POINTS OF INTEREST

Spring 2023

A Publication of the California Mortgage Association

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INSIDE THIS ISSUE

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

Shafiq Taymuree
2022-2023 CMA President

I'd like to begin my first message as President of the California Mortgage Association by saying that I am honored to serve such a great organization. CMA has endured its share of challenges in the last few years as the world has grappled with a pandemic and the slow return to "normal." But for organizations as well as individuals, adversity comes with a silver lining: it teaches us about ourselves. So, it's a good time to reflect on CMA, who we are, and how that will help us with challenges to come.

My own CMA membership has proven time and again to be an invaluable asset, especially in times of economic disruption. Many of the best practices in effect at Stonecrest Financial are a direct result of access to CMA, its members, and resources that were available when it mattered the most. It's always been clear to me that CMA's value extends beyond the fantastic networking opportunities we all enjoy at our conferences. CMA goes much further, which is what makes it exceptional. In my role as President, I see it as my responsibility to preserve and promote the culture that has created such value. That culture, in my mind, is exemplified by three guiding principles that set CMA apart.

The first of those principles is industry leadership. We are an aspirational group, always hungry to be on the leading edge of know-how in our industry. We are blessed with many thought leaders and innovators among our membership, and a spirit of shared information enables all of our members to stay current on new initiatives, new trends, or innovations that affect our industry.

The second guiding principle is education. We have built and maintained a knowledge base that is second to none. This has enabled many CMA members to improve their expertise and elevate their careers.

Finally, the third principle, is we are an advocacy group. We stay ahead of the curve on legal and regulatory issues affecting our industry. The political leadership in California often needs our expertise and perspective to avoid making laws that unintentionally hurt lenders and borrowers. At those critical times, CMA makes its voice heard in Sacramento.

And what do all of these principles share in common? They are all enabled by a culture that defines CMA: a desire to lift and empower our colleagues. It is a spirit of collaboration, the open sharing of ideas, and the knowledge that helping each of us helps all of us. It is what makes CMA something special, and it lays the foundation for our growth going forward.

And in the spirit of growth, I'd like to ask one thing of each of you: identify one person in your network that would fit our culture and would benefit from membership. Then encourage that person to consider joining CMA. If we all commit to that, we can significantly grow our membership and continue to build value for all of us.

I look forward to working with all of you to maintain the spirit of CMA and elevate it where possible. Thank you for being a member, and please join me in thanking all the industry pros who volunteer their time to make CMA what it is today.

FROM THE EDITOR

Mayumi Bowers
Editor, POINTS OF INTEREST

I feel like we have hit the ground running with 2023. New rules, laws, regulations, the economy, rising interest, etc. Things that you had to do before, now you don't have to do. Things that you thought you didn't need to do anymore, now you are required to do. I feel like I am getting whiplash trying to keep up with all of it. So, this year we hope to keep you up-to-speed on all of the changes and what they will mean for you. In this edition, we have an article in the dreaded HMDA that is back. I look forward to bringing you helpful information in this upcoming year.

DID YOU KNOW? Did You Know we have a CMA logo available for members to use? It can be found in the member services section of the site.

Save the Dates:

— Spring Conference —
March 8-10, 2023
Hyatt Regency, Newport Beach

— Fall Conference —
September 28-29, 2023
Mission Bay Resort, San Diego

SACRAMENTO SUMMARY

By Michael D. Belote, Esq.
CMA Legislative Advocate

The More Things Change

The 2023-2024 two-year session of the California Legislature began on December 5, following the November 2022 general elections. In some very important respects, the new session is emblematic of the old adage that the more things change, the more they stay the same. As legal briefs say, "to wit":

Turnover: The combination of term limits and good old-fashioned pandemic burnout have resulted in significant turnover in both the Assembly and Senate. For perhaps the first time ever, a number of legislators who could have run again in November under the state's term limits law, elected not to seek reelection, instead returning to their districts and their previous occupations. Some of these legislators held positions important to CMA, including Mark Stone from Santa Cruz, who had served as Chair of the very influential Assembly Judiciary Committee.

When the election dust settled, 31 of the 120 members of the combined Assembly and Senate are brand-new to the legislative process. Interestingly, in 2024 another one-third of the members will be termed out of office. This means that by January 1, 2025, nearly two-thirds of the entire legislature will be brand-new or nearly-new. Why does this matter? Because that means that CMA must educate over 70 newcomers about the unique role that CMA members play in real estate lending. These members may have a perception that all loans come from banks or well-known mortgage banks.

Democratic Supermajorities: Going into the November general elections, the ratio of Democrats to Republicans in the 80-member Assembly was 61 Democrats, 18 Republicans and one independent. The ratio in the 40 member Senate was 31 Democrats to 9 Republicans. After the elections, the new ratios are 62 Democrats and 18 Republicans for a supermajority of 77.5%; in the Senate Democrats increased their supermajorities to 32-8, for a 80% rate. Why does this matter? Because two-thirds votes are required to raise taxes, place initiatives on the ballot, and override gubernatorial vetos. Two-thirds is 54 votes in the Assembly and 27 in the Senate, so Democrats are quite comfortably over the two-thirds requirements.

