



POINTS OF INTEREST

Summer 2023

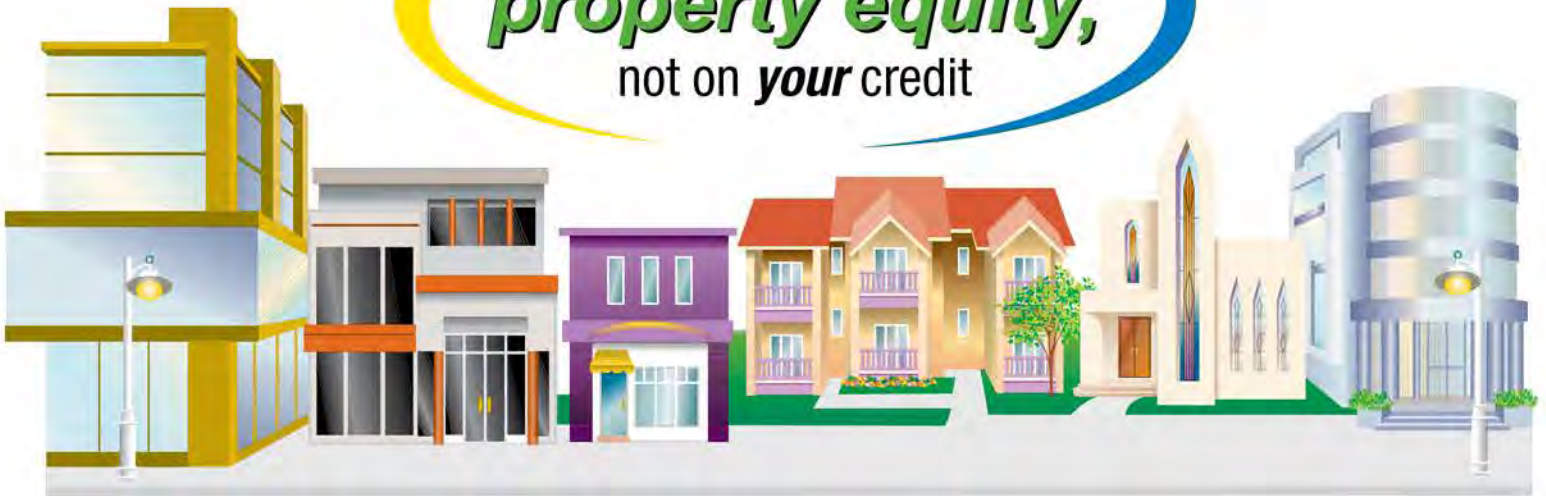
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POINTS OF INTEREST is published by the **California Mortgage Association**, a voluntary trade association serving California mortgage and trust deed brokers and lenders.

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FROM THE PRESIDENT



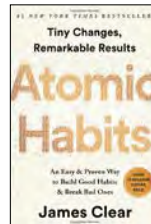
Shafiq Taymuree
2022-2023 CMA President

One of the CMA's core values is the free and open sharing of knowledge, and I have benefited greatly from it. Many actionable insights I've received through my membership have been put to work in my role at Stonecrest. So, in that spirit, I thought it might be helpful to share some resources which have proven to be of great value to me and to Stonecrest.

One simple, yet highly productive, thing we do at Stonecrest is our book club. It works like any typical book club. We choose a book which has a theme relevant to our industry or our culture, then each club member reads the book and delivers thoughts and feedback to the group. The book club has proven to be a fantastic tool for keeping our team connected and motivated.

Below are a few examples of books we have used and the key insights we obtained. I recommend all of them, of course. Naturally, the needs and culture of your company may lead you to a different list. But in my experience, the shared experience of reading and analyzing the book's content as a group is where much of the magic lies. It's a great way to promote a positive, productive culture.

Atomic Habits by James Clear



Theme:

How to adopt and maintain positive habits

Key Takeaway:

Simple, small changes to your behavior can lead to major improvements

Good to Great by Jim Collins



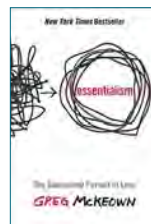
Theme:

Why some companies become great, and others don't

Key Takeaway:

Success comes from "finding your hedgehog," the nexus of three things: work your company does better than anyone, is most passionate about, and drives support through revenue

Essentialism by Greg McKeown



Theme:

Being more productive by focusing on fewer things

Key Takeaway:

Productivity can be supercharged by discerning what is absolutely essential and eliminating everything that is not

The Book of Joy by The Dalai Lama and Archbishop Desmond Tutu



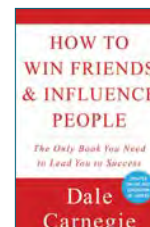
Theme:

How to maximize the joy in one's life

Key Takeaway:

Happiness is inside each of us and simply depends on our reaction to what is happening around us.

How to Win Friends & Influence People by Dale Carnegie



Theme:

The power of being likeable

Key Takeaway:

There are concrete steps everyone can take to be more likeable and gain more influence

Each of these books has provided insights and "aha" moments that have had a positive impact, both professionally and personally, for me and many of my colleagues. Let me know if you find this helpful. I would love to hear from any of you who may have thoughts about these books, or any others you have found particularly insightful or constructive for your company. 🌐



FROM THE EDITOR

Mayumi Bowers
Editor, POINTS OF INTEREST

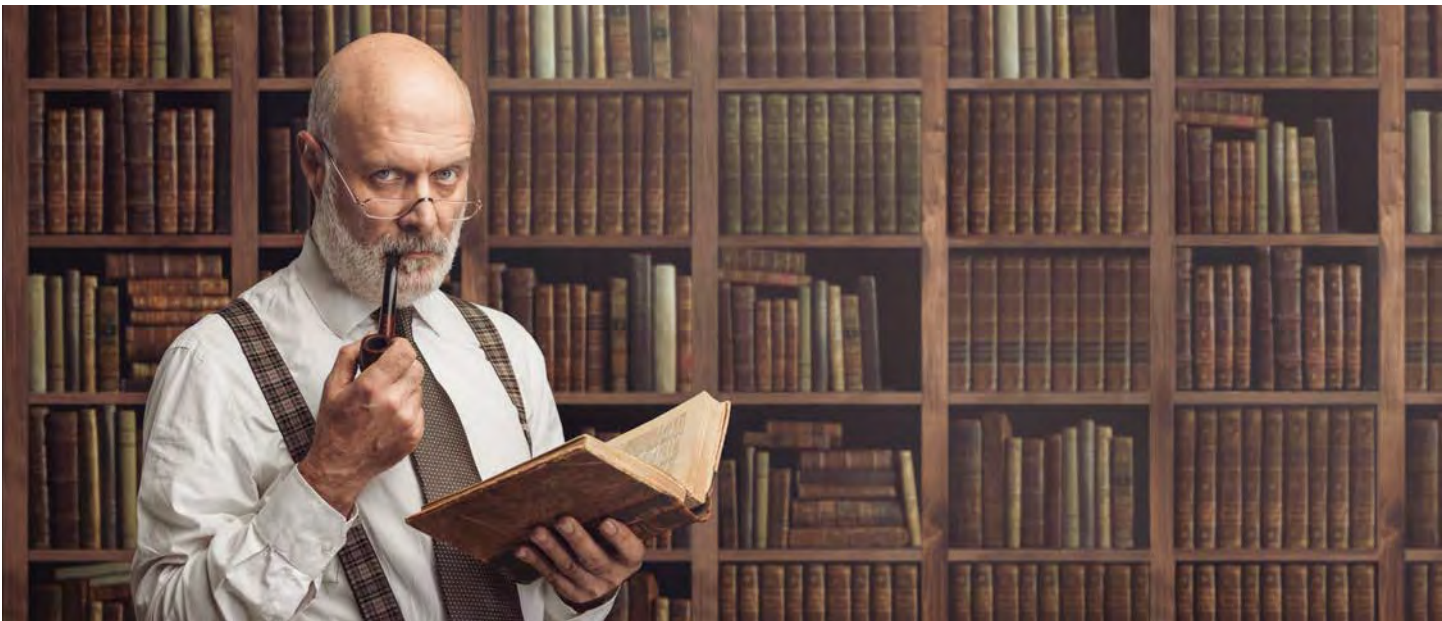
Break out the reading glasses! This edition of *Points of Interest* is chock full of information covering a range of topics. The year is passing in a flash. Hard to be believe that we are charging into summer. As the temperatures are rising, so are business activities which means, by default, issues with loans. The topics in this issue touch on foreclosure matters, interest, and our favorite, HMDA! As a reminder, we also have an e-newsletter that will be sent out later in the summer. Be sure not to miss it! As usual, I hope that you find this information helpful. 📧

