably more effort. Thus far, we have been successful in our efforts to stop bad legislation or, in some cases, avoid the introduction of bad ideas in the form of legislation we would have opposed.

The Legislature and the Governor have had many issues to deal with this year including COVID-19, housing, homelessness, and a budget outlook which went from a \$54 Billion deficit to almost a \$100 Billion surplus. The roaring economy and significant assistance from Washington created a situation where the biggest problem for the Democratic majority in the Legislature was how to spend the unanticipated revenue.

As we have reported, early in the session the Governor signed a bill extending the State’s eviction moratorium through September and boosting funding for a rent relief program addressing the needs of

both tenants and landlords. Working with other groups in the lending industry, we were able to avoid legislation which would have impacted the foreclosure process.

Several bills which did not pass this year, however, are now “two-year bills” which will be eligible for further consideration during the second year of this two-year session.

CMA is closely tracking over 60 bills during this session. Some of the measures on our list include the following:

AB 345:

Would allow an ADU to be conveyed separate from the primary residence pursuant to a local ordinance – in Senate and likely to pass.

AB 255:

Would enact the COVID Emergency Small Business Eviction Relief Act – killed on the Assembly Floor. This measure would have created more problems than it would have solved – 2-year bill.

AB 561:

Requires State Treasurer’s Office to help homeowners qualify for loans to construct ADUs and junior ADUs – in Senate and likely to pass.

AB 948:

Enacts measures to prevent unlawful discrimination in the conduct of real estate appraisals: (1) provides notice to buyers and sellers of their right to an unbiased appraisal of the property; (2) establishes a mechanism to track complaints of underappraisals by demographics; (3) requires appraisers

to complete continuing education eliminating bias and cultural competency – in Senate and likely to pass.

AB 1405:

Creates the Fair Debt Settlement Practices Act regulating debt settlement of unsecured debt, such as credit card debt – in Senate and likely to pass.

AB 1466:

Establishes task force to search, redact, and compile a publicly searchable database of unlawful and discriminatory restrictive housing covenants – in Senate and likely to pass.

SB 263:

Requires 2 hours training on “implicit bias” as part of the 45-hour continuing education for realtor license renewal – in Assembly and likely to pass.

SB 373:

Defines “economic abuse” as certain types of debt – 2-year bill.

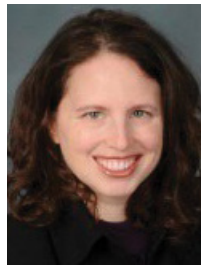
SB 449:

Requires specified lenders to report on climate-related risks in their portfolios to the Department of Financial Protection and Innovation – 2-year bill.

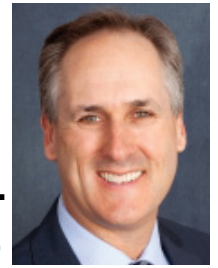
SB 531:

Amends the Rosenthal Fair Debt Collection Practices Act and the Fair Debt Buying Practices Act. Defines the term “delinquent debt” as “a consumer debt, other than a mortgage debt, that is past due at least 90 days and has not been charged off” – in Assembly and likely to pass. 🗳️





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Deflating a Balloon Partial Payment Conundrum: How to Handle Partial Payments After Loan Maturity

If you service loans with balloon payments, you have almost assuredly faced a situation where the loan has matured, but the borrower fails to remit the full payment amount owed. Instead, you receive a partial payment and are left with two options – reject or accept the payment.

Many times, the servicer, generally at the direction of the lender, accepts the partial payment. But, by accepting, have you also inadvertently agreed to extend the loan terms? Moreover, if you accept do you also need to send a new notice of payment pursuant to Civil Code section 2924i? The answer is found in the interplay between California Civil Code section 2924i and any non-waiver clause contained in the loan documents.

A. How Does Civil Code Section 2924i Apply to Balloon Loans?

A balloon loan is a loan that does not fully amortized over the course of the loan term. That means any payments

made by the borrower will not pay the loan off in full, which results in a large final payment at maturity. With respect to residential loans, the Legislature decided that borrowers needed to be reminded of the final payment to ensure awareness of what was coming due and adequate time to prepare. Thus, Civil Code section 2924i, which requires the servicer send a notice of final balloon payment to the borrower, was enacted. In short, the statute applies to balloon loans which are for a period of longer than one year, secured by a deed of trust on real property containing one to four residential units, of which at least one is occupied by the borrower. Civil Code

continued on page 8

section 2924i(a). The statute requires the lender provide a notice of final payment to the borrower at least 90 days, but no more than 150, before the final payment is due. Civil Code section 2924i(c). This notice must identify the date the final balloon payment is due, the payment amount, where the payment should be sent, and whether the borrower has a contractual right to refinance. Civil Code section 2924i(c). Failure to send the notice timely does not invalidate the loan but will extend the loan terms via operation of law to a date at least 90 days after the notice date, thus delaying collection on the loan. Civil Code section 2924i(e), (f). Moreover, a willful violation of the statute can result in an award of actual damages and attorney's fees. Civil Code section 2924i(f).