More broadly, enormous supermajorities make it far more difficult to defeat bad legislation. Most bills require simple majority votes, 41 in the Assembly and 21 in the Senate. To defeat a Democrat's bill in the Assembly, we must convince at least 22 Democrats to turn their backs on their Democratic colleagues, whose votes they will need to pass their own bills. Most lobbyists agree that better policy is made when ratios are closer and compromise is required.

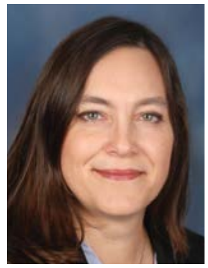
Surfeit of Bills: The California Legislature is nothing less than a bill factory. Every year approximately 2500 new bills are introduced, covering every imaginable issue affecting our state. Each bill, and every amendment to each bill, must be read for possible impact on CMA members. Inevitably dozens are identified for our association, on such diverse subjects as loan regulation, licensing, taxes, foreclosure, taxes, and more. In a fast-moving legislative environment, finding these bills can be a little like looking for needles in haystacks, and missing something important can have severe consequences.

With the deadline for introduction of new bills is set for February 17, we will soon know what is in store for this legislative year. Almost certainly one or more bills will be introduced relating to remote online notarization, however, following up on repeated unsuccessful bills from the past.

Also, we anticipate that one or more bills will be introduce in the area of foreclosures. Last year SB 1323 proposed a quite radical reform of nonjudicial foreclosures, requiring trustees to list and sell properties in default without the involvement of the actual owner. CMA participated in a very large coalition opposed to the bill, which died in the Assembly very late in the legislative year. An agreement was reached on the outlines of a compromise for 2023, which would delay residential foreclosures in the owner has listed the property for sale, and delay again if the house is in contract for sale. It is the hope and expectation of CMA and other coalition partners that the compromise will be enacted this year, but given the large number of new legislators, nothing is ever assured.

What is assured is that important issues will be raised, and CMA will be at the table.

It May Be Time to Dust Off Your HMDA Compliance



Michelle R. Rodriguez, Esq.
Wright Finlay & Zak LLP

On September 23rd, the U.S. District Court for the District of Columbia partially invalidated the Consumer Financial Protection Bureau ("CFPB")'s 2020 amendment to the Home Mortgage Disclosure Act ("HMDA") rules which raised the threshold for financial institutions (including private mortgage lenders and brokers) originating closed-end residential loans from 25 non-excluded loans in the past two calendar years to 100 non-excluded loans in the past two calendar years. In response, the CFPB released a technical amendment of the HMDA rules to vacate the 2020 amendment which raised the HMDA threshold to 100 closed end loans, so that the threshold is effectively lowered back to 25 loans.

Financial institutions that have been exempt from HMDA for the past year and a half will have to dust off their HMDA compliance programs and start tracking and reporting non-excluded residential loans to the CFPB annually.

What Is HMDA?

HMDA is the law the requires financial institutions who have a home or branch office in a metropolitan statistical area and who meet certain origination thresholds for loans secured by dwellings, to track and report numerous data points to the CFPB every March 1st. In 2020, the CFPB raised the thresholds. For closed-end loans, the threshold went from 25 non-excluded loan in the preceding two calendar years, to 100 non-excluded loan in the preceding two calendar years. For open-end loans, the threshold went from 100 non-excluded loan in the preceding two calendar years, to 200 non-excluded loan in the preceding two calendar years. Not all business purpose loans are exempt. Lender or brokers that originated fewer than 100 closed end loans, and fewer than

continued on page 8

200 open- end loans secured by residential property were not covered under HMDA, and did not have to track and report data to the CFPB.

What Did the Court Case Change?

The U.S. District court invalidated the 2020 amendment to the regulation which raised the threshold for closed-end loans. It left the threshold for open-end loans intact. If the holding stands, it will lower the threshold for closed-end loans back to 25 loans secured by residential structure in the previous two calendar years.

What Was the Case About?

The case, *National Community Reinvestment Coalition v. CFPB*, was filed by some consumer advocacy groups along with the City of Toledo, Ohio to challenge the CFPB's 2020 amendment that raised the HMDA loan thresholds. The plaintiffs claimed that by raising the threshold and therefore excluding what they characterized as a large number of lenders from the HMDA data, it thwarted their efforts to police the lending industry for fair lending violations, especially on a local and institutional level. They challenged the 2020 rule on the grounds that it was arbitrary and capricious, contrary to law, and contrary to the Bureau's authority under the Administrative Procedures Act. The court basically agreed with the plaintiffs that the rule increasing the threshold for closed-end loans was arbitrary and capricious, stating, "CFPB's compliance with the statutory directions in conducting the requisite analysis of the "benefits" of increasing the closed-end loan volume reporting threshold and the concomitant "costs" falls so short as to render this aspect of the 2020 Rule arbitrary and capricious." The court didn't find the same issues with the open-end loan threshold, and left the 200 open-end loan threshold in place.