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 September 28-29, 2023
 Mission Bay Resort, San Diego

— **Spring Conference** —
 March 7-8, 2024
 Hyatt Regency, Monterey

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SACRAMENTO SUMMARY

By Michael D. Belote, Esq.
CMA Legislative Advocate

Crunch Time Ahead in Sacramento

The calendar year may be less than half complete for 2023, but it is much later according to dreaded legislative time in Sacramento. As of this writing, only ten weeks of legislative activity remain for this year. This is a time to be wary, as some groups *begin* their legislative program as the fall recess approaches. Some people like surprises more than others, but legislative surprises are almost never good!

CMA is presently monitoring 123 different pieces of legislation for the year. Thankfully, some of the worst ideas appear to be dead for the year. But like the undead, ideas in the Capitol have a way of coming back to life through bill amendments, so caution is the watchword.

One issue which fortunately has not reemerged this year is a foreclosure proposal contained in last year's SB 1323. That was the bill which would have mandated a second track during the nonjudicial foreclosure process, wherein the trustee would have been required to obtain an appraisal of the property, engage a broker and list the property on the MLS, receive bids and sell the property, all without the consent or involvement of the owner. The bill was stopped last year on the Assembly floor, very close to reaching the Governor's desk. As time remaining in the legislative year grows shorter, it becomes harder to amend last year's concept into a current bill, but still every amendment to every bill must be read to make sure.

The following very briefly summarizes selected key bills, dead or alive:

AB 12 (Haney): Security Deposits. Limits security deposits for residential property to one month's rent. Passed Assembly, pending in Senate.

AB 475 (Mathis): Foreign Ownership-Land Near Military Bases. Prohibits ownership or interests in property by foreign governments or entities which are foreign government controlled within 50 miles of military bases. Died in Assembly.

AB 743 (Petrie-Norris): Remote Online Notarization. Sponsored by the California Association of Realtors, would authorize "RON" in California. Failed to be passed by Assembly Appropriations Committee.

AB 919 (Kalra): Sales of Residential Rental Properties. Similar to proposals in previous years, would have enacted burdensome rights of first refusal prior to selling residential properties containing tenants. Died without hearing in Assembly.

AB 968 (Grayson): Residential Property Disclosures. Requires special disclosures when selling residential properties held for less than 18 months, relating to improvements, contractors and permits. Passed Assembly, pending in Senate.

AB 1033 (Ting): Separate Conveyance of ADUs. Permits separate conveyances of ADU, by recording condominium maps, after either satisfying all liens or obtaining the permission of lenders. Passed Assembly, pending in Senate.

AB 1218 (Lowenthal): Demolition of Residential Units. Expands upon existing limitations on demolishing residential dwelling units. Passed Assembly, pending in Senate.

AB 1333 (Ward): Bundled Sales. Would have prohibited bundling two or more residential properties for sale. Died without hearing in Assembly.

AB 1532 (Haney): Office Conversions. Would have made conversions of office buildings into residential housing units a "use by right," including expanding the ministerial approval process under CEQA. Died without hearing in Assembly.

ACA 10 (Haney): Fundamental Right to Housing. Would amend the California Constitution to declare that housing is a fundamental human right. Pending in Assembly; as a proposed constitutional amendment, this measure is not subject to the deadline applicable to bills.

SB 33 (Glazer): Commercial Financing Disclosures. Extends the sunset date on the requirement to provide specific disclosures in commercial financing transactions. The law being extended excludes commercial financing secured by real property. Passed Senate, pending in Assembly.

SB 224 (Hurtado): Foreign Ownership-Agricultural Land. Prohibited foreign government ownership or foreign

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HDMA

The Temporary Financing Exclusion



Lori Randich
Bay Laurel Financial

Among the various alphabet soup of state and federal laws and regulations relating to mortgage origination and loan servicing, one that had previously escaped the notice of many California private lenders is the Home Mortgage Disclosure Act, or HMDA. In effect since 1975, HMDA requires decision-makers on residential loan applications to report a variety of application, loan and borrower data annually to the federal government. Due to the rules relating to 'covered' lenders, most private lenders historically were not covered under the law.

However, major changes to HMDA, initiated under the Dodd Frank Act and further expanded on by the Consumer Financial Protection Bureau (CFPB) under its rule-making authority, took effect beginning in 2018, and these changes had a significant impact on private lenders across the country. Thresholds for covered lenders were lowered and many smaller lenders, who previously were not covered under HMDA, fell under it.

In recognition of this major change to private lenders, CMA presented two programs on HMDA, the first at our Winter

2017 Seminar, and a follow-up at our Spring 2017 Conference. Some questions arose at the Spring Conference as to what constitutes 'temporary' financing under HMDA. Addressing this issue is important, as applications and loans for temporary financing may be excluded from HMDA reporting requirements. As most private lenders make short term loans to their borrowers, having a clear definition of temporary financing will help our members better understand and prepare for these regulatory changes.

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Before delving into this particular issue, a brief overview of the new HMDA requirements is warranted.¹ The original purpose of HMDA was to a) assist regulators in determining if financial institutions were serving the housing and credit access needs of their communities; b) assist in the distribution of public and private sector investments in communities where it's most needed; and c) provide useful data to the public in understanding the scope of mortgage lending across the nation. Over time, both the scope and purpose of HMDA have grown. In addition to its original purposes, today HMDA data provides both federal and state regulators, as well as community groups, with detailed information about the types of applications taken and loans made by lenders, the racial and ethnic make-up of applicants, and the eventual disposition of the loan application. The CFPB in particular uses HMDA data to search for possible Fair Lending violations by lenders. Community groups often use the data to support claims of lender discrimination in various minority and economically disadvantaged communities. Although somewhat benign at its inception, HMDA has become an important tool for government regulators and community groups to identify potential 'bad actors' in the mortgage lending community.

Post-2018 Regulatory and Legal Changes

Listening to industry concerns that the 2018 regulatory changes under Dodd-Frank placed an undue burden on small lenders and that the data collected from these small lenders was statistically irrelevant, in 2020 the CFPB issued a revised rule that increased the threshold for covered closed-end loans from 25 to 100 and for open-end loans from 100 to 200. Suddenly most small private lenders were no longer covered under HMDA. In reaction to this rule change, a consortium of non-profit consumer advocate organizations across the country brought suit against the CFPB challenging the rule change. The court decided the case in 2022, allowing the open-end loans threshold to remain at 200. But the court invalidated the change for

the closed-end loans threshold. Therefore, the threshold for closed-end loans has returned to 25.

Who Must Report?