As relevant to our question above, this section also states that "[i]f the due date of the final payment of a loan subject to this section is extended prior to the time notice is otherwise required under this subdivision, this notice requirement shall apply only to the due date as extended (or as subsequently extended)." Civil Code section 2924i(c). Thus, if accepting a payment after the loan matures automatically extends the loan terms, then you would arguably also need to send another notice to comply with Civil Code section 2924i(c) in situations where the loan is extended more than 90 days.

B. Can Acceptance Alone Extend the Loan Terms?

As a general matter the parties' course of conduct, i.e., acceptance of partial payments post-maturity, can extend the loan terms, usually through application of equitable principles such as waiver or estoppel.

Waiver is the intentional relinquishment of a known right after knowledge of the facts. *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 31. To succeed on his waiver claim, the borrower would need to prove by clear and convincing evidence that the lender freely and knowingly gave up its right to require the borrower to pay the full amount

owed on the maturity date. *Id.* Notably, a waiver can be oral, written or it can arise from conduct that shows the lender clearly gave up the right. *Id.*, see also *Howard J. White, Inc. v. Varian Associates* (1960) 178 Cal.App.2d 348, 353-355.

Estoppel is an equitable doctrine codified in California Evidence Code section 623, which provides that when a party, by either statement or conduct, leads another to believe a particular thing is true and the second party acts in reliance thereon, the first party is not permitted to contradict that statement or conduct in any litigation arising out of that statement or conduct. Cal. Evid. Code section 623. To succeed on an estoppel claim, the borrower would need to show that the lender knew about the breach of the loan payment terms but extended the loan term by accepting the partial payment, that the lender intended its conduct to be acted upon, that the borrower did not know differently that the loan had not been extended, and that the borrower relied upon the statement or conduct to his detriment. *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Café & Takeout III, Ltd.* (1994) 30 Cal.App.4th 54, 59.

C. How Do I Protect Myself?

While the lender's course of conduct/acceptance of payment can potentially extend the loan terms, generally all loans also contain an anti-waiver clause specifically to prohibit such an occurrence. (Note – if you loan documents do not contain one, they should!) Anti-waiver clauses generally provide that a lender's failure to enforce its contractual rights in a breach situation shall not constitute a waiver of that breach or the remedies available to the lender. Many also specifically provide that acceptance of late payments or partial payments does not constitute a modification of the loan or a waiver of any other remedy available by law. These clauses are consistently upheld by courts across the nation based on their plain language, but enforcement is based on the parties' actual conduct, which must be consistent with the anti-waiver clause terms.

Here, assuming the lender's loan documents contain an anti-waiver clause which covers acceptance of payments post-maturity, the lender's mere acceptance of the partial payment would not extend the loan terms. This is, of course, subject to the above caveat that the lender's other conduct is consistent. For instance, if the servicer orally represents to the borrower that the loan due date has been extended or a monthly statement is sent to the borrower showing a different due date post acceptance of the partial payment, a court could find that the lender waived the anti-waiver clause protections based on that separate conduct. As a best practice, in situations where the lender decides to accept the partial payment, we recommend the servicer also send a reservation of rights letter to the borrower specifically advising them that acceptance of the payment is not to be considered a modification of the loan or a waiver of any of the loan terms. This letter would not only cut against any argument by the borrower that the lender intended to modify the loan, but also be strong evidence that the borrower knew the acceptance was not a modification of the due date.

We are aware that some servicers will sometimes send a new 90-day notice under Section 2924i if they accept a partial payment. However, we do not recommend such a course of action for two reasons. First, logic dictates that since the loan terms have not been extended, a new 90-day notice is not necessary to comply with the statute's requirements. Second, sending such a notice could actually be problematic because it could be used by the borrower as evidence that the lender intended to voluntarily extend the due date, otherwise why did the lender send the new notice in the first place.

In summary, first check your loan documents and review the anti-waiver provision. If it does not already specifically address acceptance of late/partial payments, consider revising it. Next, consider implementing a policy requiring