The CFPB's Response.

The CFPB posted a blog post in December 2022 indicating that the court case meant that the HMDA loan thresholds were now lowered back to the 25 closed-end loans. The CFPB also released a technical amendment of the HMDA rules to vacate the 2020 amendment which raised the HMDA threshold to 100 closed-end loans, so that the threshold is effectively lowered back to 25 loans to align the HMDA regulations with the case holding. The technical amendment states that financial institutions that met the 25 closed-end loan threshold but not the 100 closed-end loan threshold in 2020 & 2021, can, but are not required, to submit a HMDA report in 2023 for their 2022 loans. But financial institutions that met the 25 loan threshold in 2021 and 2022 will have to collect HMDA data for 2023 and report to the CFPB by March 1, 2024.

What does it mean for lenders?

For lenders and originating brokers, they may once again fall within the 25 loan threshold of a "financial institution" under HMDA, and will need to start tracking and reporting over 40 data points each year for:

1. Applications for covered loans it receives during the year;
2. Covered loans that it originates during the year; and
3. Covered loans that it purchases during the year.

Covered loans are loans secured by dwelling. A dwelling is a residential structure whether or not attached to real property, including condos, manufactured homes, and multifamily residential structures, with some exceptions. Here are some of the more common exceptions:

1. Land loans
2. Ag loans
3. Temporary loans
4. The purchase of a partial interest in a loan
5. The purchase of a pool of loans
6. The purchase solely of servicing rights in a loan
7. Business purpose loans made for a purpose *other than* home improvement, home purchase, or refinance.

What can you do?

Financial institutions should review their originations for 2021 and 2022, to determine if they exceed the 25 residential closed-end loan threshold in those two years, and are ready to collect and report HMDA data in March, 2024. Institutions who let their legal entity identifier (LEI) number lapse with the GMEI utility or other similar service should renew it in anticipation of reporting in March 2024.

If you need help figuring out if you will be covered under HMDA, or need help with HMDA compliance – WFZ has attorneys on staff to help you with your compliance needs.

Endnotes

1 *Nat'l Cmty. Reinvestment Coal. v. Consumer Fin. Prot. Bureau*, 2022 U.S. Dist. LEXIS 174183, 2022 WL 4447293 (D.D.C. September 23, 2022)

2 12 CFR 1026.5

3 12 CFR 1026.2(g)

4 12 CFR 1026.2(g)(2)

5 12 CFR 1026.3(c)

Why Use a Certified Appellate Specialist?

Horses of a Different Color

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

Jonathan D. Fink
Wright, Finlay & Zak, LLP

The old adage cautions against changing horses in mid-stream. So why should a litigant consider hiring a new attorney to handle the appeal? And why should that new attorney be an appellate specialist?

The answer to the first question is that, on appeal, you are no longer crossing the same river, but rather a completely different, deeper and (potentially) more treacherous body of water. One in which the original attorney might be out of his or her depth and unaware of how best to navigate to find the right trail. The decision to switch is easiest when you are the appellant: For some reason, the original attorney lost the case below. This might be for reasons having nothing to do with the original attorney's competence, such as bad facts or a bad judge; nonetheless, a fresh perspective might be very useful in deciding where the case veered off course and sank, and whether and how that wreck might best be salvaged. Conversely, the original "horse" might be wearing blinders when it comes to the critical evaluation of why the case was lost.

As for the second question, while any licensed attorney admitted to the appellate court can handle an appeal, an appellate specialist has undergone more rigorous testing, has been recommended by persons familiar with the specialist's appellate work, has more stringent continuing legal education requirements focused on appeals, and likely has more extensive experience in handling appeals – and, thus, is probably more familiar with the appellate judges who will be deciding the case and any quirks or preferences they might have. In fact, in California, fewer than 350 attorneys are certified appellate specialists.

Appellate specialists can also be useful to assist the unsuccessful litigant and trial counsel before any appeal is filed. For example, in deciding whether certain post-trial motions should or must be brought to raise or preserve issues for an appeal, to ensure that a proper record is designated, and a timely and proper appeal notice and case information statement and/or designation of issues (where required by the court) is filed. The appellate specialist can also help determine whether an appeal is in the appellant's best interests, both from an economic and practical point of view.