Under HMDA, reporters are 'for profit' lending institutions (including individuals) who make a credit decision and who

- Have a home or branch office in a Metropolitan Statistical Area (MSA), and
- Meet at least one of the following criteria:
 - In both of the two preceding calendar years, originated at least 25 closed-end mortgage loans, or
 - In both of the two preceding calendar years, originated at least 200 open-end lines of credit



Examples of private lending 'financial institutions' are:

- Mortgage brokers (who make the credit decision)
- Mortgage lenders
- Mortgage pools funding the loan
- Mortgage investors (who make the credit decision)

Making The Credit Decision

A thorough discussion of who does or doesn't make the credit decision is beyond the scope of this article. Some mention of it is useful, however as it can represent perhaps an important exemption under

HMDA for a small number of private lenders. An excellent reference source for more detail on this part of HMDA are the materials provided with the recorded CMA webinar from May, 2023, which is available to members on the CMA website.

The person or institution which makes the credit decision on an application is the party responsible for reporting under HMDA. For some private lenders, this is easy to ascertain, and for others it can be more difficult. Who makes the credit decision can vary depending upon the private lender's business model. Those making loans using their own funds, through a line of credit or through a broker-managed fund can most likely be characterized as having made the credit decision. Those who broker loans to individual investors may or may not be the party who makes the decision. Some brokers send loans to their private investors to make the credit decision. Most brokers who fund using private investors, however, make the credit decision themselves. A broker may consider several points in resolving the credit decision issue. Consider if the broker does any of the following:

- Negotiates the terms of the loan before presenting it to the investor
- Approves a loan request before offering it to any investors
- Denies a loan request without offering it to any investors
- Advertises as a lender
- Issues loan approvals or credit denials
- Discloses the loan with the broker's name as the lender
- Funds a portion of the loan
- Communicates a positive or negative credit decision before sending the loan to the investor

It may be necessary for the broker to consult legal counsel knowledgeable in HMDA before coming to a final conclusion on this point.

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Covered Loans and Applications

Loan applications covered under this regulation are for closed-end loans or open-end lines of credit secured by a lien on a 'dwelling.' Under 12 CFR 1003.2 & 3, a dwelling is a residential structure, whether or not attached to real property. The term includes, but is not limited to:

- A detached home
- An individual condominium or cooperative unit
- A manufactured or factory-built home
- A multifamily residential structure or community
- A mixed-use property where 50% or more of the structure is residential
- Properties for long-term housing and/or medical care if the primary use is residential
 - SRO's and residential care facilities could be included in this category

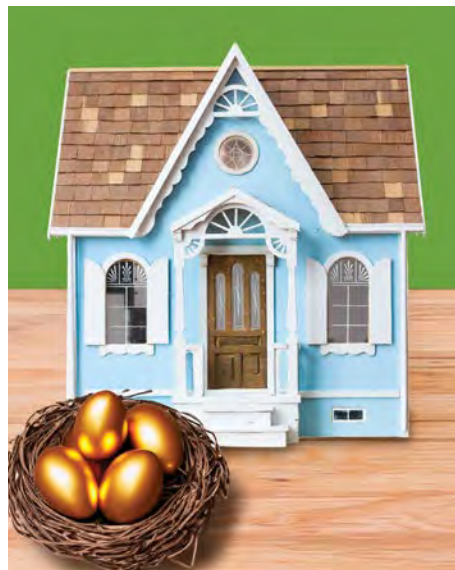
Most consumer and business purpose loans are covered under HMDA. There is a very narrow definition of business purpose loans which are exempt from HMDA reporting requirements. This exemption will be discussed later. The three primary loan purposes which are covered under HMDA are home purchase loans, home improvement loans and refinancings. Loans that do not fall under one of these three categories and are not otherwise exempt are reported as 'Other.'

Home Purchase Loan

A home purchase loan is any application for the purchase of a dwelling. The purchase application is covered regardless of whether the loan will be for a consumer or nonconsumer purpose, or whether the property will be a primary residence or for investment purposes. An application is considered to be for a home purchase even if the property to be secured by the loan is not the property being acquired. For example, if a borrower requests a cash out refinance on Property A in order to purchase Property B, the loan request on Property A is reported as a home purchase loan.

Home Improvement Loan

A home improvement loan is one where the loan proceeds, in whole or in part, will be used to repair, rehabilitate, remodel or improve a dwelling, or the real property on which the dwelling is located. As with the home purchase loan, the home improvement application is reportable under HMDA regardless of whether the loan will be for a consumer or nonconsumer purpose, or whether the property will be a primary residence or for investment purposes.



Refinancing

A refinancing is a loan application in which a new dwelling-secured obligation replaces an existing dwelling-secured obligation by the same borrower. In other words, a refinancing is a loan where a new loan will pay off an existing loan on the property. Conversely, a cash out loan which does not pay off existing debt on the property is not a refinancing. Such a cash out loan may still be reportable under HMDA as either a home purchase loan, a home improvement loan, or as 'other.'

Exemptions from HMDA

Certain loans are expressly exempt from HMDA:

- Business purpose loans –

Many business purpose loans are exempt, but only those loans that are for a purpose other than the purchase, refinancing or improvement of a dwelling. If the loan is to provide funds for the borrower's widget manufacturing business, then it would be excluded from HMDA reporting requirements under the business purpose exemption. But a loan to acquire, refinance or improve a dwelling, even if for a business purpose or profit motive, is covered under HMDA and must be reported. Loans that refinance existing debt are HMDA reportable, even if there is a cash out component for a true business purpose.

Additional exemptions under HMDA include:

- Loans not secured by real estate
- Loans secured by unimproved land
- Temporary financing (discussed further below)
- Purchase of an interest in a pool of mortgages
- Purchase solely of the right to service loans
- Purchase of loans as part of a merger or acquisition
- Applications for less than \$500
- Purchase of a partial interest in a loan
- Loans primarily for agricultural purposes

Temporary Financing

Turning to the topic of temporary financing, there has been some confusion pertaining to this issue. To provide additional insight into the temporary financing question, among other things, the CFPB issued a clarification document in April, 2017 containing the following:

Paragraph 3(c)(3).

1. Temporary financing. Section 1003.3(c)(3) provides that closed-end mortgage loans or open-end lines of credit obtained for temporary financing are excluded

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transactions. Except as provided in comment 3(c)(3)-2, **a loan or line of credit is considered temporary financing and excluded under § 1003.3(c)(3) if the loan or line of credit is designed to be replaced by separate permanent financing extended to the same borrower at a later time.** [emphasis added]

Essentially, under the rule, a temporary financing is one that is intended to be replaced by permanent financing. Unfortunately, this explanation can still be a bit murky to lenders. To further clarify its meaning, the CFPB has provided the following examples related to temporary financing:

Example 1 – Fix and Flip Loan:

(from page 709 of the original October 2015 rule)

Lender A originates a loan with a nine-month term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires. Under § 1003.3(c)(3), the loan is not designed to be replaced by permanent financing and therefore the temporary financing exclusion does not apply. Such a transaction is not temporary financing under § 1003.3(c)(3) merely because its term is short.

This example illustrates the classic ‘fix and flip’ loan and confirms that these loans do not fall under the temporary financing exclusion and are therefore reportable under HMDA.

Example 2 – Bridge Loan:

Lender A extends credit in the form of a bridge or swing loan to finance a borrower’s down payment on a home purchase. The borrower pays off the bridge or swing loan with funds from the sale of his or her existing home and obtains permanent financing for his or her new home from Lender A or from another lender. The bridge or swing loan is excluded as temporary financing under § 1003.3(c)(3).

Be cautious in interpreting this example.

On its face, it would seem to say that a bridge loan to purchase a new home is

excluded as temporary financing. However, a careful reading of the example can lead to the conclusion that only bridge loans where the borrower intends to obtain permanent financing on their acquisition home after the sale of their exit home would be exempt. The example specifically mentions a loan for the down payment of the new home. It also includes the statement that permanent financing will be obtained on the new home.



