



POINTS OF INTEREST

Summer 2022

A Publication of the California Mortgage Association

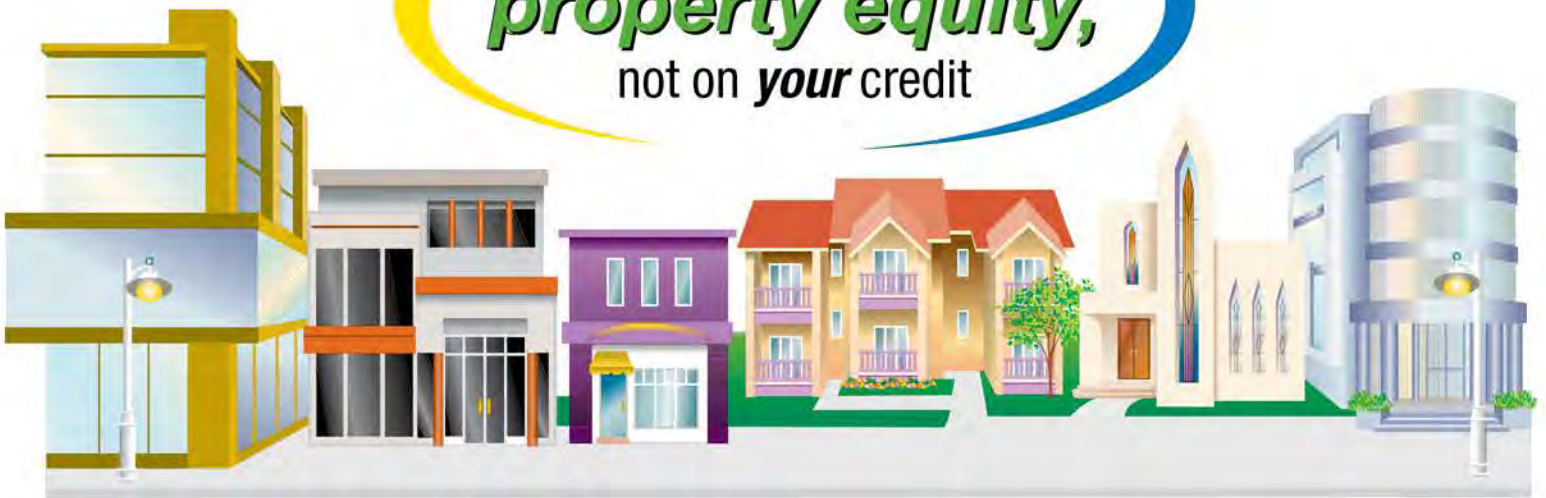


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POINTS OF INTEREST is published by the **California Mortgage Association**, a voluntary trade association serving California mortgage and trust deed brokers and lenders.

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FROM THE PRESIDENT



Elizabeth M. Knight
2021-2022 CMA President

This is my last missive as President of the California Mortgage Association. Today, there is not a quote for you to ponder, just my farewell as President. It is with mixed emotions that I leave office. I shall miss the position but know that I can continue to work for the CMA behind the scenes.

During these two years of my presidency, so much has happened statewide and globally. This platform is not to bring in the global event of the Ukraine conflict, but I did not want to minimize it by not mentioning it and how it will continue to affect the world. COVID, of course, one of the most world-changing events in decades that continues to affect our lives, our families, and our businesses. Dealing with this illness and its fallout that it created has made people change in many ways.

As to the professional changes, it brought about re-analysis of peoples' professional and personal life directions; implementation of virtual conferences, increase of webinars, new methods created to continue to maintain a business, new ways to communicate with clients and effective ways for organizations to work with their members. And let's not forget to mention Zoom and the other types of communication methods which allowed us to see and talk with many others just like

they had shown us in futuristic versions of the world when we were kids. Who knew we would acclimate so quickly and keep life moving forward?

As to CMA during this time, the Board of Directors had listened to its membership and changes have been made to keep members engaged and informed: now that we are meeting in person again, the number of conferences held per year have changed, more webinars have been performed and will continue on a regular basis, and a new committee has been formed to improve the networking quality. The distribution and quality of our written materials such as our newsletter and the interim written materials are more substantial than ever.

Although I will be the "past president," there are changes which have been requested by members that I will continue to work on with the new president. These changes include making changes to the Lender Purchase Disclosure to include an appraisal waiver section, the 10% rule disclosure and type of security being utilized. An additional change would be to eliminate or modify the onerous MLDS885 as well. Some of these are legislative changes and some are approval of change by the Department of Real Estate.

It has been my honor and privilege to serve the members of the California Mortgage Association and to work closely with all of the strong, smart, innovative Board members, committee chairs and our management company, CAMS. As President, although I appreciate everyone who works diligently for CMA and the membership, I do get the luxury of giving a very special thank you to Michelle Rodriguez, Committee Chair of Education, Teresa Excinia, our Executive Director and Mayumi Bowers, our Editor of *Points of Interest*.

I look forward to seeing you all at the next seminar and seeing who will be the next to join the committees and make future changes to CMA, keeping CMA and our industry relevant. Remember, together we are strong, smart, capable, brave, fluid, honorable, and can keep this industry as an integral piece of credit arranging. Thank you for allowing me to give my service. 🌐





FROM THE EDITOR

Mayumi Bowers
Editor, POINTS OF INTEREST

Sometimes I feel like I am living in an alternate universe. Between the pandemic, crazy housing market, inflation, rising interest rates and high gas prices, it can make a person feel like the world is going to hell in a hand basket. Until you realize that this has all happened before (even the pandemic). Everything happens in cycles, some much longer than others.

When I realize that similar events like these have all happened in the past, the next thing that I do is look to see what was done to get through it in the past. We tend to forget history and thus repeat the same mistakes. We just need to remind ourselves of the lessons learned. The articles in this edition are reminders of a couple of those prior events and some basic lessons that we should not forget. 🌐

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SACRAMENTO SUMMARY

By Michael D. Belote, Esq.
CMA Legislative Advocate

Foreclosure “Reform” Stays Alive

The calendar may say that 2022 is only half over, but in “legislative time” the year is rapidly coming to a close. The California Senate and Assembly take the month of July off for summer recess, returning on August 1 for one final month of bedlam. The state constitution requires the legislature to adjourn by midnight, August 31, after which Governor Newsom will have September to wade through the many hundreds of bills to reach his desk.