Even if you were successful in the court below, though, an appellate specialist is worth considering. The skill sets employed by the trial lawyer and the appellate lawyer are different. The former tends to focus more on investigating and presenting facts and (if the case has survived to trial) is largely dependent on a sometimes-lengthy oral presentation to the judge and/or jury. The latter is primarily concerned with legal issues and, while a relatively short – rarely more than 15 minutes per side – oral argument is often a component (and can sometimes tip the balance), appeals are usually won or lost on the briefs. While there are definite potential cost and time savings in using the same attorney for the appeal that handled the trial, proper appellate presentation does not consist of simply recycling the arguments raised below; it involves a thorough review of what did and did not work before, fresh research to see what might have been missed and what might have changed since the judgment was issued. Of course, the appellate specialist can also be useful as a consultant and editor even if the trial attorney is the one taking the laboring oar on appeal. Lastly, and often very

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Certified Appellate Specialist – *continued from page 9*

importantly, an appellate specialist often knows where an amicus curie brief may be helpful and which groups may be interested in weighing in on your side.

So Why Retain an Appellate Specialist? It's Just Horse Sense.

Wright, Finlay & Zak, LLP is one of the few mortgage firms with a Certified Appellate Specialist, Jonathan Fink. There are fewer than 350 California Certified Appellate Specialists in California. To achieve this prestigious designation, Jonathan had to pass a thorough examination on his knowledge of appellate issues and had to have handled at least seven oral arguments and prepared a significant number of appellate briefs prior to applying. To maintain his certification, Jonathan is required to take at least 25 additional hours of appellate CLE during each period. If you find yourself involved with an important appeal, either based on the risk or the issues involved, please feel free to reach out to Robert Finlay at *rfinlay@wrightlegal.net* and Jonathan Fink at *jfink@wrightlegal.net*. Jonathan will review your appeal, provide a second opinion, or handle the appellate briefing.

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.

Register Online at *www.CaliforniaMortgageAssociation.com*

GENERAL INFORMATION

LOCATION:

The CMA Spring Seminar will be held March 8-10, 2023 at the Hyatt Regency Newport Beach, located at 1107 Jamboree Road, Newport Beach, CA 92660. For room reservations, call the hotel at (949) 729-1234. Ask for the "CMA 2023 Spring Conference" rate. (Room rate is $239 + $10 resort fee per night Single/Double) through February 7, 2023 or until sold out.

SEMINAR FEES:

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

	Registration received on or before February 23, 2023	Registration received from February 24, 2023 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 February 23, 2023 will receive a credit toward a future seminar. Cancellations received in writing on or after February 23, 2023 will not receive a credit or refund.

CMA DISCLAIMER STATEMENT:

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

PHOTO/VIDEO DISCLAIMER:

By registering for and attending this conference, you agree that your image may be taken during the conference and used at any time, without further notification, for printed materials, websites, social media and other marketing purposes.

MISCELLANEOUS:

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

MCLE INFORMATION:

This activity is approved for Minimum Continuing Legal Education Credit by the State Bar of California in the amount of nine 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.

Wednesday, March 8, 2023

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

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

Join your colleagues at the Newport Beach Country Club for cocktails and appetizers on Wednesday evening. Enjoy beautiful Newport Beach, catch up with your peers and start networking early!

Sponsored by CrowdTrustDeed, Excelerate Capital, Residential First Capital, National Equity Funding, PrideCo

Thursday, March 9, 2023

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

8:30 am – 10:00 am **Broker/Expert Round Tables**

Moderated by Pam Sosa, President, Standard Mortgage Financial Services, Inc.

What if you could "run that one question" by a panel of industry experts? What if you could hear what questions OTHER top broker/lenders in your field are asking? YOU CAN! It's called CMA Broker Roundtables. And it gives you a chance to sit at a table -where EVERYONE speaks "your language." You can't miss this.

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

10:30 am – 12:00 pm **Commercial Real Estate in 2023: Where Are We Headed?**

Moderated by Lori Randich, Principal, Bay Laurel Financial

A little nervous? – We all should be. There's so much stagnation in commercial markets right now, it's hard to know where things stand. Asset classes, local markets, and transaction types? Which ones might hold up better and which ones are stumbling? What strategies help us write safer loans? What about transaction volumes and leasing activity? Banks and "straight-laced" lenders are pulling out – good for our business volume, but what about the risk? Lori Randich will moderate as you get ideas and answers from our panel of industry experts! Walk away with the tools and information you need to keep your head above water.

12:00 pm – 1:30 pm **Luncheon**

1:30 pm – 3:00 pm **Cyber Security: Best Practices Survival Guide**

Joseph JD Hold, Cybersecurity & Data Privacy Advisor, Akin Gump Strauss Hauer & Feld LLP | Joe Hold, Chief Revenue Officer, Fortanix | Bob Spier, Partner, Loan Servicing SOFT | Moderated by Sandy McDougall, President & Founder, Mortgage Vintage, Inc.

The essence of Cyber Security is Data. This panel, including a Senior C level executive in the Cyber Security industry, a Cyber Security and Data Privacy Attorney, and a Loan Origination System (LOS) provider, will review what Cyber Security is, how to protect yourself, your company, and the associated borrower and investor data. Joe and JD Hold will discuss Cyber Security best practices at some of the largest companies in the world. CMA's own Bob Spier will be enlightening the audience with technologies, processes, and simple steps for what to do before, during, and after an attack. Special emphasis will be placed on how these same principles can be applied to your life and business.