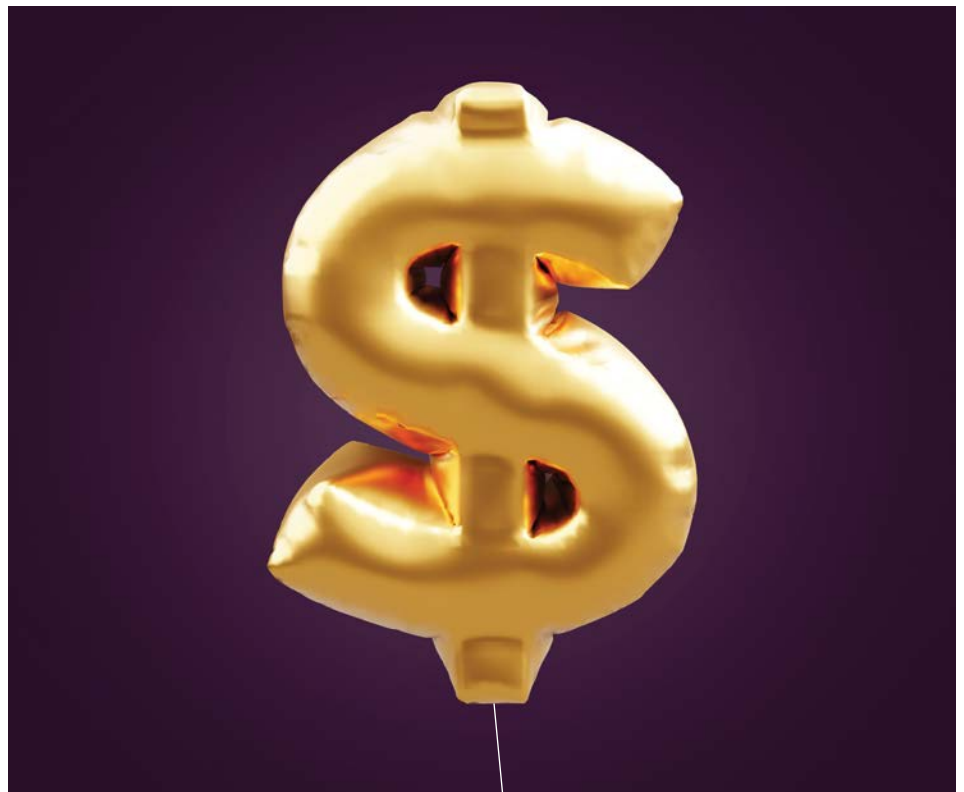
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a reservation of rights letter be sent to the borrower in situations where a partial payment is going to be accepted post-maturity. Ultimately, if you are unsure what level of protection you currently possess, please reach out to Wright, Finlay & Zak, LLP or your counsel to discuss your specific situation.

If you have any questions regarding this topic, please do not hesitate to contact Sarah Greenberg Davis at sdavis@wrightlegal.net or Robert Finlay at rfinlay@wrightlegal.net. 📧

Disclaimer: The above information is intended for information purposes alone and is not intended as legal advice. Please consult with counsel before taking any steps in reliance on any of the information contained herein.

Sarah Greenberg Davis is a Senior Associate Attorney at WFZ's California office. Robert Finlay is a founding Partner of WFZ.



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Everything You Want to Know About the New Auditor's Report



Henry Chavez
Spiegel Accountancy Corp.

After seemingly eons of time that we have had to become familiar with the standard auditor's report, it is about to categorically change. That's right, the Auditing Standards Board (ASB) of the American Institute of Certified Public Accountants (AICPA) has changed the auditor's report by issuing Statement of Auditing Standard (SAS) No. 134, *Auditor Reporting and Amendments, including Amendments Addressing Disclosures in the Audit of Financial Statements*.

This new auditor's report, which becomes effective for all reporting periods ending on or after December 15, 2021, is designed to give us a whole new literary thrill in audit reporting because the report is presumably more relevant and transparent. Be forewarned as I attempt to elaborate on the new standard with an injection of humor. After all, who wants to read a dry article on auditor's reports?

Why the Change?

The ASB issued the new auditor's report to coincide with international auditing and assurance standards and create consistency with the auditor's report previously issued by the Public Company Accounting Oversight Board.

The new auditor's report is intended to increase its value by providing more transparency into the audit and supplying the user with more information on the auditor's and management's responsibility for the audit.

What Are the Changes?

1. Facelift

The first thing you will notice is the entire structure of the auditor's report was flipped. In short, the audit opinion now comes first rather than last. Yes sir, no more waiting for the auditor's punch line to come at the end of the joke, as it will now come first.

Report on the Audit of the Financial Statements (Template)

Opinion

We have audited the financial statements of Company X, which comprises the balance sheet as of December 31, 2021, and the related statements of income, changes in stockholders' equity, and cash flows for the year then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of Company X as of December 31, 2021, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

2. We are independent, ethical, and we own it

The "Basis for the Opinion" is a new section in the auditor's report that provides clarity regarding the auditor's obligations. Here is something new in the paragraph: we are ethical and independent. We as auditors find this amusing, and you should too since this is the reason you hired us.

Basis for Opinion (Template)

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section

continued on page 11

of our report. We are required to be independent of Company X and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

3. Management, you are still responsible, too

Management, you are lucky! Not much has changed in what we have to say about your role in making sure the financial statements are correct. Essentially, you must promise us your company will not fold within 12 months of issuing the financial statements. Remember, management is responsible for the financial statements, not the auditor.

Responsibilities of Management for the Financial Statements (Template)

Management is responsible for the preparation and fair presentation of

the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about Company X's ability to continue as a going concern for one year after the date that the financial statements are issued.

4. A discourse on your auditor and what work we do in your audit

Anyone who reads the new auditor's report will now have the joy of obtaining an auditor's "101 guide" through the audit process. Voilà! Here is everything you

wanted to know about the steps auditors perform.

Auditor's Responsibilities for the Audit of the Financial Statements (Template)

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override

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of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with Generally Accepted Auditing Standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit. Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of Company X's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about Company X's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain

internal control–related matters that we identified during the audit.

5. The new and exciting Key Audit Matters (KAM)

The intent of this new, optional paragraph in the auditor's report is to disclose the most important audit matters encountered during the audit. The spirit of this new paragraph is to provide better information to users of the financial statements and to improve governance. While the AICPA may be excited about this revision, it remains to be seen how beneficial it may be to the reader of the financial statements. Further, key audit matters are already discussed in the communication with those charged with governance letter that auditors are required to provide to management.