In the spirit of David Letterman (a somewhat archaic cultural reference, to be sure) this column is dedicated to the Top 10 bills of interest to CMA this year, from tenth to first, with special emphasis on Number 1. So without further adieu:

10.SB 1176 (Limon): Community Reinvestment Act. Requires the Department of Financial Protection and Innovation to study whether nonbank lenders are meeting the credit needs of underserved communities as compared with depository institutions already subject to the Community Reinvestment Act. Pending hearing in the Assembly Banking Committee.

9. AB 561 (Ting): ADU Financing. Requires the state Treasurer to establish the “Help Homeowners Add New Housing Program” to provide participating lenders protection against defaults in ADU lending. Pending hearing in the Senate Banking and Finance Committee.

8. AB 2001 (Grayson): CFL Remote Work. Allows a finance lender or MLO to designate an employee to work at another location, such as home, despite current law which prohibits employees from working at other than the licensed location. Pending hearing in the Senate Banking, and Judiciary, committees.

7. AB 1093 (Jones-Sawyer): Remote Online Notarization. Would make California the fortieth state to permit remote online notarization (“RON”). The bill continues to generate controversy over the extent to which out-of-state RONs will be recognized in California, among other unresolved issues. Passage is uncertain for 2022. Pending hearing in the Senate Judiciary Committee.

6. AB 2170 (Grayson): First Look Program. Creates requirements for sale of REO property similar to the federal First Look Program. At the request of CMA and others, the bill is limited to larger financial institutions, which annually foreclose on 175 or more properties. Pending hearing in the Senate Judiciary Committee.

5. AB 1837 (Bonta): SB 1079 Clean-Up. Continues the refinement of the SB 1079 process which was enacted several years ago and permits certain individuals and entities to place bids on properties after the trustee’s sale. Amendments this year focus on preventing bids from fraudulent

nonprofit entities. Pending hearing in the Senate Judiciary Committee.

4. AB 2710 (Kalra): Would have imposed complicated first right of refusal standards on the post-foreclosure sale of properties inhabited by tenants, including just cause eviction. CMA was opposed. DEAD.

3. SB 975 (Min): Coerced Debt. Would permit a debtor to bring an action alleging that debts were incurred as a result of coercion or duress. If the court found that by a preponderance of the evidence that the allegation was true, the debtor would be relieved of the debt, with uncertain impacts on collateral. At the request of CMA and others, the bill was amended to exclude real property secured debt. Pending hearing in the Assembly Judiciary Committee.

2. AB 1771 (Ward): Capital Gains Taxes. Would impose an additional capital gains tax of 25% on rental properties held for less than three years, declining to zero after 7 years. The bill is designed to discourage the flipping of residential properties. CMA and a host of other organizations were opposed to this well-intentioned but counterproductive measure. DEAD.

1. SB 1323 (Archuleta): Foreclosures. Would massively modify California’s nonjudicial foreclosure statutes. During

continued on page 30



BACK TO BASICS:

How I Read a Commercial Appraisal



Angelica Gardner
Asher Evan
Investments

A Commercial Appraisal is only as good as its logic. Therefore, it is important to READ the entire appraisal. I will say that again, READ the entire appraisal. You must read it in order understand the logic and methodology used by the appraiser which leads to the concluded value. You should never accept an appraisal's conclusion without making some reasonable determination as to the quality of the logic used.

Over the last 17 years, I have read well over 1,000 commercial appraisals. I typically order Narrative Summary Appraisals which range from 80 to 300 pages. I have read excellent appraisals, terrible appraisals, and appraisals which I believed were excellent, but later discovered had underlying factors I was not aware of until years later. An appraisal is just one person's value on a specific day. You could hire three appraisers, have each of them complete a report as of the same day, and you would get three different values. That is why you must understand how the appraiser calculated the value, why they calculated it in that manner, and if it was a logical conclusion.

Here are the ten steps I take when reading a commercial appraisal:

1 Quick Review – This is where you are reviewing the licensing and qualifications to make sure a qualified appraiser was engaged. You should also be looking to see if the appraiser completed the property inspection and authored the report. I have often received reports where the MAI appraiser signed off on the report, but a different appraiser completed the inspection. You should then look at the effective date of the appraisal. Is it recent?

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If it is a few months old, have there been any changes to the area which may have affected the value? If the appraisal is more than 6 months old, you may not want to use it. Ninety-eight percent of the time I require a new appraisal ordered by my company so that we may vet the appraiser. However, there are times I have accepted an appraisal ordered outside of my company. If that is the case, I also look at to whom the appraisal is addressed. If it is the borrower, I will not accept it. If it is the broker, I may accept, but I would have to know the full situation. If it is for another lender, I am more willing to accept it, if it turns out to be a good report.

2 Familiarity with the Property –

When you first get an appraisal start the review by familiarizing yourself with the property. What is being appraised? Is it a building or is there land involved? Is the property located in a desirable area? Is it rural? Once you have a basic understanding of this, next look at the improvement descriptions where you can learn more about the property (i.e., What is the size, acreage, building condition? What is the zoning?) It is a good idea to pull up an aerial view of the property and look around. Does the aerial view match the descriptions of the property and area? Then switch to ground view and look at the subject property and neighboring properties. This is a good way to make sure everything “makes sense.”

3 Study Photos – Once you are familiar with the property, it’s a good time to go directly to the pictures included in the appraisal. It is important to have color pictures. Better yet, having an electronic copy of the appraisal is great to zoom in on the pictures. Here, you are verifying the pictures represent what is described within the report. For example, if the report is stating the subject property is leased, but has pictures of vacant units, this is a red flag that should trigger some questions. Next, review the pictures of the comparable properties to make sure that the comparisons used are similar to the subject property. Are they the same class of building? Are they in the same/

similar condition as the subject? If you note obvious differences, it will be important to carefully study the comparison matrix within the report, paying attention to adjustments used.

4 Check for “Subject To” Items or Conditions –

While reading the report, pay close attention to any “subject to” items. Typically, this is within the first few pages of the appraisal. However, it may not be in the beginning of the report, but instead at the end. If the value is subject to conditions, you need to make sure those conditions can be met. For example, if the value is subject to certain additions or improvements, then you should make sure that there is a plan for those additions as well as funds for those additions?