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

Thursday, March 9, 2023

3:30 pm – 5:00 pm

Loan Modifications and Workouts – Are You Using Your Sharpest Tools in the Toolbox?
Elizabeth Knight, President, PLM Family of Companies |
Michelle R. Rodriguez, Esq., Senior Compliance Counsel, Wright Finlay & Zak LLP

The economy and real estate markets are changing! When loans become "challenges," workouts and modifications can save loans and avoid costly problems.

Don't make a mistake by using the wrong documentation or by missing a critical factor. Remember there are also opportunities to fix and "fine tune" other aspects of the loan while you're working through your toolbox.

And let's not ignore the negotiation side of modifying a loan. Backing yourself up with superior knowledge puts you in the driver's seat for working out the details with borrowers and others.

With Michelle and Liz, you'll get the benefit of the hundreds of loan mods and workouts they've done over the years, and their perspectives as a loan servicer and a broker/attorney.

5:00 pm – 6:30 pm

Cocktail Reception **Sponsored by** S.B.S. TRUST DEED NETWORK INC.1978 FAMILY OWNED & OPERATED SINCE 1978 | EXCELERATE CAPITAL

Friday, March 10, 2023

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**

8:30 am – 10:00 am

Town Hall: Legislative and Regulatory Update
Mike Belote, Esq., CMA Legislative Advocate | **Robert Finlay, Esq., CMA General Counsel**

What are the legislators up to in Sacramento? Find out at the Legislative Townhall with CMA's General Counsel, Robert Finlay, and CMA's long time legislative advocate, Mike Belote. They will cover some of the major California legislation affecting our industry, as well as the political climate up at the State Capitol. Keep up with the new laws and regulations and learn what CMA has done to represent your interests in Sacramento.

10:00 am – 10:30 am

Networking Break

10:30 am – 12:00 pm

Keynote Session with Dr. Christopher Thornberg
Dr. Christopher Thornberg, Beacon Economics

A perennial favorite with CMA members, Dr. Christopher Thornberg of Beacon Economics is a rare combination of wit and economic expertise. Having forecast the subprime crash that began in 2007, Dr. Thornberg is a recognized national expert on the economy. Always a lively and engaging speaker, Dr. Thornberg is an expert in economic revenue forecasting, regional economics, economic policy, labor markets and real estate markets. Expect a fast-moving, entertaining discussion of the state of today's markets and where we may be heading.

12:00 pm

Conference Ends

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Banner Ad on CMA Website	12 Months	9 Months	6 Months
Social Media Posts	2 posts (per seminar)	1 post (per seminar)	1 post (per Seminar)
Seminar Registration Vouchers	4 registrations	2 registrations	1 registration
Listing on Seminar Website	✔	✔	✔
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Please contact Teresa Excinia at teresa@camgmt.com if you would like to discuss other sponsorship opportunities.

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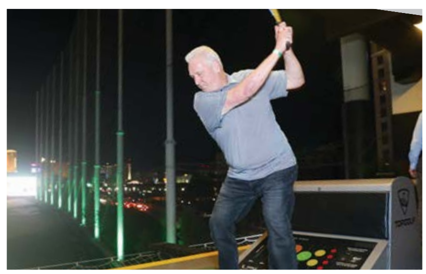
PICTURES FROM THE FALL CONFERENCE









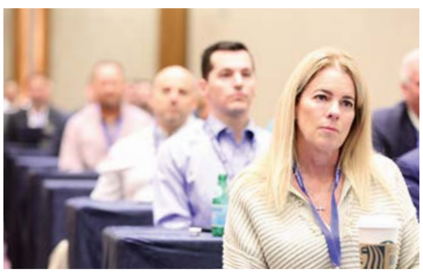



PICTURES FROM THE FALL CONFERENCE

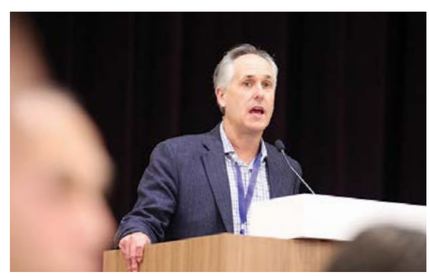


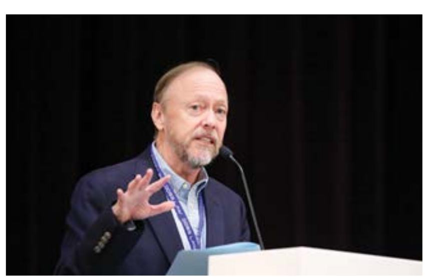
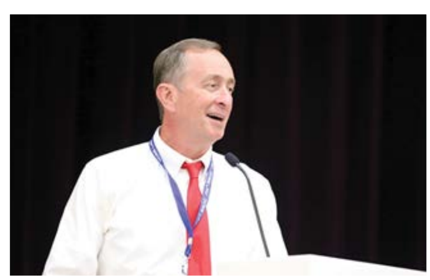