Key Audit Matters (Example)

Key audit matters are those matters that were communicated with those charged with governance and, in our professional judgement, were of most significance in our audit of the financial statements of the current period. These matters were addressed in the context of our audit of the financial statements, and in forming our opinion thereon, and we do not provide a separate opinion on these matters.

The most sensitive accounting estimate affecting the financial statements is Company X's estimate of the collectability and valuation of mortgage loans receivable, which is based on historically collections and the fair value of collateral. We evaluated and tested the key factors and assumptions used to determine fair value and found them to be reasonable in relation to the financial statements taken as a whole.

Are You Ready For the Change?

The two issues management should consider prior to the adoption of SAS 134 are as follows:

- Do I need to inform the readers of the financial statements about the change in financial statement reporting?

In truth, the changes to the auditor's report should not impact the viewpoint of any reader. Therefore, you should not have to prepare them for it, other than letting them changes exist.

- Should you elect to include KAMs in the auditor's report?

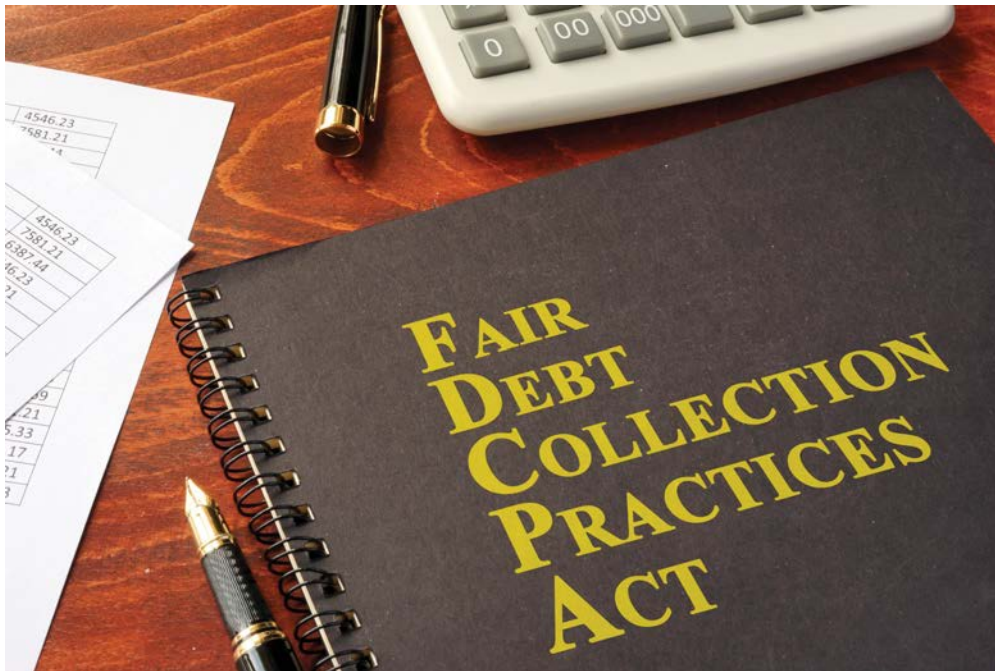
Given that the paragraph is optional, prior to including it, management should really consider whether it adds value to the readers of your financial statements.

If you have any questions about SAS 134, please contact me. I'm happy to help. 📞

Henry Chavez serves as a strategic resource for growing organizations, guiding their development and success. A seasoned public accountant, Henry provides assurance and business consulting services to privately-held businesses in the financial services, manufacturing and distribution, technology, and non-profit sectors.



Eleventh Circuit Decision in *Hunstein* Places Debt Collection Business Models at Risk



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Wright, Finlay & Zak, LLP



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

On April 21, 2021, the U.S. Court of Appeals for the Eleventh Circuit issued an opinion in *Hunstein vs. Preferred Collection and Management Services, Inc.*, creating new risk and uncertainty around the most common, everyday business practices used by many debt collectors, including loan servicers. 994 F.3d 1341 (11th Cir. 2021). While a petition for rehearing *en banc* was filed on May 25, 2021, and thirteen industry-related *amicus curiae* briefs in support of the rehearing were also timely filed, the opinion remains published at this time.

Debt collectors often contract with third party vendors for services such as creating and mailing collection letters, receiving incoming phone calls, even simple accounts receivable bookkeeping. These practices now face increased scrutiny and potential litigation as described in further detail below.

In *Hunstein*, the debt collector provided its mail services vendor, Compumail, with information about Hunstein, including, among other things: (1) his status as a debtor, (2) the exact balance of his

debt, (3) the entity to which he owed the debt, (4) that the debt concerned his son's medical treatment, and (5) his son's name. Compumail used that information to generate and send a dunning letter to Hunstein.

On Appeal, the 11th Circuit ruled that Hunstein could pursue claims that by providing this information to its third party vendor the debt collector violated § 1692c(b) of the Fair Debt Collection Practices Act ("FDCPA"), entitled "Communication With Third Parties." This section provides –

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the

creditor, or the attorney of the debt collector.

Thus, the mere act of providing its third-party vendor with the information necessary to create and deliver the collection correspondence can constitute a violation of the FDCPA.