5 Check for Extraordinary Assumptions –

Like “subject to” items, extraordinary assumptions are especially important. I once reviewed an appraisal on land in San Diego. The appraisal had an extraordinary assumption that the zoning on the land would change from a wildlife protected area to residential. The appraiser valued the land as if a developer would be able to build forty-five residential properties. But the land was currently a wildlife protected area and had been since the 1980’s. The appraiser reasoned the only thing needed was a vote by the city residents to change the zoning, despite the repeated unfavorable attempts to do this over the last 20 years. But this time it was going to happen. Yeah, right!

6 Methods Utilized for Valuing Subject Property –

It is my opinion that the sale comparison approach is the most important method and should be the one given the most weight in valuing the subject property. The market value approach of a property only considers what others might be willing to pay for the property. Looking at comparison sales of comparable properties, is the best estimate of a property’s value. It is also good to have a cost approach and an income approach included in the report. This allows for the opportunity to compare all three values

and develop a full understanding and potential of the property.

7 Ages of Comparisons, Sales, and Listings –

Be sure to pay attention to the ages of the comparisons provided within the report. If all the comparisons were sold recently, then I would feel good about them. If there was a comparison included that was over, say, nine months, then go to the comparison matrix and make a quick note if there was an adjustment for age. When looking at the ages of comparisons, pay close attention to the type of comparison provided. Are all the comparisons sales? Are there any listings? If there are multiple listings and only a few sales, then there could be a problem with the report that would trigger questions for the appraiser and would be time to study appraisal and determine the adjustments made. Just because someone lists a property for a specific price, does not make it fact that the property value is the list price. I have had appraisals in which all comparisons were listings and many of the listings were over a year old. Unfortunately, this is something I tend to run into more often on Special-use properties, or rural properties.

8 Comparison Matrix –

I spend the most time studying the Comparison Matrix. Here, you can see the subject property details compared to the comparison property details. Paying close attention to the adjustments made by the appraiser, study each adjustment and see if they make sense. Look at the size of the adjustment, the number of adjustments and look to see if the appraisal includes written details of the adjustments made. There should be a logical reason for each adjustment to make sense. If not, there is a problem.

9 Reconciliation of Approaches –

Now it is time to look at the final value provided for each of the methods included in the appraisal. You should consider the value given for the Sale Comparison approach, then the value for the Cost approach and finally the Income

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approach. I look for the appraisers' details on how they weighted the values. What I want to see is that most weight goes to the sale comparison approach. I want to see the appraiser's methodology of his reconciliation to be sure that I agree with the final value, and I can fully explain the reasoning behind the value.

10 Clarification and Finalization – At this point you have now read and studied the entire appraisal. Typically, you will have multiple questions for the appraiser. I call the appraiser with any questions or clarifications. There have been times I did not feel good about the appraiser's explanations, or the methodology used in the appraisal. If that is the case, I will simply disregard the appraisal. Most of the time I get the answers that I needed to be comfortable. The appraiser usually appreciates the feedback and questions, and I know that I can feel good about relying on the appraisal and the value provided.

Most of us who are reading appraisals for underwriting purposes have a procedure to follow when analyzing an appraisal report. Over the years, I have adjusted some of my practices based on prior experiences or changes in the industry. While there are many ways to read and interpret appraisals, these steps I am sharing with you today are what I have found to be the most helpful.

Note: While this article discusses the steps I use to read and analyze an appraisal, it is particularly important that the selection of the appraiser was correct. I believe using MAI appraisers is best. However, there are times when I cannot find one and must use another appraiser without the MAI designation. Always make sure the appraiser has a valid license, has experience in the property type and has had no prior relationship with the borrower.

Warren Buffett went further and said cyberattacks are the number one problem with mankind. Not that I necessarily agree

with him on that, but I think it plays well to highlight the importance of the subject at hand! 📌



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The Payoff Scam Is Back!



Jennifer A. Brady, Esq.
Wright, Finlay & Zak, LLP



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

We've seen this before. You are a lender, the year is circa 2008, and a borrower takes out a loan from you to purchase their new dream property. It's a beautiful multimillion dollar home listed for sale by the current owner. The sale closes and your borrower begins making payments. The loan is current, and things are great, until they aren't. Out of the blue you are served with a new lawsuit, the prior lender is foreclosing on the property – turns out the prior loan was not actually paid off by the prior owner.

What Happened, and as the New Lender What Do You Do?

Perhaps it was all an innocent mistake, but alternatively, the prior owner defrauded the prior lender. The payoff scam used to be a common occurrence in years ago and we are seeing an increase in cases again.

In short, a borrower lists their property for sale and makes several, sometimes up to 5-6 months of payments at once, and then requests a payoff statement. The payoff is generated, taking into account those payments. The property is sold, the borrower tenders the full payoff amount per the statement, and the new purchaser

believes he/she is purchasing the property free and clear. However, unbeknownst to the prior lender, those final payments tendered by the former borrower prior to the payoff statement being generated were not good funds. Sometimes they are NSF, other times they are counterfeit cashier's checks. Those payments bounce and the prior lender goes after the outstanding funds not properly accounted for in the payoff statement.

What is the Remedy?

In California, if you are the new lender, you are in the clear. In the event you find the prior lender foreclosing on the property which secures your lien, simply tender a claim to your insurance carrier. They should send a letter to the prior lender/servicer saying, not so fast!

If you are the prior lender, things are much more difficult. You cannot foreclose – depending on the state, recovery may be limited to an unsecured obligation pursuant to the terms of the Note. For example, California Civil Code Section 2943(d)(3) limits a lender's option for recovering on monies that were not included in the payoff demand, to an

unsecured claim against the prior borrower. In other words, the prior lender cannot go after the property! In cases where the funds not included in the payoff statement is a large amount and the former borrower has assets, it is likely cost effective to file suit and seek an equitable lien against the property. *Ghirardo v. Antonioli*, (1996) 14 Cal.4th 39, 50-5. However, it is on a case-by-case basis and merely locating the former borrower may prove to not be cost effective.

As the Prior Lender, How Do You Protect Yourself?