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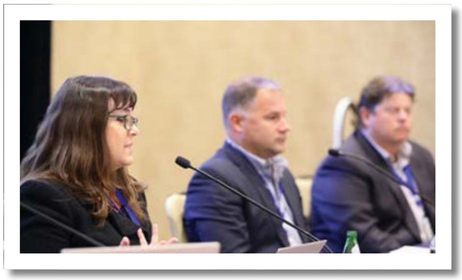


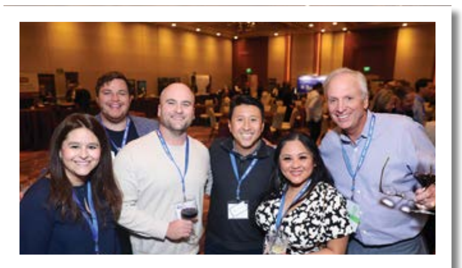


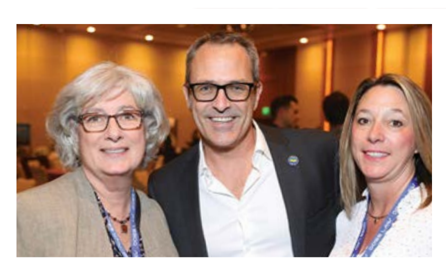

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CA Supreme Court Refuses to Hear Default Interest Case

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

The CMA previously updated its members on the negative impact of the California Court of Appeals decision in the *Honchariw* case. In that decision, the Court of Appeals held that a lender could not charge default interest on the entire unpaid principal balance following a monthly payment default. Following the Court of Appeal's decision, the lender, FJM, requested a review by the California Supreme Court. To bolster FJM's efforts, CMA's General Counsel, Robert Finlay, and his team at Wright, Finlay & Zak, LLP filed an Amicus Letter in support of the Petition for Review. WFZ was also able to get the Mortgage Bankers Association, California Mortgage Bankers Association, National Private Lenders Association, and American Association of Private Lenders to join our efforts. Unfortunately, despite everyone's best efforts, the CA Supreme Court refused to hear the matter. This means that the *Honchariw* ruling is final!

WHAT'S NEXT? Provided that the default interest charged bears a "reasonable relationship" to the anticipated loss that the lender would suffer as a result of the default, a lender should be able to do the following:

- Charge default interest on the missed payment(s); and
- Charge default interest on the entire unpaid principal balance upon maturity of the loan.

Subject to the proper notices and the "reasonable relationship" test, a lender may also be able to do the following:

- Charge default interest on the entire unpaid principal balance following acceleration due to a non-monetary default; and
- Charge default interest on the entire unpaid principal balance following acceleration due to a monetary default.

BUT, both options carry risks that should be discussed with your counsel before charging default interest.

Under the Honchariw decision, a lender should NOT charge default interest on the entire unpaid principal balance following a payment-only default.

WHAT ABOUT YOUR EXISTING LOAN DOCS? To enhance a lender's ability to charge default interest or, otherwise protect itself in the event of default, lenders may also want to consider updating your existing loan documents.

If you have any questions as to the *Honchariw* decision or how it impacts a particular loan, please feel free to reach out to Robert Finlay at *rfinlay@wrightlegal.net* or Michelle Rodriguez at *mrodriguez@wrightlegal.net*.

MEMBER SPOTLIGHT:

Phil Goldstein

Angelica Gardner
Asher Evan Investments

The California Mortgage Association turns the spotlight on members who are making an impact in their professional field and around the Association. These members exemplify the Mission of the 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 Phil Goldstein, President of Trust Deed Investments, Inc. located in San Francisco, California. Phil has been a member of the California Mortgage Association for over 25 years and has been involved with Trust Deed Investments for 37 years. He started as an investor and loved it so much he started his own company. Phil is a devoted member who goes above and beyond for this association, and we are honored to feature him.

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

A I am married and have three children. My first-born son just got married, so we are all very excited. He is a digital engineer in robotics in Silicon Valley. My hobbies are traveling, hiking, camping, and exploring nature.

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

A A friend of mine was Gordon Getty's investment manager. Thirty-seven years ago, he started investing my money in deeds of trust of which I had never heard. The more he invested, the more I loved it and at the same time, the more afraid I became. So, I started going out and

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inspecting each loan that he purchased for me. I drove by each property, reviewed each appraisal, looked at the loan file and asked a lot of questions. Pretty soon, I was underwriting every loan without even knowing what that word meant. So, I started my own company. Soon all my friends and relatives wanted to invest with me, then others too. Today, I am the largest investor in my company's loan portfolio. My friend, who is both an attorney and a CPA, retired twenty years ago and is our second largest investor. He will not invest with anyone else.