But what about a borrower who owns their home free & clear of mortgage debt and who is buying a smaller, less expensive replacement home? When making a bridge loan in this situation the lender needs to consider the borrower’s financing situation when the bridge loan is paid off. If the sale of the exit home will result in the full payoff of the bridge loan, leaving the acquisition home free and clear, then no permanent financing is anticipated to be needed. Without the prospect of permanent financing replacing the bridge loan, the temporary financing exclusion would not apply.

The following four examples all have to do with construction loans.

Example 3 – Homeowner Construction Loan:

Lender A extends credit to a borrower to finance construction of a dwelling. The borrower will obtain a new extension of credit

for permanent financing for the dwelling, either from Lender A or from another lender, and either through a refinancing of the initial construction loan or a separate loan. The initial construction loan is excluded as temporary financing under § 1003.3(c)(3).

Example 4 – Homeowner Construction Loan with Renewals:

Assume the same scenario as in comment 3(c)(3)-1.ii, except that the initial construction loan is, or may be, renewed one or more times before the separate permanent financing is obtained. The initial construction loan, including any renewal thereof, is excluded as temporary financing under § 1003.3(c)(3).

Example 5 – Homeowner Construction to Perm Loan:

Lender A extends credit to finance construction of a dwelling. The loan automatically will convert to permanent financing extended to the same borrower with Lender A once the construction phase is complete. Under § 1003.3(c)(3), the loan is not designed to be replaced by separate permanent financing extended to the same borrower and therefore the temporary financing exclusion does not apply. See also comment 2(j)-3.

Example 6 – Speculative Construction Loan:

Loan or line of credit to construct a dwelling for sale. A construction-only loan or line of credit is considered temporary financing and excluded under § 1003.3(c)(3) if the loan or line of credit is extended to a person exclusively to construct a dwelling for sale. See comment 3(c)(3)-1.ii through .iv for examples of the reporting requirement for construction loans that are not extended to a person exclusively to construct a dwelling for sale.

As demonstrated above, a construction loan may or may not be considered to be temporary financing under HMDA. Construction loans that are excluded from HMDA reporting requirements are a) loans to homeowners that will be replaced

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with permanent financing through a refinance of the construction loan when the home is completed (Examples 3 and 4), and b) speculative construction loans that will be paid off through the sale of the property (Example 6). A construction to-perm-loan (Example 5) is not afforded the temporary financing exclusion and is therefore reportable. It is interesting to note that the CFPB specifically includes speculative ground up construction loans in its temporary financing exclusion, but not the similarly speculative fix and flip loan.

Next Steps

Of course, understanding a regulation and how it applies to a broker's operation is merely the first step in the compliance process. Moving forward a private lender may want to do the following:

- Consult competent legal counsel well versed in HMDA to discuss your business plan and lending practices. Make sure

you understand who is responsible for the reporting requirement under your business model.

- Inquire about the status of HMDA compliance with your loan origination software (LOS) representative. Many data point fields had to be added in 2017 to origination software programs that were not originally designed to collect them. Ask your LOS provider to demo their HMDA capabilities for you.
- Ask your LOS provider if they offer integration with third-party software programs that will encrypt the data and deliver it to the CFPB. The LOS is typically the mechanism for inputting the data (the data gatherer if you will) and an additional software program is needed to encrypt the data and deliver it to the appropriate regulatory agency. If the LOS can't integrate the data with this second software program, then it won't be possible to deliver the report

to the CFPB. Expect to be charged an annual fee for the integrated software as you will be gaining access to an additional software program.

- Another very helpful tool that may be available within the LOS is loan level data verification. It is not unusual, and actually quite common, for there to be data errors within a file. Various fields may have been missed when keying in data. Addresses can be mistyped and zip codes may be incorrect. The Demographic Information section, which collects borrower

race, ethnicity and gender data, is one area that is particularly prone to errors. It is far easier to check for errors at the time a loan is being processed, rather than waiting until the annual HMDA report is compiled. If errors within a loan file are not discovered until months after the loan closed or was denied, it can be quite cumbersome to have to retrieve the loan file and research and correct the data. An error check within the LOS could save hours of time when preparing the HMDA report at the end of the year.

- Seek out software providers who provide the encryption and delivery service independently of an LOS. Some, such as QuestSoft, now a part of N Contracts (www.ncontracts.com) have programs that allow you to key the data directly into their system, providing an all-in-one service without the need for an LOS. This could prove extremely useful for those who may be processing their loans manually. Ideally, however, programs such as QuestSoft will be available through an integration with your LOS. Integration between the two programs will avoid duplicate data entry as the data keyed into the LOS passes seamlessly into the encryption software.

One final suggestion. Take a look at your HMDA report results well before submitting them by the filing deadline. As noted in the beginning of this article, government regulators and the public at large have a keen interest in these reports. The results can appear to erroneously reflect unethical and discriminatory practices for even the most fair and unbiased of lenders. It is wise for a broker or lender to know what the data shows before the report is filed or made available to the public. 🌐

Endnotes

- 1 This discussion is meant only to provide a summary of the regulation, and is not intended to provide in depth analysis of the regulation or its applicability to private lenders.

Joffrey Long
Mortgage Expert Witness
Consultation and Testimony

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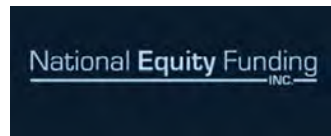