Often it seems Courts do not appreciate the impact of their rulings on routine, widely understood and accepted business practices on which entire segments of industry depend. That is not the situation in *Hunstein*. The Court recognizes its ruling "may well require debt collectors ... to in-source many of the services that they had previously outsourced, potentially at great cost." The Court goes on to note that its "obligation is to interpret the law as written, whether or not we think the resulting consequences are particularly sensible or desirable."

The 11th Circuit's decision is only binding in Alabama, Florida, and Georgia. However, since the Court indicated that this is an

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issue of first impression, it is very likely that Federal Courts of Appeals covering other states may adopt the same approach in evaluating the inevitable lawsuits on this issue. It remains to be seen whether arguments regarding agency and/or severe services contract limitations on the use of information will be considered to mitigate claims of violation. As a result, loan servicers and debt collectors should evaluate each third-party vendor relationship utilized in relation to interaction with or about a debtor. For residential loan servicers, this may include call center vendors, business process outsourcing vendors assisting in the processing of modification requests and, clearly, print and mail vendors.

Fortunately, the initial transfer of information to counsel for the debt collector would be exempt under the plain language of the statute. However, any further transfers of information by the debt collector's counsel to a subsequent vendor would be subject to scrutiny under *Hunstein*. There is no longer an attorney



exemption to the federal FDCPA's definition of debt collector (and California recently eliminated its attorney exemption to the Rosenthal FDCPA). Thus, counsel for the debt collector itself may be deemed a debt collector under federal or state definitions of a debt collector, subjecting the transfer of information by the law firm to a third-party vendor to potential coverage as well.

Both the federal FDCPA and the California Rosenthal FDCPA only apply to the collection of consumer debts. However, California expanded the definition of a debt collector beyond the federal scope to include persons or entities collecting their own debts, not only debts owed or due to another.

If you have any questions or need assistance evaluating your current debt collection practices in light of the *Hunstein* decision, please contact Michelle Mierzwa at mmierzwa@wrightlegal.net or Brett Foster at bfoster@wrightlegal.net.

Disclaimer: The above information is intended for information purposes alone and is not intended as legal advice. Please consult with counsel before taking any steps in reliance on any of the information contained herein.

Brett Foster is Of Counsel for Wright, Finlay & Zak, LLP. Michelle Mierzwa is a Partner at Wright, Finlay & Zak, LLP.

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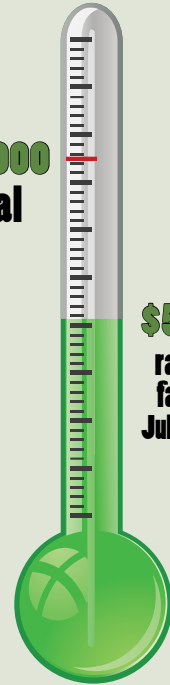
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MEMBER SPOTLIGHT:

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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 CMA. We know that our members are one of the most important aspects of this Association, and we work hard to feature outstanding members. This time, the California Mortgage Association turns the spotlight on member Odell Murry, President of MAI Financial Services, Inc., located in Los Angeles, California. Odell has been a member of the California Mortgage Association since 2008. He has also served as the CMA Board President, Vice President and Treasurer, as well as many CMA committees, seminars, and panels. In addition to his many accomplishments in the CMA, he has led quite an inspiring life. We are grateful to have Odell as a member and are excited for our members to learn more about his life.

Q Tell us a little about you, your family, hobbies, etc.

A As one of the youngest members of my family, I was born and raised in Los Angeles, California, but my oldest sister, Evell, and oldest brother, Nathan, were born in Opelousas, St. Landry Parish, Louisiana. My mother and father, Ida and Joshua, grew up as farmers in the tiny community of Garland, Louisiana, also in St. Landry Parish. My grandfather William on my father's side of our family was a sharecropper who never owned real estate, but my grandfather Phillip on my mother's side owned an abundant amount of farmland. There were horses and cattle, chickens and pigs, lots of hunting dogs, a pecan orchard, acres of planted food



Odell's father and mother, Joshua and Ida Murry.

crops, and a bayou that ran right through the property – great for catching catfish! We had our own cemetery, right on our property, where many of my ancestors are buried. My father developed an incredible work ethic which paid off. He left the farm and moved his family West. His first stop was Houston, Texas, where my second oldest brother, Jerry, was born. Several years later, my father made a final move to Los Angeles, California, where I, and two years later my youngest sister, Joselle, were born.

There were five children in our family, which kept my mom busy as a stay-at-home mom. She was a fantastic cook who

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Odell and his siblings, Evell, Nathan, Joselle, and Jerry.

enjoyed preparing delicious Louisiana-style delicacies. Mom and dad frequently displayed their Southern hospitality, often hosting a parade of interesting people for dinner. This gave me an introduction to the value of being part of a community and of civic life.



As a kid, I was never good at sports, but excelled in math and science and was awarded a Bank of America scholarship in mathematics. I attended Pepperdine College (later Pepperdine

University), majoring in technical management, and then matriculated at the California Military Academy, where I graduated and was commissioned a second lieutenant in the U.S. Army.