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

A I joined CMA about twenty-five years ago. I joined in order to learn about the industry and the laws. The laws seemed to change more often then, although that seems hard to believe. The networking is very good, speaking with the attorney speakers and generally picking up new information is terrific.

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

A My favorite thing is to learn about different methods that each company uses to get to the same place: good loans. When we divide up into smaller groups and share war stories, I learn the most.

Q Who is your ideal/target customer?

A Someone with a lot of equity who is unsure how to unlock it and needs the money for improvements, construction, rental properties, businesses, etc.

Q What goals are you hoping to accomplish in 2023?

A Every business cycle has its opportunities and pitfalls for private lenders. Our portfolio is in excellent shape. However, this coming business cycle smells in most, but not all ways, like a recession. I suspect it will be different from other recessions. I see some industries prospering and others failing in mass. Our job then is to figure that out. Therefore, my goal in the coming year is to learn what that next economic downturn is going to look like and to learn how to market that segment.

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

A The most challenging thing in the industry is the number of bad players there are. With relatively low loan barriers to entry, many people enter the industry who are poor businesspeople or at times dishonest. They make loans that perform well in a good economy but tank in a bad one. That is why I welcome recessions. It cleans up the industry for all of us and drives the bad players out of business.

Q What sets your company apart from others?

A We have been around for almost thirty-five years. We have weathered four recessions. We are totally hands on: we fund internally, we draw docs internally, we do our own appraisals, so we can move at lightening speeds with a quick yes or a quick no.

Q What is your favorite part of your job?

A I love that no two days are the same. I learn new things every day with every transaction we do or do not do. You have to always be on your toes if you expect to stay in this business long term. One of my attorneys once said to me that he thought I was too skeptical or maybe even paranoid. I told him that is the only way to stay in this business.

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

A The last app I downloaded was Flight Aware which tracks the airplanes that you are taking better than any other app.

STRICKTLY STRICKLAND

Pamela J. Strickland
California Compliance Consulting

Running Your Business

Warren Buffett was interviewed once and was asked for his advice on the best way to run a small business. He listed several important and valuable hints, but the one that caught my eye was, "Keep out of trouble." How appropriate that memory of his interview was when I was asked to write this column about "Running Your Business." Keep out of trouble with the DRE was the first thing that came to my mind. If you don't stay out of trouble with your regulator and other required state agencies, you won't have a business to run.

As the broker of record of your company it is your responsibility to know the rules and regulations of the DRE and to make sure that your agents and staff are following the rules every day, in every way. Over the years, I have seen many brokers lose their licenses by assuming that their agents and staff were conducting the business in a legal manner, meeting all the rules and regulations, but not supervising enough to realize that not only were they not in compliance but that the agents and staff weren't trained enough to even know what to do. The broker of record position epitomizes the old adage of "The Buck Stops Here."

The following bullet points are (at a minimum) those areas that need to be monitored and tested to make sure you are, indeed, running your business in a DRE-compliant manner:

- All company licenses must be current and in good standing with the DRE (and the Secretary of State and NMLS, if applicable);
- All salesperson and broker-associate licensees must be properly licensed under your corporate or personal broker license (whichever is applicable to their licensed activities, and be sure you have added all broker-associates under your license either via e-licensing or by mailing the RE215 form);
- All licensees (including licensed spouses, if applicable) must have a written contract and commission agreement between themselves and the broker;
- Any and all fictitious business names being used by the broker or corporation must be filed with the county and the DRE and renewed with the county every five (5) years;
- All branches used by the company must be properly filed with the DRE;
- All advertising for the company and/or any licensees must be approved by the broker of record;
- All advertising must have the proper disclosures of license numbers/broker affiliation;
- All transactions must have the proper disclosures (and with private money, there are many!);
- The broker of record must be familiar with all Fair Housing and Fair Lending laws and have a system in place that shows the agents are trained in these laws;
- All reports (state for DRE and federal for NMLS, if applicable) must be filed no later than the due date;

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Strickland – *continued from page 25*

- Any trust accounts must be properly set up in a bank that offers broker trust accounts (many do not) and the broker of record must be a signer on the trust accounts;

- Additional signers on trust accounts must meet DRE requirements for signers (i.e licensed or bonded and authorized by the broker);

- Trust accounts must be reconciled correctly to the stringent DRE standards (easier said than done) on a monthly basis;

- The broker of record must review and sign off on all reconciliations;

- Unclaimed funds/uncleared checks in the trust account must be escheated to the State Comptroller's Office after three (3) years;

- Any team names used by agents must meet the DRE requirements for team names;

- For a corporation, the Statement of Information must be filed with the Secretary of State each year prior to the end of the month of original incorporation;

- All records must be retained by the broker for no less than three (3) years.

Even though there is no way I could list all of the laws and regulations that exist under California real estate law, if you meet the minimum supervision requirements in each of the areas I have listed here, you are going a long way toward fulfilling your duties. How would you do if you were tested in each of these areas?