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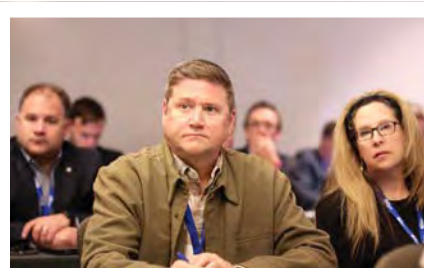
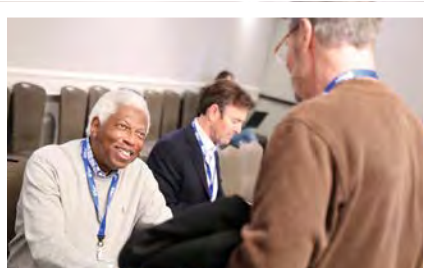
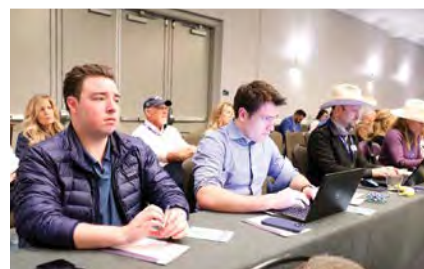
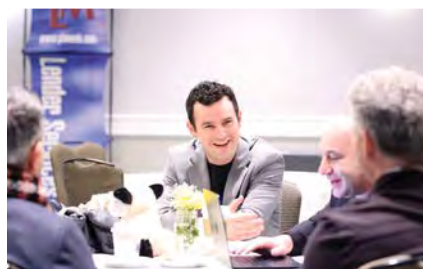
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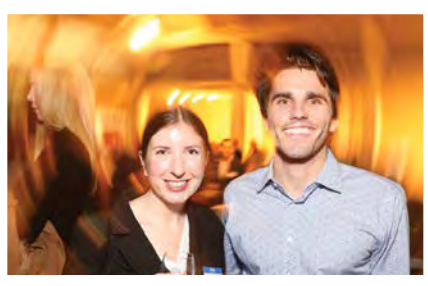
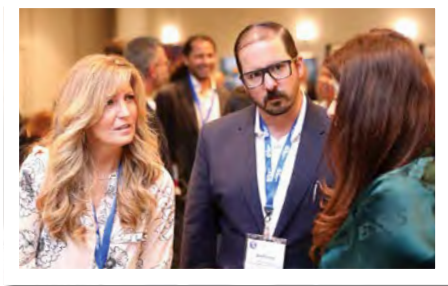
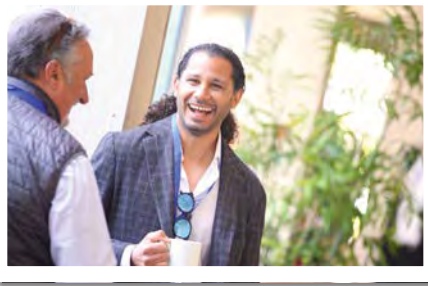
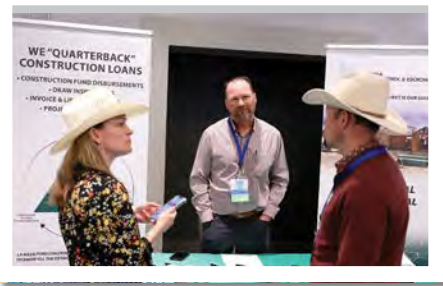
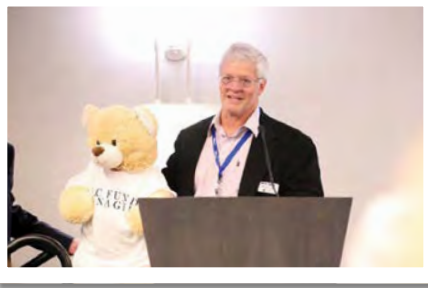
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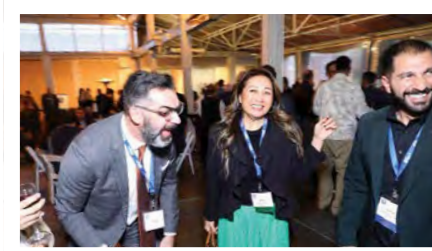
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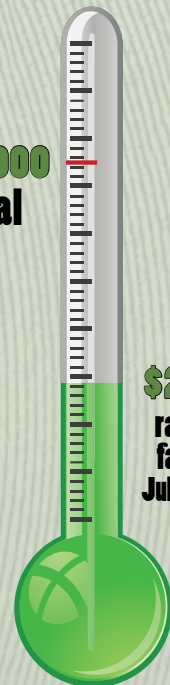
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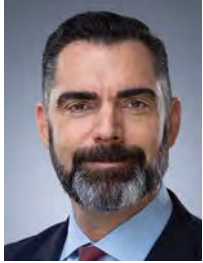
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The Short-Term Rental Debate – What Investors Can Consider



Peter Steigleder



There has been a decent amount of speculation over the last two to three years specifically about the pros and cons of the short-term rental market and how it has significantly changed real estate investing by creating new opportunities for even the most novice of investors to generate passive income. The popularity of platforms like Airbnb, Booking.com, and VRBO has made it easier for investors to rent out their properties on a short-term basis to travelers and tourists.

Especially coming off of a hotel cost surge, which will occur when an entire global community is kept from traveling for two years and then finally permitted to vacation again. This, plus general privacy and accessibility factors, has led to a serious increase in demand for properties in popular tourist destinations like Hawaii, Florida, and overseas as well. New and savvy investors alike are purchasing properties solely for the purpose of renting them out on these platforms. The short-term rental (STR) market in the United States has been a game-changer for residential real estate investors. Short-term rentals have created new opportunities for investors to earn high returns on their investments, while also providing a range of benefits to travelers. However, it has also created new challenges for investors, including the management of the properties, dealing with local regulations, and attracting guests to their listings.

One of the main advantages of investing in STR is the high rate of return on investment. Short-term rentals can generate significantly higher rental income than traditional long-term rentals, especially in popular tourist destinations. This is because the demand for short-term rentals is higher and travelers are willing to pay a premium for the convenience and luxury of a short-term rental.

Additionally, short-term rentals offer greater flexibility for investors. Unlike long-term rentals, investors can adjust their rental rates to accommodate seasonal demand or to respond to changes in the market. This flexibility allows investors to maximize their rental income and minimize their vacancy rates.

Another key benefit of the STR market is the ability to diversify your investment portfolio. Short-term rentals can provide a steady stream of income that is not subject to the fluctuations of the stock market or other traditional investment vehicles. This allows investors to spread their risk and generate income from multiple sources.

The short-term rental market also has a positive impact on local economies. Short-term rentals can help to boost tourism by providing travelers with a unique and authentic experience of the local area. This can lead to increased spending on local

businesses and attractions, which can have a ripple effect on the local economy.

Furthermore, short-term rentals can help to revitalize and improve neighborhoods. Investors who purchase and renovate properties for short-term rentals can help to increase property values and attract new residents to the area. This can lead to the creation of new jobs and the development of new businesses, which can further stimulate economic growth. There isn't any doubt that in certain areas, and for popular markets, this has had a significant positive impact on residential real estate investors. STRs offer high returns on investment, greater flexibility, and the opportunity to diversify your investment portfolio. Additionally, short-term rentals can help to boost local economies and revitalize neighborhoods. As such, short-term rentals are a smart investment choice for investors looking to maximize their returns and make a positive impact on their communities.

Now, there are several opinions about short-term rentals and how it affects neighborhoods, and what "is or is not" allowed per certain HOAs and general community feedback. This is a debate that has no true "right or wrong" answer. There are points on both sides and truthfully, a

continued on page 22

Short-Term Rentals – continued from page 21

lot of fallacies and generally, a lot of worries that are based on fluff people read online.

While everyone will have their own opinions and examples of the pros and cons, here are some potential benefits of having investors renovate properties for short-term rentals based on actual statistical information:

1. Economic growth: Short-term rental properties can bring in more tourism dollars to a neighborhood, which can help boost the local economy. This can lead to job creation and increased revenue for local businesses.
2. Property value: Renovated properties can potentially increase the value of surrounding properties, leading to higher property values for homeowners in the area.
3. Increased tax revenue: Short-term rental properties can generate additional tax revenue for the city, which can be used to fund public services and infrastructure projects.
4. Neighborhood revitalization: Renovating properties for short-term rentals can help revitalize older or neglected neighborhoods, making them more attractive to potential residents and investors.
5. Flexibility for travelers: Short-term rentals can offer travelers more flexibility in terms of location and amenities than traditional hotels, which can make a neighborhood more appealing to visitors.



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Why Should I Care About the Difference Between a Legal Parcel and an APN?



Richard Selzer
Selzer Realty & Associates

If you've ever looked at a property tax statement, you'll notice there's at least one parcel number listed. This is your assessor's parcel number (APN), and APNs are used to determine your property tax burden.

When reviewing property, you may see the term "legal parcel" and this is not necessarily the same as your assessor's parcel. As land is divided and subdivided over time, a legal parcel can be made up of multiple assessor's parcels. This is important because each assessor's parcel may be subject to different tax burdens.

If the property is in a subdivision full of regular lots, chances are the APN and the legal parcel are one and the same. If, on the other hand, the property is an older home or consists of an acre or two (or more), there's a decent chance that the property is made up of multiple APNs.

Boundary line adjustments, easements, or a merging of adjacent properties can all lead to a patchwork of APNs for a single legal parcel. This is something all some brokers/lenders in more rural areas are aware of, but it could be news to a broker/lender that has only been dealing with properties in subdivisions in urban and suburban settings.

In Mendocino County, for example, things are different. Let's say the subject property is a 150-acre property in Hopland – one

legal parcel. A portion of the property might be in a cemetery district, another part might be in the school district, and to complicate things, the property may include an easement across the neighbor's property which allows the property owner to access their property. On the tax bill, it'll indicate three APNs with three separate tax liabilities.