Under California law, you have 21 days from the date of the request to provide a payoff statement to the beneficiary, or his or her assignees. That payoff statement shall be in writing and include the necessary information to calculate the payoff for a period of time, not to exceed 30 days. Civil Code 2943. Often times, especially when a loan is in foreclosure, additional fees, such as foreclosure fees and costs have to be requested from foreclosure counsel, which increases the work to be performed and eats into the 21 days.

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Scam – continued from page 10

These payoff scams are successful because the borrower intentionally makes the numerous payments made very close to when a payoff is requested, using that short window to their advantage. You should be cognizant of all payments coming in during that window and ensure the payments have cleared before generating the payoff statement. If you don't, any amounts still owed are an unsecured obligation and you are often left with little recourse to recoup those missing funds.

If you have any questions regarding this article, please do not hesitate to contact Jennifer Brady at jbrady@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. 🌐

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What Happens When Your Borrower and/or Investor Dies?



Dylan Recht
Lerman Law
Partners



Jeffrey H. Lerman
Lerman Law
Partners

The aging Boomer generation and COVID, are “propelling the nation toward a milestone: A historic increase in number of deaths every year,” according to the U.S. Census Bureau¹. In fact “As the nation’s baby boom cohort ages (the youngest are 53 this year), the number and percentage of people who die will increase dramatically every year, peaking in 2055 before leveling off gradually”¹ and this prediction does not include deaths from COVID. It is therefore imperative that mortgage professionals understand, now more than ever, what happens when your borrower and/or investor dies.

Treatment of Mortgages at the Death of an Investor or Borrower

When a borrower or investor dies, anxiety can be felt among a wide array of people - family members, business partners, lenders, and co-signors; all of these individuals may worry about the impact of the death on mortgages secured by real estate. Luckily, federal law allows the assumption of a mortgage after the death of a borrower or investor in many circumstances. Even if a mortgage contains a “due on sale” clause, the Garn-St. Germain Depository Institution Act of 1982 often prohibits enforcement of the “due on sale” clause after the death of a borrower. Particularly, “due on sale” clauses cannot be enforced when the secured property is received as inheritance by parents, children, or other relatives through a trust, probate estate administration, or joint title. The parties inheriting the property must continue to make payments on the loan. Also, there

are federal regulations in place that extend the protection of federal law to individuals who qualify as a “successor in interest” of a deceased original borrower. If an investor dies, the right to receive payment can pass to the investor’s successors in interest.

However, without proper estate planning, there is a strong possibility the death of a borrower or investor will result in probate court administration of the deceased individual’s estate. A probate court estate administration might result in substantial delay in access to funds that would be needed to make payments on an assumed mortgage. One way to ensure immediate access to funds that would allow a deceased borrower’s family to continue payments on a mortgage is to keep a small joint account or “pay on death” account with a family member who would assume a mortgage in the event of a borrower’s death. However, this does not cover the possibility that the joint account holder or pay on death beneficiary also dies. The best coverage is provided by a living trust: during a borrower’s incapacity or after the borrower’s death, a well-funded living trust would allow immediate access to a Trustee, who could continue to make payments on a mortgage.

Further, if an investor dies without a living trust as a California resident, the right to receive income from a mortgage would pass through probate court administration. A probate court administration takes at minimum 4 months, but ordinarily takes more than a year to complete due to heavily burdened probate court calendars,

limited court staffing, and backlog. All investors should have a full estate plan, including a living trust as the centerpiece of the plan. A living trust avoids probate in California, and can save time and expense. Probate court administration attorneys are compensated based on the value of the assets of the estate, whereas post-death trust administration is often billed at attorneys’ hourly rates.

However, a living trust does not provide asset protection during life or after the death of the investor. Investors should consider forming an LLC to hold their assets that may expose them to liability, and own their LLC membership interests as trustees of their living trust to avoid a probate court administration of the LLC membership interests. An LLC is not a replacement for a properly funded living trust: having an LLC owned in an investor’s individual name does not avoid probate court administration, even if the LLC operating agreement outlines succession of the deceased investor’s interest.

If you have any questions about this topic, please contact the authors below. 📞

Endnote

¹ Source: <https://www.census.gov/library/stories/2017/10/aging-boomers-deaths.html> (emphasis added)

Dylan Recht, Estate Planning Attorney, Partner, Lerman Law Partners and Jeffrey H. Lerman, Real Estate Attorney, Co-Founder of Lerman Law Partners (realestateinvestorlaw.com).



SUMMER CONFERENCE 2022 SAN DIEGO

July 27 - 29, 2022

San Diego Mission Bay Resort | San Diego



Register Online at www.CaliforniaMortgageAssociation.com

GENERAL INFORMATION

LOCATION:

The CMA Summer Conference will be held July 27-29, 2022 at the San Diego Mission Bay Resort, located at 1775 E. Mission Bay Drive. For room reservations, call the hotel at (619) 677-1161. Ask for the "CMA 2022 Summer Conference" rate. Room rate is \$275 per night Single/Double through June 28, 2022 or until sold out. Resort fee is \$10 + tax per night. Daily self-parking is \$15/day.

SEMINAR FEES:

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

	Registration received on or before July 14, 2022	Registration received from July 15, 2022 to date of seminar
CMA Member	\$495	\$595
Additional Attendee Same Company	\$395	\$495
Non-Member	\$695	\$795
Registration Total	\$ _____	\$ _____
PAC Raffle Tickets (voluntary; \$20 or more)	\$ _____	\$ _____
TOTAL ENCLOSED	\$ _____	\$ _____

REFUND POLICY:

Cancellations received in writing on or before July 14, 2022 will receive a credit toward a future conference. Cancellations received in writing on or after July 15, 2022 will not receive a credit or refund.

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MISCELLANEOUS:

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This activity is approved for Minimum Continuing Legal Education Credit by the State Bar of California in the amount of 4.5 hours. The CMA certifies that this activity conforms to the standards for approved education activities prescribed by the MCLE Rules of the State Bar of California.



July 27 - 29, 2022

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CMA SUMMER CONFERENCE 2022 SAN DIEGO

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6:30 pm – 8:30 pm

Wednesday Night Mixer

Jump-start your seminar experience in style and have a blast with your friends!

Join your colleagues at the Garden by the Bay in the hotel for cocktails and appetizers on Wednesday evening. Enjoy beautiful San Diego, catch up with your peers and start networking early!