Pam Strickland, owner of California Compliance Consulting, strives to keep brokers compliant so that they are always prepared for the dreaded DRE audit call. She can be reached at *pam@pamstrickland.com.*

WELCOME NEW MEMBERS

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

Matt Coordes
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Regular Member

Steve Fenton
Accelerated Lending Group
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(661) 489-5363
sfenton@mylenderalg.com
Regular Member

Sharon Rucker
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(209) 769-0864
sharon@privatemoneylendinginc.com
Regular Member

Paul Trimakas
Trim Financial Services, Inc.
PO BOX 41455
Los Angeles, CA 90041
(818) 618-0616
trimfin@prodigy.net
Regular Member

BENEFITS OF MEMBERSHIP

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

Please remember to share information about the Focus Groups that are provided to members only. Additional information can be found on the CMA website. There are many exciting educational programs being planned and the Spring Conference in Newport Beach in March, 2023 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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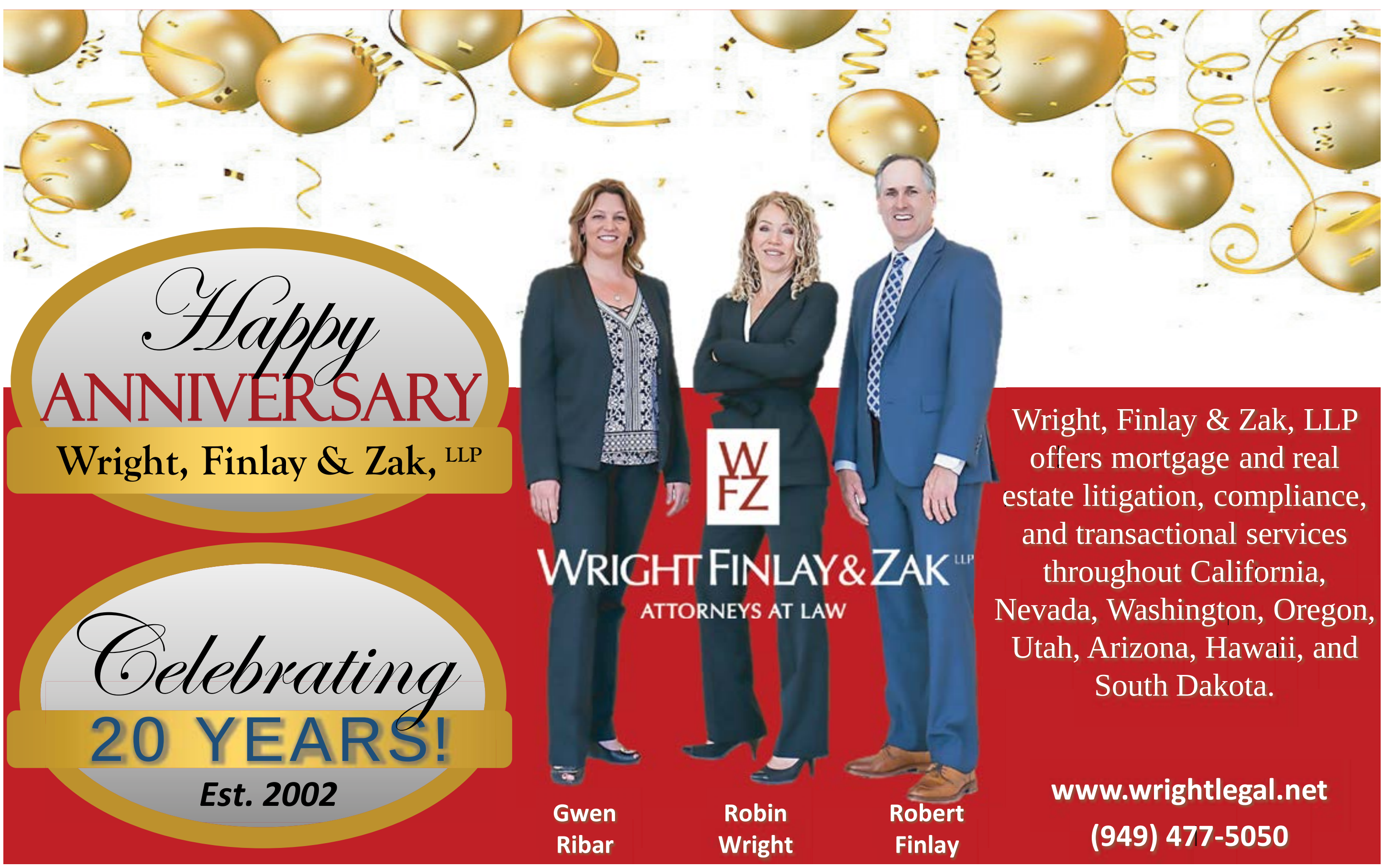
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