If you're curious about how property is divided, you can go to a local title company or the County Assessor's Office and request a plat map. Plat maps show geographic areas overlaid with individual property boundaries. They can include everything from subdivision numbers to legal descriptions to APNs.

Sometimes APNs change over time. If there's a new subdivision or boundary line adjustment, the county will assign a new APN, so the number you've always seen may change. This can make it difficult to compare historical records with current records.

Knowing the history of a legal parcel is not only important for tax reasons, but also if you want to divide the property along original boundary lines, which can dramatically increase the market value. If the 150-acre parcel in Hopland was created by merging multiple legal parcels, then the property can be split along the original lines. Let's say those 150 acres were originally ten legal parcels. If it can be

proven to the county, then the owner can sell each parcel individually without going through the legal rigamarole of getting a new subdivision approved by the county. Note, you cannot sell only part of a parcel unless that section is recognized as its own legal parcel. Having the county recognize separate legal parcels within one property is called a certificate of compliance.

Once I learned the hard way that if your title company makes a mistake and doesn't include all the legal descriptions when the property is acquired, then the owner may not have a legal parcel and they cannot sell the property.

The long and short of it is this: knowing the difference between the legal parcel and your assessor's parcel(s) can allow an owner to profit from their real estate investment. 🏠

Dick Selzer is a real estate broker who has been in the business for more than 45 years.



Pros and Cons of Taking Title at the Foreclosure Sale Via an LLC



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



In the private lending world, investors often hold loans in their personal names, their family trusts or the name of their investing Limited Liability Corporation (“LLC”). If title remains unchanged, those same entities will take title to the property at the foreclosure sale. However, taking title in your name or the name of your family trust can create risks. Likewise, taking title in the name of your LLC, along with several other parties, can create unnecessary headaches. As a result, many investors band together to create a new LLC for the sole purpose of taking title at the foreclosure sale.

The newly formed LLC creates several benefits. For starters, if done properly, the LLC should limit the investor’s exposure for acts that occur post-foreclose to the assets of the LLC, i.e., the property. (Of course, the investors could still be sued for their pre-foreclosure conduct, e.g., wrongful foreclosure.) In addition, in the case of a nasty eviction, it keeps the investors name off the pleadings and out of the eyes of an uneducated occupant. The LLC also provides a mechanism to handle the post-foreclosure costs of managing the property, e.g., eviction costs, property taxes, insurance payments, rehab costs, etc. This is particularly useful when there are multiple investors on the loan. The LLC can be structured to share costs at the same percentages as the investors owned the loan. The LLC can also identify the loan servicer as the managing member to handle

the eviction, manage the property and sell the asset. In sum, creating an LLC for the purposes of taking title at the foreclosure sale provides several practical and financial benefits.

So, what is the downside? Other than a little more work and cost, not much. First, the investors should hire counsel to create the LLC. The cost is not extensive, but worth it instead of trying to set up the LLC themselves and risk not doing it correctly.¹ In addition to the cost of the attorney, there is the cost to maintain the LLC – \$800 per year. Then, after the property is sold, the investors must dissolve the LLC. Not too difficult, but another task to get in the way of the investor’s golf game. All in all, the cost and minor additional work is likely worth the reduced exposure and headache.²

When to create the LLC is a question we often hear. Ideally, investors want to hold off incurring the costs of creating the LLC until the last minute, once they are confident that the foreclosure sale is going forward. But, don’t wait so long that your counsel does not have time to prepare the necessary documents or is busy with other work. At Wright, Finlay & Zak, we ask that our clients ideally give us one week’s notice; but, sometimes we have prepared them within only hours of the request. In addition to creating the LLC documents, the investors’ loan servicer will want to create an assignment, assigning the loan from the current beneficiary or beneficiaries to the

LLC. While the assignment can be created at any time, it should be signed prior to the foreclosure sale date. However, it does not need to be recorded until just before the Trustees Deed Upon Sale records. That way, the investors remain the beneficiaries all the way up until the official transfer of title to the LLC. Note – the investor’s REO insurance policy should be in the name of the LLC.

In conclusion, creating an LLC prior to taking title to the property at the foreclosure sale is a relatively inexpensive way to reduce investors’ exposure and an effective tool to manage the property post-foreclosure. If you have any questions regarding this article, the process of creating the LLC or costs, please feel free to reach out to Robert Finlay rfinlay@wrightlegal.net or Nick Hood at nhood@wrightlegal.net. Thank you! 📧

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.*

Endnotes:

- 1 Depending on the circumstances, the offering of the LLC could be considered a securities offering, requiring an exception. Please verify prior to proceeding.
- 2 This article does not address whether the investor wants to include the asset in a 1031 exchange. Please discuss with your tax professional.

Where Default Interest Meets Compound Interest

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

Since the *Honchariw* decision came down last September, the CMA and its members have spent a lot of time trying to determine when and where default interest can be charged. As previously discussed, the *Honchariw* decision didn't specifically prohibit and arguably condoned charging default interest on the missed monthly installment. However, the court never considered whether doing so could violate other laws, namely the prohibition on charging *compound interest*. Unfortunately, according to CMA's General Counsel, Robert Finlay, charging default interest on the interest portion of a missed monthly payment *could* violate other laws related to charging compound interest.

Pursuant to the *uncodified* Civil Code Section 1916-2: "interest shall not be compounded, nor shall the interest thereon be construed to bear interest unless an agreement to

that effect is clearly expressed in writing and signed by the party to be charged therewith." The first question is whether the agreement allows for compound interest. The second question is, if there is no such provision in the agreement, is the lender exempt from Section 1916-2 under Art. XV, Section 1. In *Wishnev v. Nw. Mut. Life Ins. Co.*, (2019) 8 Cal.5th 199, 219, the California Supreme Court answered a question on this point as follows: "The provision in section 1916-2 prohibiting lenders from assessing compound interest 'unless an agreement to that effect is clearly expressed in writing and signed by the party to be charged therewith' does not apply to lenders exempt under article XV." However, as the California Supreme Court explained, at 218: "This conclusion does not mean exempt lenders may charge compound interest without a contractual or legal basis to do so. It simply means they are not subject to statutory liability and

penalties otherwise imposed by the 1918 initiative on nonexempt lenders." In other words, the gold standard would be if there is an agreement allowing the charging of compound interest; however, if there is no such agreement and the lender is exempt, the charging of compound interest *might* be improper but will not be a violation of the usury laws.

Absent a written agreement allowing compound interest, CMA members may want to discuss with their counsel whether to only charge default interest on the principal portion of the missed monthly installment, as opposed to the entire missed installment. 📞

Disclaimer: *Nothing contained herein should be considered legal advice or relied on in any way. Please consult with the counsel of your choosing before taking any action in response to reading this article.*



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Richard C. Temme Becomes “Honorary Lifetime Director”



Joffrey Long
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Richard Temme has been awarded the status of “Lifetime Honorary Director” with the California Mortgage Association.

Rich, as we all know him, got his start in private money lending and in the trade associations that preceded CMA around 1976.

Around 1998, Rich worked with others to form CMA, which was created through a merger of two other trade associations.

During his years with CMA, Rich has worked tirelessly in his efforts on behalf of CMA and our industry. He has served as CMA President, CMA Education Chair, and as a Member of CMA’s Board of Directors. In addition, he has participated in many educational presentations for CMA.

He is also a recipient of the CMA Education Award, given to individuals who have made an outstanding contribution to education in the private money lending field.

One of Rich’s proudest accomplishments was prior to the existence of CMA. He was

involved, through predecessor trade associations, in the structuring, legislative advocacy, and passage of Proposition 2, the “Broker Exemption from Usury.” A great portion of the loans that many of us make or arrange would not be possible without this exemption.