Thursday, July 28, 2022

7:30 am – 8:30 am

7:30 am – 5:00 pm

8:00 am – 10:00 am

10:00 am – 6:00 pm

Continental Breakfast

Seminar Registration

Exhibitor Set-up

Exhibitor Fair Open

8:30 am – 10:00 am

Private Money Reverse Mortgages: New “DealSource” Serving the Equity-Rich (MCLE General 1.5)

Dennis Doss, Esq., Manager, Doss Law, LLP | Ken Thayer, President, Residential First Mortgage |

MODERATOR: Joffrey Long, President, Southwest Bancorp

Here’s a GROUNDBREAKING and potentially huge source of loans. Hundreds of millions in equity with potentially good borrowers – they can’t get a “traditional” reverse mortgage. Not only living, medical, and family expenses, but many higher net worth homeowners need funds to avoid liquidating other investments.

It can be done! Dennis and Ken are already doing these and they’re willing to share the basics with you. Joffrey will ask the questions about marketing, underwriting, documenting, selling to investors, and servicing this bold new source of transactions. This area is only growing, so don’t miss this.

10:00 am – 10:30 am

Networking Break

10:30 am – 12:00 pm

Avoiding Agency Traps: Workable Solutions for Your Business Model (MCLE General 1.5)

Joffrey Long, President, Southwest Bancorp | Lori Randich, President, Bay Laurel Financial

Even smart people wind up in **avoidable** agency traps, sometimes several! Some problems or disputes get worse – due to agency problems. It’s amazing how easily some agency problems could have been avoided. Joffrey and Lori’s recent CMA Webinar received a lot of “call-backs” for more information and requests from others who missed the webinar.

They’ll explain in clear language how to fix existing forms and procedures or, if needed, what to consider in having new forms created. You’ll find out how to manage agency under different business models, and you’ll walk away with useable steps to take.

12:00 pm – 1:30 pm

Installation Luncheon

with Keynote Speaker: Commissioner Doug McCauley, CA Department of Real Estate (DRE)

1:30 pm – 3:00 pm

Fund vs. Fractional Debate

FRACTIONAL TEAM: Sandy MacDougall, President & Founder, Mortgage Vintage, Inc. | Ken Thayer, President, Residential First Mortgage

FUND TEAM: Dane Valadao, Chief Operating Officer, ReProp Financial | Brock VandenBerg, President, TaliMar Financial |

MODERATOR: Mayumi Bowers, Chief Operating Officer, Mortgage Vintage, Inc.

Come One, Come All to CMA’s First Ever Debate! The lively, fun, educational and entertaining Fund vs. Fractional Debate will explore the Benefits and Pitfalls of each of these Trust Deed Originating methods. Learn how and why a Mortgage Fund or a Fractional Trust Deed Investment would work best for you and your private money business model. See you there!



CMA
SUMMER CONFERENCE
2022
SAN DIEGO

July 27 - 29, 2022

San Diego Mission Bay Resort | San Diego

Thursday, July 28, 2022

3:00 pm – 3:30 pm

Networking Break

3:30 pm – 5:00 pm

CMA Game Show: Let's Make a Deal!

EMCEE: Dave Herzer, President, Herzer Financial | **CO-HOST: Rich Wachter, President, Wachter Investments**

This fast-action program offers CMA's first ever game show – 'Let's Make a Deal!' Contestants will compete with one another to beat the clock, 'win' the loan, and defend their reasoning. Lots of opportunity for audience input. Test your wits against some of CMA's most savvy decision-makers. Hosted by our very own Dave Herzer, with Rich Wachter providing color commentary, the pace will be fast and the action frenetic. Join the fun and see how you'd stack up against your colleagues! Submit a loan scenario of your own that was on the edge of approval and see what CMA's best would have done!

5:00 pm – 6:30 pm

Cocktail Reception

Friday, July 29, 2022

7:30 am – 8:30 am

Continental Breakfast in Exhibitor Area

7:30 am – 12:00 pm

Registration

7:30 am – 12:00 pm

Exhibitor Fair Open

9:00 am – 10:00 am

SPEED Networking – The Art of Advanced Deal Making!

MODERATOR: Randy Newman, CEO, Total Lender Solutions, Inc. Randy Newman, CEO, Total Lender Solutions, Inc.

Yes, we all LOVE Speed Networking! Why? Because it's fun!! Meet tons of new people. Find out something you didn't know about your friends and acquaintances. Give your own elevator speech. All in about 5 minutes, and then you move on to the next person. It's Super networking, super-fast! And don't forget to bring **tons of business cards**. You're going to need them!

10:00 am – 10:30 am

Networking Break

10:30 am – 12:00 pm

Lending in a Rising Interest Rate Environment (MCLE General 1.5)

Shafiq Taymuree, Executive Vice, President, Stonecrest | **Robert Austin, President, Crawford Real Estate Services, Inc.** | **Ramsey Kassih, Vice President, Corevest**

MODERATOR: Bradley Laddusaw, CPA, CFO, S&L Capital Group

Inflation, Rates, and Market uncertainty are on the rise. Has this had an effect on the capital stacks available to real estate investors? We will be breaking down investor (Trust Deed, Fund, and Institutional) expectations vs. borrower demands, analyzing behavioral finance and emotional biases present in the current market, what red flags to look out for, and discussing where our panelists see opportunities going forward. Is there a pendulum swinging? You won't want to miss the information we get out of our panelists when we put them in the hot seat.