I did not have many hobbies growing up, but as a young man, I became a sailor, golfer, and mountain climber. During the summer of 1986, I climbed to the summit of Mount Kilimanjaro in Tanzania, Africa.

A huge honor and responsibility came to my life in 2005, when I inherited the rights to the W.E.B. Du Bois Estate. As everyone probably knows, Dr. Du Bois was one of

the most important and influential Black scholars and activists of his time. Among his many achievements, he was the first African-American to earn a doctorate degree from Harvard University, and he was a founding member of the NAACP and the Pan-African Congress. The literary estate is one of the world's most extensive. It includes not only the life works of Dr. Du Bois, but also those of Shirley Graham Du Bois, his second wife, and David Graham Du Bois, Shirley's son. Shirley was nationally known as a playwright, composer and author, and for her influence as an activist. David was a professor who devoted his career and much of his life to preserving and furthering the legacy of W.E.B. Du Bois.

Q What do you do for work? What is your typical day like?

A My work includes operating a commercial mortgage company, managing investment properties, and managing the Du Bois literary estate. My typical day starts in the early morning, and sometimes my day does not end until late at night. When projects require lots of brainpower and concentration, I prefer to work on them early in the morning when my energy level is high, or late in the peaceful hours of the night. I'm a workaholic, so long days do not bother

me. I like to take walks and exercise as time permits throughout the day.

Q How did you find yourself working in this industry? Was it love at first sight or a longer path?

It was a 20-year journey that began in the retail industry. Until 1960, F.W. Woolworth Company, one of the country's largest retailers, would not allow Black Americans to eat at lunch counters in their stores. That changed when nationwide sit-ins led Woolworth to rethink its policies. Little did I know the change would launch me on a career path.



Woolworth's board chairman decided the company must hire an African American executive to run one of their stores. I was 17, working after school at a Woolworth store, and was stunned when I was offered the opportunity to train to become the company's first black store manager.

While attending college full time, I went through a special accelerated Woolworth management training program. In 1969, age 20, I became Woolworth's first African American store manager. I was also the first African American national chain store manager in the United States.

I managed several Woolworth stores over the next 11 years. After leaving Woolworth for a new opportunity, in 1985 I opened Mervyn's flagship department store at Horton Plaza, San Diego (Mervyn's was owned by its parent company Dayton Hudson Corporation, later renamed Target Corporation).

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My final, capstone position in retail was as President of Gateway Marketplace, an affiliate of The Price Club (later named Costco Warehouse Stores).

I then moved on to found a commercial mortgage finance company, MAI Financial Services, Inc. MAI specializes in origination of institutional and private business-purpose loans in residential, retail, office, industrial, and other income-producing commercial real estate.

Q Who is your ideal/target customer?

A My business model includes origination of private and institutional mortgages on income producing commercial properties, so my ideal/target client owns or controls a portfolio of sizable income producing commercial properties. Such investors appreciate having access to an experienced capital source that understands their issues and becomes part of their team.

Q What do you think your greatest personal achievement has been?

A At age 33, I was named Outstanding Young Man of America for 1982, which was announced by Doug Blankenship, President of the U.S. Junior Chamber of Commerce. I was honored to become a member of a group of distinguished Americans who have received this national award since 1934, including Nelson Rockefeller, Henry Ford, John Kennedy, Richard Nixon, Henry Kissinger, and Bill Clinton.

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

A I have been a member since 2008 and have served on the California Mortgage Association board as Treasurer, Vice President, and President. I also served as chairperson of the Executive, Finance, Nominating, and General Counsel Search Committees. With the hard work of many

others, I helped develop and introduce new operational systems at CMA.

I joined CMA after becoming interested in learning about the private mortgage business. I discovered the value of a private mortgage in 1989 when I learned banks had stopped financing industrial properties in the wake of the San Francisco earthquake. As the managing partner of a 120,000 square foot industrial building in the Bay Area, I needed to refinance a matured loan. A private mortgage was my only option. That attracted me to CMA, the state's only private mortgage trade association, and its long track record of providing quality education to its members.

Q Knowing that you have attended many CMA seminars, what is one thing you look forward to the most at each event?

A As an active CMA member, I always look forward to meeting and networking with my peers at events and keeping up to date on industry news through CMA publications and seminars. The organization affords members important professional development opportunities, as well as serving as an effective advocate for the California private lending industry.

With the massive uncertainty caused by the COVID-19 pandemic and the resulting economic fallout, CMA's mission to educate its membership and to be responsive and proactive is more important than ever.



Q Tell us a little about what else you're working on outside of the mortgage industry.

A Since 2005, I have had the distinct honor to own and manage the estates of W.E.B. Du Bois, Shirley Graham Du Bois, and David Graham Du Bois. As such, I have the responsibility to oversee the vast intellectual property of the three estates, including important works of fiction and non-fiction, as well as theatrical works. This is one of the most extensive literary estates in the world, and many key works remain unpublished or are being rediscovered.

I recently finalized negotiations with the Roundabout Theatre Company in New York City to produce and perform Shirley Graham Du Bois's full-length play, "I Gotta Home," in one of their Broadway theaters. We recently did a successful live reading of the play for virtual viewers during the COVID-19 lockdown. Of the viewers who tuned in to the live event, 92% said they are likely to see the performance and recommend it to someone else when it is available on a live stage.