Rich is now enjoying semi-retirement, planning a lot of travel and time with extended family. We’re “lobbying” to get him to the San Diego Conference in September, so we’re looking forward to seeing him there! 🌐





MEMBER SPOTLIGHT:



Lori Bradford



Angelica Gardner
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The California Mortgage Association turns the spotlight on members who are making an impact in their professional field and around the Association. These members exemplify the Mission of the CMA. We know our members are one of the most important aspects of this Association, and we work hard to feature outstanding members. This month, the California Mortgage Association turns the spotlight on member Lori Bradford, Sr. Vice President-Regional Director of Sales for Mortgage Lender Services located in Fair Oaks, CA. Lori has over 25 years of experience in the trustee industry. She began her career processing commercial and residential foreclosures before moving into sales. As Regional Director of Sales, Lori is responsible for client development and education. If you have attended the CMA seminars over the years, Lori is always there answering questions and providing guidance to members and attendees.

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

A I have lived in California all my life and was born in South San Francisco, settled in the South Bay area where I raised three wonderful children, who also have given me five beautiful grandchildren, that I get to spend a lot of time with.



In my spare time from family and working, my hobbies are triathlons/Ironmans/marathons. I have a goal that I have almost hit, but due to COVID, it pushed out another year of training and racing. Then I will retire from all my racing. I have raced for the past 20 years.

When I'm not racing, I enjoy gardening, training, and showing my standard poodles in obedience.

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

A I started in the foreclosure world over 35 years ago. I processed foreclosures for many years and ran a branch office out of Pleasanton, California. I moved on to another trustee company and ran a branch office out of Morgan Hill, California.

In between all those years, I found Mortgage Lender Services. I have been with Mortgage Lender Services for the past 13 years as their Senior Vice President/Marketing person.

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

A I have been a member of CMA for about 13 years. I joined because this is a great networking organization, and the seminars are a great wealth of information.

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

A The help that you can get from one another, whether it be attendees, vendors, or even Trustee companies like us.

Q Who is your ideal/target customer?

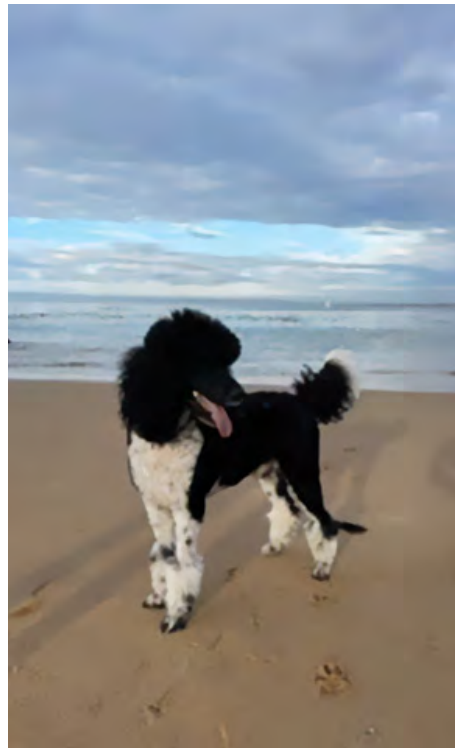
A Private Lenders, Mortgage Company, Banks, Credit Unions. If you have a note and deed of trust that is facing foreclosure, then we can help you!

Q What goals are you hoping to accomplish in 2023?

A My goals would be to get out there and face to face meet more people. This pandemic has changed the world of marketing.

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

A I really don't have anything that stands out to be the "most." I love a challenge.



Q What sets your company apart from others?

A I like to say the experience. Our team at Mortgage Lender Services is exceptional. We have all been in the industry for many years and pass on our wealth of knowledge to our customers. We are a small boutique company and, with that said, our customers always receive the best one-on-one service.

Q What is your favorite part of your job?

A I enjoy meeting and getting to know so many people in this industry. One thing I do know is you never stop learning new things in this business.



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

A LastPass. I downloaded this when I was at the Newport Beach CMA conference this year. I was listening to Bob Spier with Mortgage Care talk about how important it was to download this on your phone to protect your passwords.

My motto is live life to the fullest and always treat others the way you would like to be treated. 🌊





CMA Webinar Archives

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](#).

WEBINAR PLUS!
JANUARY 31, 2023
2:00PM - 4:30PM

Townhall - What to Expect in 2023
 Hosted by: Michelle R. Rodriguez, Esq. (Senior Compliance Counsel Wright, Finlay and Zak) and Robert Finlay, Esq. (Partner Wright, Finlay and Zak)

1098 & 1099 Reporting
 Hosted by: Bob Spier (Partner Mortgage+Care Loan Servicing SOFT) and Pam Sosa (President Standard Mortgage Financial Services, Inc.)

To REIT or not to REIT, That is the Question!
 Hosted by: Kevin Kim, Esq. (Partner | Geraci, LLP), Jeff Spiegel (Spiegel Accountancy Firm), and Shafiq Taymuree (Executive Vice President | Stonecrest)

WEBINAR PLUS! TOWNHALL:

- **What to Expect in 2023 - Update on Recent Changes in the Law**
- **1098 and 1099 Reporting**
- **To REIT or Not to REIT, That is the Question!**

(Presented: January 31, 2023)

What to Expect in 2023

What's New in 2023? Learn about some of the changes in the statutes, regs and cases that affect your business: Default Interest, California Consumer Privacy Act, HMDA, and more changes to the post-trustee's sale bidding process. Find out what changed and tips for compliance.

FOR MORE INFORMATION CONTACT:

Michelle R. Rodriguez, Esq. | Senior Compliance Counsel | Wright, Finlay and Zak
Panelists: Robert Finlay, Esq. | Partner | Wright, Finlay and Zak

1098 and 1099 Reporting

It's that time of year for 1098 & 1099 reporting for borrowers, lenders, and vendors. Learn who must file, when to file, what to file, to whom you must file, and more importantly how you must file. Whether you file manually or electronically, the burden of accuracy is on you! The penalties for incorrect reporting can be thousands of dollars. Avoid those penalties or contest them if you have received an IRS assessment by attending this session.

FOR MORE INFORMATION CONTACT:

Bob Spier | Partner | Mortgage+Care Loan Servicing SOFT
Pam Sosa | President | Standard Mortgage Financial Services, Inc.

To REIT or not to REIT, That is the Question!

Thinking about starting a fund or have an existing fund? You don't want to miss this! With the everchanging market and all that has happened lately with capital sources, many want to know if they should look at a REIT structure as an option when forming a fund. Some have existing funds that have an opportunity to establish a SUB-REIT, what are the benefits and downside of doing so? We will answer these questions along with a complete overview of what it takes to establish and manage a REIT with our expert panelists.

FOR MORE INFORMATION CONTACT:

Kevin Kim, Esq. | Partner | Geraci, LLP.
Jeff Spiegel | Spiegel Accountancy Firm
Shafiq Taymuree | Executive Vice President | Stonecrest

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CMA Webinar Archives

Going to Foreclosure: Top 10 Issues
 April 25, 2023
 11:00am - 12:15pm

MODERATOR: Randy Newman, Total Lender Solutions
PANELIST: Elizabeth Knight, PLM Family of Companies
PANELIST: Marsha Townsend, Mortgage Lender Services, Inc.

Going to Foreclosure: Top 10 Issues

(Presented: April 25, 2023)

When the economy is running at full steam and real estate values are appreciating, there are usually ways to solve problem loans that don't involve foreclosure. But when the economy shifts, when interest rates rise, when values are stagnated, or worse, decreasing, then the exit lanes all seem to be blocked and foreclosure can become the only option.