12:00 pm

Seminar Concludes



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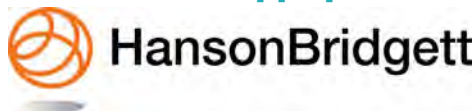
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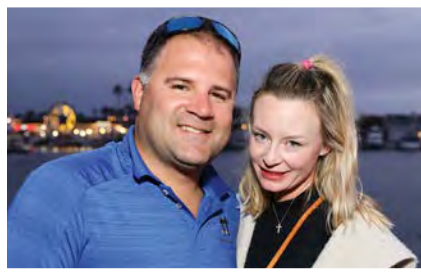
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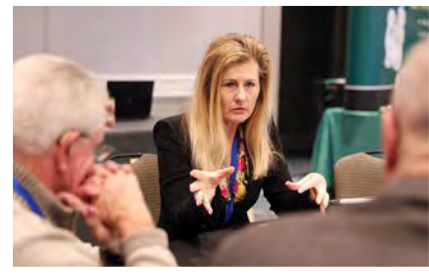
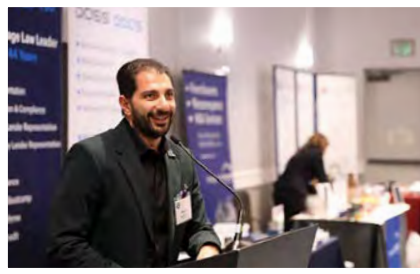
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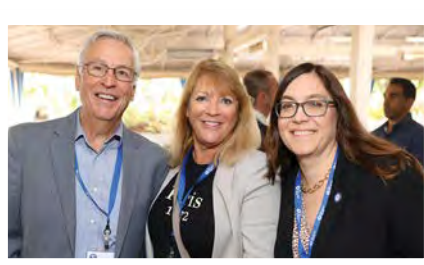
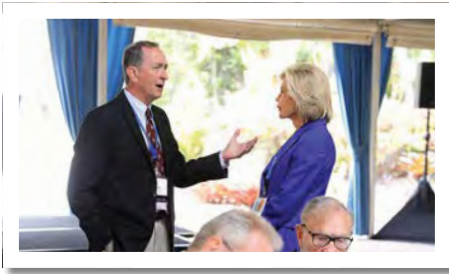
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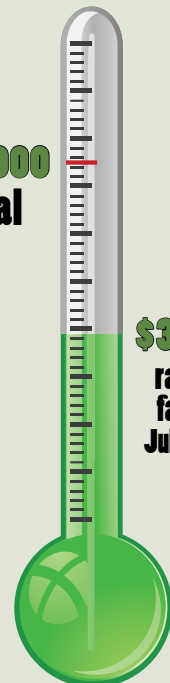
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For more information contact:

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

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

**\$75,000
Goal**



**\$39,695
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Have you heard of the new CMA Learning Lab? This educational series provides the most up-to-date information effecting the mortgage industry. Here is a peek at past programming your CMA education team has been working on. All programs are accessible to CMA members at no cost in the webinar archive here: <https://californiamortgageassociation.org/members/index.php>

You can view all upcoming Learning Lab programming on our website under [Events](#).
Not a member of CMA and want access to this member exclusive content? [JOIN NOW](#).

CALIFORNIA MORTGAGE ASSOCIATION

WEBINAR

Collections and Servicing: New Regulations Already in Effect!

JANUARY 20, 2022
11am - 12pm

Collections and Servicing: New Regulations Already in Effect

(Presented: January 20, 2022)

Loan servicing rules have recently changed in California and you need to be aware of what the Fair Debt Collection Practices Act (FDCPA) and the Rosenthal Act now are. Recent clarifications to these laws mean that private lenders who service consumer loans are likely covered under the Rosenthal Act, which pulls them into many portions of the FDCPA. Are you servicing legacy consumer loans? It is likely that the much of the FDCPA applies to you. Or, are you outsourcing your servicing? If so, do you know if your servicer is properly following these rules? Join highly regarded experts, Michelle Mierzwa and Randy Newman, as they take you through these laws and their recent changes.

FOR MORE INFORMATION CONTACT:

Michelle A. Mierzwa, Esq. | Partner -Wright Finlay & Zak, LLP | mmierzwa@wrightlegal.net
Randy Newman | President - Total Lender Solutions | randy@tlsemails.com

CALIFORNIA MORTGAGE ASSOCIATION

WEBINAR

Accounting Practices for the Private Mortgage Lender

MARCH 1, 2022
11am - 12:15pm

Accounting Practices for the Private Mortgage Lender

(Presented: March 1, 2022)

Gather your accounting and bookkeeping personnel together for this lively webinar on Accounting for the Private Lender. Top accountants, Jeff Spiegel, Derrick Foote and Bryan Vencill will share their tips on accounting practices - both basic and advanced, all geared for private lending operations. Among the discussion items will be how your business model affects your financial statement, internal controls, regulatory reporting requirements, and trust accounting. Special attention will be paid to the tax treatment of various servicing situations, such as loan modifications and REO. Moderated by Dick Selzer, CMA Treasurer, this fast-paced program will provide you with a broad overview of how this very important back-office function should be run. The webinar format allows your staff to participate. Miss this program at your peril!

FOR MORE INFORMATION CONTACT:

Dick Selzer | Owner, Selzer Realty | rselzer@selzerrealty.com
Jeff Spiegel | Principal, Spiegel Accountancy Corp. | jeff@spiegel.cpa
Derrick Foote | Principal, Duner and Foote | derrickfoote@dunercpa.com
Bryan Vencill | Audit Partner, Armanino | bryan.vencill@amllp.com



Why Are Your Competitors Lending on 1031 Exchanges?

(Presented: April 12, 2022)

"I'd rather not defer my capital gains taxes," said no one ever. How to successfully trade into a new investment property while deferring the capital gains tax is knowledge that every real estate professional should have. Ruth Benjamin of National 1031 Exchange Services is an expert in this field. She will guide you through the how's and why's of 1031 exchanges and share some of the pitfalls to avoid when attempting these exchanges. One small mistake can cost thousands of dollars to the unfortunate investor. Plus, industry consultant Lori Randich will give you some tips when lending on reverse exchanges, a great niche product for private lenders. Don't miss this CMA Learning Lab program! You'll increase your real estate knowledge and find new ways to do business at the same time.



WEBINAR

Why Are Your Competitors Lending on 1031 Exchanges?

APRIL 12, 2022
11am - 12:15pm

FOR MORE INFORMATION CONTACT:

Ruth Benjamin | General Manager, National 1031 Exchange Services | ruth@the1031center.com
Lori A. Randich | Bay Laurel Financial | lori@redwoodmortgage.com



Webinar Plus - Virtual Town Hall - Legal and Regulatory Updates, Illegal Racial Covenants, and Appraisal Disclosure Law

(Presented: May 18, 2022)

Virtual Town Hall - Legal & Regulatory Updates: Things are always changing in Sacramento, with new laws continually being proposed that affect private lenders, their investors and borrowers. Join CMA's General Counsel, Robert Finlay, and CMA's long time legislative advocate, Mike Belote, as they discuss this year's legislative session and how it will impact private lending, servicing, and foreclosure in California. Keep up with the new laws and regulations and learn what CMA has done to represent your interests in Sacramento.