Shirley Graham Du Bois was a noted Civil Rights activist and an integral figure in Black theater. She authored an opera, numerous plays, and many biographies that illuminated the Black experience in America. This will be the first full performance of her works in 80 years. I am excited to lead the resurgence of her work at this important time in our nation's history.

In addition, I am currently reviewing requests from major publishers and producers to bring the works of W.E.B. Du Bois to the renewed attention of the world. It is no surprise that the works of two of the greatest Black thinkers of the 20th century are resurfacing at this point in history. I hope to continue to share their wisdom to help illuminate the path for future generations.

I am also finishing up my memoir, titled *The Woolworth Story 1960-1969*, which I am planning to publish next year.

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Q You represent the legacy of W.E.B. Du Bois a prominent Black historical figure, and I know you have met many celebrities and famous people, who stands out as the most memorable?

A I'm unable to list them all, but I've met a lot of wonderful people in my life and I've had many memorable occasions.

On December 22, 1999, I was pleased to join President Bill Clinton and Hillary Clinton at the White House Holiday Reception. I was also very impressed with meeting Secretary of State Madeleine Albright and David Dinkins, the former mayor of New York City, at that same White House holiday party.

It was a delight to meet Cyril Magnin, CEO of the Joseph Magnin Company, in San Francisco. We spent time together in his office during 1980 in mentoring sessions on fashion merchandising.

On June 19, 1981, a day I will never forget, I had the pleasure of having dinner with Frank Sinatra in San Francisco. Our dinner party included Frank Sinatra, Rich Little and Jerri Lange. Jerri was an award-winning journalist, producer and host of several TV shows in the Bay Area from 1969 to 1979. She was the mother of Ted Lange who played the bartender, Isaac Washington, on the popular TV series "Love Boat." Frank and I developed a bond that night.

During the summer of 1988, I had the privilege of meeting with the United States Ambassador to Czechoslovakia, Shirley Temple Black, in her office in Prague, Czechoslovakia. This was while that country was still under communist rule. As a little boy I had always enjoyed watching Shirley Temple movies, but having a personal one-on-one conversation with her was certainly a highlight. She had been an ambassador to Ghana and although their paths never crossed in Africa, she knew and spoke very highly of W.E.B. Du Bois, and talked about the honorary doctorate degree he received from Charles University in Prague.

Of course, I'll never forget my time spent working with Sol Price, the founder of Price Club (Costco Warehouse Stores), who I consider the greatest retail merchant of the 20th century. And, I must mention David Andrew Graham Jr. (Uncle David), the brother-in-law of W.E.B. Du Bois, who was my uncle, mentor and best friend.

Q Over the last year during the COVID shutdown, what have you learned to do differently? What is one new change that you will stick with when everything opens up again?

California has reopened, and things are quickly getting back to normal. I think the isolation of being in such a long lockdown brought everyone including me closer to family, friends and neighbors. During the shutdown, my lovely girlfriend Cecilia and I spent time each week hiking and picnicking

in the mountains. We plan to continue that routine. Although my heart goes out to our many relatives and friends who have fallen during the COVID-19 virus, the technology that developed as a result of the pandemic was a momentous advance, and will have lasting effects on the way business is conducted. I express my gratitude to all the first responders, front line medical workers, those who worked in the laboratories, grocery stores, and other essential jobs to keep things moving throughout our nation's shutdown. 🌐

"You and I can never be satisfied with sitting down before a great human problem and saying nothing can be done. We must do something. That is the reason we are on Earth."

— W. E. B. Du Bois [1909]



Odell and Cecilia at Bao Dai Summer Palace, Da Lat, Vietnam



Odell in Hue City, Vietnam

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DRE Broker Office Survey

The Special Investigators from the DRE (especially those in the Mortgage Loan Activities Section) are conducting more and more Broker Office Surveys (generally by phone at this time due to continuing COVID protocols). It seems I am getting calls at least once a week from a mortgage/private money broker who has had a call, e-mail or letter from the DRE requesting an appointment for the Survey. Whatever you do, DO NOT ignore the communication from the DRE, regardless of the form it takes. You are required to reply and to cooperate with the Special Investigator during this call/visit. Depending on the Special Investigator and the scope of your business activities, these Surveys can take from less than an hour to over three hours. Whether it is on the lower or higher side of the time taken sometimes depends on your answers and/or the Special Investigator him/herself. They have a set of questions that they must ask and will be either entering your answers directly into their computerized form or will be writing down the answers to type in later.

The Survey starts out by asking you (the Broker of Record) for general information

about your company. This includes questions about the business activities of the company (e.g. Conventional Loans, Private Money Loans, Real Estate Listings/Sales, Property Management, and/or Broker Controlled Escrow). They confirm the office address, any branch offices, any fictitious business names, and if you are a corporation, whether you are in good standing with the Secretary of State. The Special Investigator will go over your list of licensed agents (Salespersons or Broker-Associates) and will request a copy of their contracts/commission agreements. (Note: If your company is a corporation, it is important to check whether all of your agents, including the Broker-Associates, are showing up on your DRE database for your corporation and none are under your personal Broker license. Also, make sure you have contracts and commission agreements with ALL licensees under your license, whether or not they are simply clerical personnel or family members. If they have a license and it hangs under your corporate/company license, they MUST have a contract, regardless of their job description or family affiliation.)