Randy Newman has assembled a team of foreclosure experts who will provide you with solid insight and ideas for managing the foreclosure process. From addressing pre-foreclosure issues, to post-foreclosure strategies, you will come away with meaty content you can put into practice. No one wants to foreclose. But when it's the only option, you need the right tools and resources to protect your investors. A pre-foreclosure checklist will be provided with the course materials.

FOR MORE INFORMATION CONTACT:

Randy Newman | President and CEO | Total Lender Solutions
 Elizabeth Knight | President | PLM Family of Companies
 Marsha Townsend | President | Mortgage Lender Services, Inc.

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Industry Calendar

Jul 30, 2023	CA DRE	RE 852	Trust Account Report
Jul 30, 2023	CA DRE	RE 854	Trust Fund Non-Accountability Report
Jul 30, 2023	CA DRE	RE 855	Trust Fund Status Report
Jul 30, 2023	CA DRE	RE 856	Trust Fund Bank Account Reconciliation
Aug 14, 2023	NMLS		Mortgage Call Report
Oct 30, 2023	CA DRE	RE 852	Trust Account Report
Oct 30, 2023	CA DRE	RE 854	Trust Fund Non-Accountability Report
Oct 30, 2023	CA DRE	RE 855	Trust Fund Status Report
Oct 30, 2023	CA DRE	RE 856	Trust Fund Bank Account Reconciliation
Nov 1, 2023	NMLS		NMLS Renewal Opening Date
Nov 14, 2023	NMLS		Mortgage Call Report
Dec 8, 2023	NMLS		SMART Deadline for NMLS renewal
Dec 15, 2023	NMLS		At-Risk Deadline for NMLS renewal

Jan 30, 2024	CA DRE	RE 852	Trust Account Report
Jan 30, 2024	CA DRE	RE 854	Trust Fund Non-Accountability Report
Jan 30, 2024	CA DRE	RE 855	Trust Fund Status Report
Jan 30, 2024	CA DRE	RE 856	Trust Fund Bank Account Reconciliation
Feb 14, 2024	NMLS		Mortgage Call Report
Mar 1, 2024	CFPB		Home Mortgage Disclosure Act Report
Mar 15, 2024	DFPI		CFL Annual Report
Mar 30, 2024	NMLS		Financial Condition Statement (12/31/23 fiscal year)
Mar 30, 2024	CA DRE	RE 881	Mortgage Loan Business Activities Report
Mar 31, 2024	CA DRE	RE 857	Residential Mortgage Loan Report
Apr 30, 2024	CA DRE	RE 852	Trust Account Report
Apr 30, 2024	CA DRE	RE 854	Trust Fund Non-Accountability Report
Apr 30, 2024	CA DRE	RE 855	Trust Fund Status Report
Apr 30, 2024	CA DRE	RE 856	Trust Fund Bank Account Reconciliation
May 14, 2024	NMLS		Mortgage Call Report



MAY 16, 2023 | 2:00PM - 4:45PM

Commercial Real Estate Trends: What Does the Data Tell Us?

Today's Lending Environment: Massive Lending Opportunity or Fool's Gold?

2023 HMDA Update

WEBINAR PLUS!

- **Commercial Real Estate Trends**
- **Today's Lending Environment**
- **2023 HMDA Update**

(Presented: May 16, 2023)

Commercial Real Estate Trends: What Does the Data Tell Us?

Moderated by Steve Belleville, this lively presentation will provide insights into the data for real time information on commercial property types across the state. Our expert panelists can drill down into the finer details to help you understand the markets you operate in, and where values and transaction activity are headed. Whether you are an investor, landlord, tenant, developer, broker, or lender, this program is one you won't want to miss.

FOR MORE INFORMATION CONTACT:

Steven Belleville | Director of Sales and Marketing | Redwood Mortgage
Nigel Hughes | SF Bay Area Senior Director of Market Analytics | CoStar
Ryan Patap | Los Angeles Area Senior Director of Market Analytics | CoStar
Rafael DeAnda | Associate Director of Market Analytics | CoStar

Today's Lending Environment: Massive Lending Opportunity or Fool's Gold?

Ever since interest rates took their quick trip to the moon beginning in March 2022, your traditional asset-based lending companies, whether backed by trust deed investors or a debt fund, have experienced an acceleration in volume not really seen since before Wall Street flooded the industry in 2015/2016. When many of the new "Titans" of private lending hit pause, drastically changed pricing, or scaled back operations, others quickly filled the void. Does Wall Street know something Main Street doesn't

Our panelists will take a deep dive into what they see coming down the pipeline for the private lending industry in terms of opportunity, what is driving their current deal flow, where they see the biggest risks going forward, and how they are positioning themselves for growth in the second half of 2023 and on into 2024. The panelists have volunteered to jump into the hot seat and no question will be off limits.

FOR MORE INFORMATION CONTACT:

Bradley Laddusaw | CPA – Chief Financial Officer | Capital Group
Boris Dorfman | Fund Manager | LBC Capital Income Fund, LLC
Brock VandenBerg | Principal | TaliMar Financial

2023 HMDA Update

With the recent 2022 court decision which dropped the reporting threshold back down to 25 covered loans, small lenders will again be required to report their HMDA loans annually. Moreover, most business purpose loans are not exempt. Gathering the reportable data points, making sure the data is correct, and properly filing the report can be a cumbersome process. Your best plan is to equip yourself with the right information and tools to do the job. Michelle Rodriguez and Lori Randich have been in the trenches, having implemented HMDA strategies for their respective companies and have also taught on this subject several times. Let them train you - and your office staff - on what loans are covered, how to compile the data, and how to successfully complete your HMDA filing.

FOR MORE INFORMATION CONTACT:

Lori Randich | Principal | Bay Lauren Financial
Michelle Rodriguez, Esq. | Compliance Counsel | Wright, Finlay & Zak



WELCOME NEW MEMBERS



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

Lin He

Rellion Inc.

16580 Harbor Boulevard, Suite J92708
Fountain Valley, CA 92708
(949) 209-9896
lhe@rellioninc.com
Regular Member

Jeff Smallowitz

Private Lending Direct, LLC

P.O. Box 992
Redondo Beach, CA 90277
(310) 750-5969
jeff@privatelendingdirect.com
Educational Member

Kevin Terry

Twin Rivers Capital

2255 Watt Avenue, Suite 125
Sacramento, CA 95825
(916) 952-4971
kevin@twinriversr.com
Regular Member

Dane Valadao

ReProp Financial

735 4th Street
Eureka, CA 95501
(707) 444-7711
dane@reprop.net
Regular Member

Sacramento Summary – continued from page 5

government controlled ownership of agricultural land in California. Held in Senate Appropriations Committee.

SB 455 (McGuire): States of Emergency-Mortgage Servicers.

Prohibits transferee mortgage servicers from dishonoring written agreements between borrowers and prior servicers and holders of notes concerning property repairs for losses caused by natural disasters in declared states of emergency. Passed Senate, pending in Assembly.

SB 460 (Wahab): Rental Applicants-Criminal History.

Would have enacted broad prohibitions against inquiring about criminal records of applicants for rental housing. Died without hearing in Senate.

SB 478 (Dodd): Hidden Fees.

Adds provisions to the Consumers Legal Remedies Act for false advertising which does not disclose all mandatory fees. CMA is working with a coalition of lender groups to obtain an exemption from the bill since the Consumer Legal Remedies Act presently exempts REBs and CFLs. Passed Senate, pending in Assembly.

SB 696 (Portantino): Remote Online Notarization.

Sponsored by the RON platforms, including Notarize and DocuSign, this bill would authorize the use of RON in California. Passed Senate, pending in Assembly. 🗳️

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POINTS OF INTEREST

Material Deadlines:

Spring Issue: January 1st

Summer Issue: May 1st

Fall Issue: August 1st

Please submit materials to Mayumi Bowers
mayumi@mortgagevintage.com





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