WEBINAR

Webinar Plus - Virtual Town Hall - Legal and Regulatory Updates, Illegal Racial Covenants, and Appraisal Disclosure Law

MAY 18, 2022
2pm - 5pm

FOR MORE INFORMATION CONTACT:

Michael Belote, Esq. | Legislative Advocate | California Advocates, Inc. | mbelote@caladvocates.com
T. Robert Finlay, Esq. | Legal Counsel | Wright, Finlay & Zak, LLP | rfinlay@wrightlegal.net

Illegal Racial Covenants and Appraisal Disclosure Law: Learn about the new rules regarding illegal racial covenants and a new appraisal disclosure, how they affect you, and ideas for dealing with these new laws.

FOR MORE INFORMATION CONTACT:

Jennifer Felten, Esq. | Principal and Founder | RELAW, APC | jennifer@relawapc.com
Christopher J. Donovan, Esq. | Partner | Doss Law | chris@dossllaw.com
Moderated By: Michelle Rodriguez, Esq. | Woodland Hills Mortgage | michelle@woodlandhillsmtg.com



Avoiding Agency Traps - 5 Simple Steps to Take

(Presented: June 14, 2022)

Agency: Standards are very different if you're someone's agent - even if you didn't plan to be! You'd be surprised at the smart people who fall into this mess. Don't let an opposing party get the upper hand through your avoidable mistake - find out simple steps you can take to avoid "unwanted agency" and related problems.



WEBINAR

Avoiding Agency Traps - 5 Simple Steps to Take

JUNE 14, 2022
11am - 12:15pm

Invest 59 minutes in this. Joffrey will moderate a fast-moving session with Attorney Mike King of Hennelly and Grossfeld. Mike knows private money lending well and Joffrey will ask the right questions. You'll get "implementable" steps you can take to avoid that "sloppy agency mess."

FOR MORE INFORMATION CONTACT:

Joffrey Long | Southwest Bancorp | info@asksw.com
Michael G. King | Hennelly & Grossfeld LLP | mking@hgla.com



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MEMBER SPOTLIGHT:

Bob Spier

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 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 Bob Spier. Bob is a principal partner at Mortgage Care LOAN SERVICING SOFT, Inc. (MCLSS) located in San Juan Capistrano, CA. MCLSS has been providing Loan Servicing software since 1988. Bob has been a CMA member since the early 90s (pre-merger). He currently serves as the Technology Committee Chair. If you have attended the CMA seminars, you would know that Bob has been a frequent exhibitor, along with company's coveted "Care Bear." He is a long-standing member who truly deserves to be recognized for his hard work and commitment to the association.



Angelica Gardner
Asher Evan Investments

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

A Yes and no.

I grew up in the west Texas town of El Paso – near the not-so-mighty Rio Grande. I graduated from college in 1978 with a business degree. I immediately put that degree to work waiting tables and being a beach bum in San Diego. That was great fun until I had to pay rent. I soon moved back to El Paso and through some contacts, got a job as a stockbroker at Dean Witter. Earning a Series 7 SEC license at age 23 was a great experience and could have been a wonderful career path, but back then, you

were expected to cold call investors all day and sell the brokerage's IPO of the week. I wasn't cut out for that.

In the meantime, I fixed up an old house and sold it for a profit making more money than I did as a broker. This is great, I thought! I'll move to Salt Lake City, fix-and-flip some properties, and ski the rest of the time. Then interest rates hit 18%. In 1982, to supplement my non-existent income, I got a job at a little computer store (pre IBM PC). They mostly sold Apple IIs and Commodore consoles. But I became fascinated with the early PC business products. I saw a lot of potential there.

This knowledge got me a job at one of the many struggling Savings and Loans that

was buried in foreclosures and REOs. They were tracking hundreds of repossessed properties all over the state on paper ledgers. It was a disaster. I ended up automating the department on a first-generation IBM PC. Like many S&Ls at the time, they ended up going under. I learned a lot about risk and recessions from this experience.

In the late 1980s, I moved to the Bay Area where I got my MBA as I worked as a loan officer, then again at a computer store. Business customers were hungry for vertical software packages that either didn't exist or were designed for very expensive antiquated hardware. I picked

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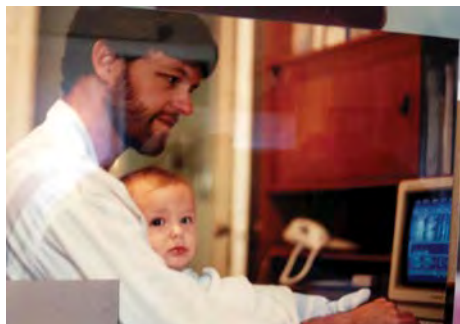
up database programming on my own and took on some projects.

I had a gentleman approach me to create a private-money, loan-servicing program. He had rounded up five hard-money lenders that would each put up \$2,500 to develop the program. Well, it turned out he spent most of the money on himself and didn't pay me. So, I was stuck finishing the project for free and supporting the five clients. Some of them are still using my software today!

So, yes, the path took me right where I was supposed to go!

Q That's interesting. What was it like back then?

A I'm going to sound like that old guy in the rocking chair sitting on the front porch: The kids that work for us today have no idea what this business was like 30+ years ago. Compiling the program took about 20 minutes. You would print out code, look for bugs, and do it over and over into the night. Then during the day, you grabbed your floppy disks, jumped in the car, and visited clients to install the updates and train new clients. Meanwhile, your expensive pager was going off like crazy and you found a phone booth to check in (waa, waa, waa). Taking on a Southern California client was a major ordeal. "Portable PCs" the size of sewing machines were not very portable back then.



Eventually, I brought on coders and in 1990 I met Greg Luna at an early pre-CMA meeting in Lake Tahoe. He was selling a competitor's product and wanted to jump ship. We joined forces and he took over marketing until his death in 2010.

Q What did you do after that?

A After Greg's passing, I met Jeff Tremaine at a CMA event. He had years of experience in the industry and was connected to the most brilliant programmer I've ever met – John Balas. Eventually we all became partners and have been moving to a much more sophisticated .NET Microsoft SQL platform.