There will be many questions regarding Trust Accounts (and perhaps requests for copies of bank statements, signature cards and reconciliations, depending on the Special Investigator). Right now is a very good time to do a self-audit of your Trust Accounts before you get the call (a word to the wise!).

Quite a bit of time is spent going over Broker Supervision. This is of prime importance to the DRE and the Special Investigators and they are very serious about the requirements necessary for a broker to demonstrate that he or she is supervising the activities of the company, the employees and the licensees.

The following areas are discussed in-depth (and you had best be prepared with the answers):

- Do you have an established file review system?
- What steps do you take if errors are found in files?
- Where are the files maintained?

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- How are the files protected (locked cabinets or computer password)?
- How available is the broker to the agents?
- How often is the broker in the office/branch?
- How far does the broker live from the office/branch in miles?
- How often are meetings held between the broker and licensees?
- How much training is provided by the broker?
- Is this training documented?
- What are the topics covered in the training?
- How does the broker communicate with his/her licensees?
- Who interviews new employees/licensees?
- Do you employ a manager at the main or branch office?
- Have you filed the forms with the DRE to add a division or branch manager?
- Do you have a specific management agreement with division or branch managers?
- Who pays the office rent and other expenses?
- Do you have the required Policy and Procedures Manual in writing?
- Do you have an established policy for monitoring your policies and procedures?
- Explain your policy for monitoring your policies and procedures.
- How do you monitor renewals for your licensed agents?
- Do you and your agents understand the requirements and laws for Fair Housing/Fair Lending?

- How do you make sure that your agents understand the requirements?
- Explain the requirements for Fair Housing/Fair Lending (yes, this is the TEST part of the Survey!).
- Do you have the Fair Housing/Fair Lending laws covered in your Compliance Manual?
- What is your destruction policy for documents/files?
- Do you keep your files for at least three (3) years?
- Do you retain certain documents in private money files that are required to be retained for four (4) years? Do you know what documents require the extra year retention?

The Special Investigator will request that you send him/her certain documents (such as copies of loan or real estate transaction files, trust account information, contracts, etc.) and will give you from several days to several weeks to provide the requested items. They will either choose the files from closed transaction logs that you send to him/her or will ask you to pick files at random (anywhere from 3-10 files has been my experience).

The outcome of the Broker Office Survey can be a letter thanking you for your cooperation, a referral to the Audit Section for an audit, a cite and fine invoice for hundreds or thousands of dollars, or an accusation. These are not to be taken lightly and you should be prepared well before you receive the notification that you are chosen for the Survey! 📧

Pam Strickland of California Compliance Consulting spends all of her time helping California DRE brokers prepare for and survive audits and office surveys. You can reach her at pam@pamstrickland.com.

of thousands of new homes are being built for the current demand. Many of you remember how many developments were only partially complete when the last downturns occurred.

Also, remember that foreclosures have been held in abeyance by the GSEs and government loans since March 2020. They will continue to hold off until March 31 and June 30 respectively, perhaps longer. But they cannot hold off forever. The market will eventually need to march forward.

This message is not here to “flatten your roller coaster ride” but written simply to caution the young and the very ambitious to review the increase of value in your particular area that you are lending. When you get your current appraisal, think about what that home was probably worth a scant six months ago and what you would have loaned then. I urge you to talk to the members who have been in business since before 2005 and see what they would have done differently from 2005 to 2007 if anything. What saved them and their business. No one has a crystal ball and this writer is not here to discourage the writing of loans but just to remind the members to be cautious. This is a livelihood that you plan on being in for many years to come. Riding up the roller coaster is so exciting; it is the little dips that give us a reminder of what could be and what to be ready for. 📧

Save the Dates:

—Fall Seminar—
October 13-15, 2021
ARIA Resort & Casino, Las Vegas

—Spring Seminar—
March 30 - April 1, 2022
Hyatt Regency, Newport Beach

—Summer Seminar—
July 28-29, 2022
Mission Bay Resort, San Diego



"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.

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.

PLACING YOUR AD

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

Name of Company/Organization Being Advertised: _____

Billing Contact: _____ Billing Address: _____

Phone: _____ Fax: _____ E-mail: _____

Agency or Advertising Representative (if different from above): _____

Phone: _____ Fax: _____ E-mail: _____

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

Phone: _____ Fax: _____ E-mail: _____

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

| | | |
|----------------------------|----------------------|-------------------------------|
| _____ Fall '21 | _____ Winter '21-'22 | _____ Spring '22 |
| Material Deadlines: | 8/13/21 | 11/12/21 2/4/22 |

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.

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



www.californiamortgageassociation.org
Now showing on a small screen near you....

The California Mortgage Association has a wealth of valuable information available to you at www.californiamortgageassociation.org, including an up-to-date Calendar of Events, online meeting registration, Member, Lender, and Vendor directories, archives of important and timely industry news as well as back issues of **POINTS OF INTEREST magazine, and a Members-Only section.**

Log on today.





California Mortgage Association

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