The support and sales crew works out of the office in San Juan Capistrano. I work from my home office in the Sierra Foothills. I still code and manage projects, but I've cut back my hours. It's wonderful!

Q Who is your ideal/target customer?

A Private lenders and fund managers. In other words – CMA members! We're currently releasing a new product designed for large funds and smaller banks. It will be interesting scaling up to this larger market. We're very excited.

Q What sets your company apart from others?

A Well, besides decades of experience, we pride ourselves at being very flexible. We realize our clients want customizations, and we are happy to do that for them. As a hard money investor myself, and user of the software, I'm always seeing ways to simplify the workflow. We're also cheaper than the other guys and have a wonderful, friendly support staff.

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

A I have a 32-year-old son, Everett, with my first wife, who passed. Everett is married to Rachelle and they live nearby. I've been married for 20 years to a wonderful woman, Nan (she did not make me write that). We also have two rescue dogs – Pickles and Gizmo.



I've always loved the outdoors. I've been a skier since I was 12 years old and have been whitewater kayaking for over 40 years. Living near Lake Tahoe makes this easy. I can sneak away on powder days and when the rivers come up (don't tell anybody). We also used to go windsurfing every year in Maui, but this old body can't take that anymore.



Ten years ago, Nan and I discovered Pickleball when it first appeared in our area. It's a ridiculously addictive sport. We now play several times a week. The golf clubs and road bike are not happy.



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California Compliance Consulting

Setting Up a Trust Account Correctly

For those of you who have read this column over the years, you know that I keep harping on trust accounts and for those of you who have been through DRE audits or special investigations, you know why. Brokers make mistakes in setting up trust accounts all the time and no amount of education seems to keep this from happening. In the last few months, I have helped with audits for experienced, solid brokers/companies where they still had issues and violations with trust accounts. I just want to go over some of these audit findings and ask that you self-audit your company practices before you, too, get a violation and possibly an accusation.

First of all, you must choose the right bank. There are more banks that do not offer Real Estate Broker Trust Accounts than there are banks that do offer them. Oh, the retail side of the bank will tell you that they can set you up in a trust account (I'm looking at you Wells Fargo!), but they have no idea how to configure the account correctly. And, there are banks that will tell you to just file a dba with the words "trust account" in the name and they will title the account that way and it will be a trust account (ahem, Chase

Bank), but this is NOT a trust account and would never meet the requirements. I don't recommend any bank over another, but I do know that some of the best banks that do understand TRUE trust accounts and offer them to their Real Estate customers are Enterprise Bank (formerly Seacoast Bank), City National Bank, Citizen's Business Bank, and First Republic Bank. There are others who do offer these types of accounts, but they are few and far between. Drop me an e-mail at pam@pamstrickland.com if you are unsure if your account is truly a trust account and I'll help you sort it out. Do not wait until you are undergoing an audit before you make sure that this important item is in compliance.

Next you must make sure the account is correctly titled. The words "trust account" or "trustee" must appear with the corporation or regularly used dba name in the account title. No variation of the words "trust account" or "trustee" can be used in the account title. Brokers are cited by the DRE if these words aren't completely spelled out in the title. For example, I've seen violations cited in audits if TTSE, ITF, or TRST are used, to name a few examples of incorrect abbreviations that

banks sometimes use. Again, if you have any questions about how your accounts are titled, let me know and I'll help you get the right titling.

Another important part of the puzzle concerns who the signers are on the account. The broker of record (designated officer if a corporation) MUST be a signer on any trust account. Other signers can be any licensed broker-associate or salesperson licensed to the broker/corporation with a signed authorization allowing them to sign on the account. An unlicensed employee of the broker/corporation can sign with the appropriate bonding/insurance and written authorization. Be extremely careful if you have an unlicensed signer, as the type and amount of the bond/insurance is important and must meet the DRE regulations. Also, I have recently seen citations where investors or outside brokers sign on the trust account and that is strictly forbidden. And, if your licensed or unlicensed signers leave your company, don't forget to remove them from the trust account signature card as soon as possible. Get a copy of the signature card from your

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bank and see where you stand on signers and sign a new card if any corrections are needed.

In future columns I will cover accounting issues in more detail, but for now you should work on making sure that the titling and signers on your account are correct. The DRE is serious about these items being in compliance. 🗓



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Q Tell us what else you're working on outside of the mortgage industry?

A I LOVE the private equity industry. I put my extra cash into deals and am happy with the results. But I've watched the business go through several dramatic cycles, so I'm cautious.

I also LOVE technology. I don't play computer games. Developing software is my computer game. I own and have developed dozens of random websites. Mostly just fun, silly stuff. I enjoy learning new computer languages and applying them. Weird, I know.

Q Do you have any advice for fellow CMA Members?

A As head of the tech committee, I'm always worried about Internet security. It keeps me up at night. Find a good advisor and do your best to keep your network secure. Ransomware sucks. I'm always happy to help if you need it.

Also try to embrace new technology. It's always better to surf the front of the wave rather than the back.

Oh – and get some good loan origination /servicing software! 🗓



Sacramento Summary

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the pendency of the foreclosure, the bill requires trustees to obtain an independent appraisal of the property. If the appraisal shows that the trustor has at least 10% equity, taking into account all liens and encumbrances, the bill would require the trustee to select a "realtor" to list the property, accept offers and sell the property, without the involvement of the trustor. If offers are not received at the list price, the bills requires the trustee to gradually reduce the price, which could significantly lengthen the foreclosure process. Proponents argue that the current nonjudicial foreclosure process systematically strips homeowners of equity, necessitating this change. A large coalition of real estate groups are opposed, including banks, mortgage banks, the title insurance industry, and CMA are opposed. As this column is written, proponents are drafting amendments to respond to the opposition, but they seem committed to creating an "equity sale" process to run concurrently with the existing nonjudicial foreclosure process. Pending hearing in the Assembly Judiciary Committee.

Taken together, this TOP 10 list shows that a number of bills opposed by CMA are either dead or have been amended to eliminate concerns, but a good deal of work remains, especially relating to SB 1323.

On to September! 🗓





WELCOME NEW MEMBERS



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

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

Please remember to share information about the Focus Groups that are provided to members only. Additional information can be found on the CMA website. There are many exciting educational programs being planned and the Summer Conference in San Diego in July, 2022 is the next program being offered.

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

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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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