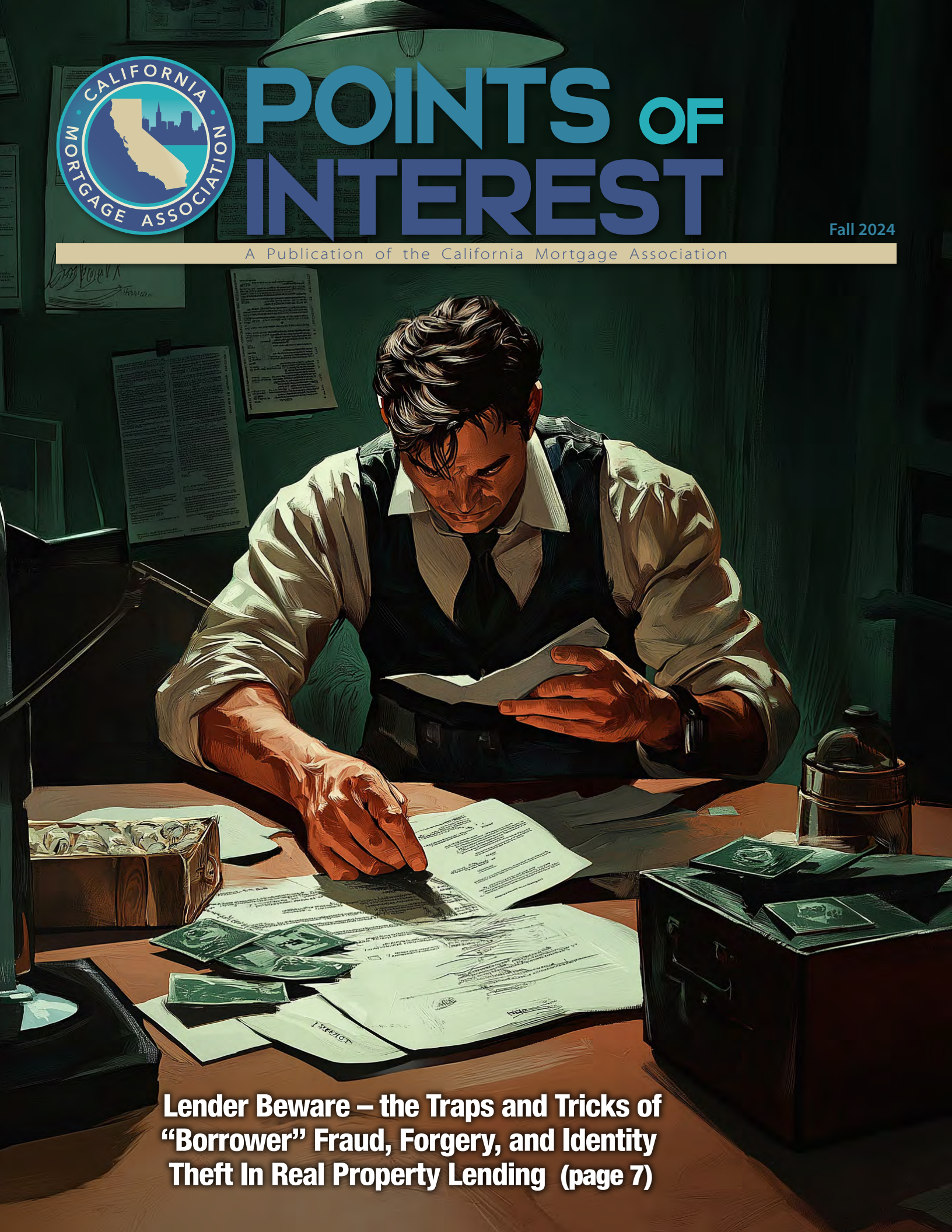
POINTS OF INTEREST

Fall 2024

A Publication of the California Mortgage Association



Lender Beware – the Traps and Tricks of "Borrower" Fraud, Forgery, and Identity Theft In Real Property Lending (page 7)

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We provide opportunities for our members to connect and collaborate with other trusted industry professionals.

POINTS OF INTEREST

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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

Bradley Laddusaw, CPA
2024-2025 CMA President

When you hear, "The California Mortgage Association," what comes to mind?

Two years ago, if you asked five different members this question, you might get five different replies.

If you asked a traditional mortgage broker "What does the California Mortgage Association mean to you?" the reply would catch you off guard:

"What's the CMA? Never heard of it."

Under the leadership of Shafiq Taymuree over the past two years, CMA went "Back to the Basics," focusing on its core competencies, and we had a lot of fun doing it. CMA was never a flashy association that needed nor wanted to have blowout parties after each conference. CMA is the first non-profit trade association hyper-focused on the California private lending industry. Our membership is comprised of private lenders, real estate investors, mortgage brokers, attorneys, and service providers from across the state of California that allow this industry to prosper. Over the decades, we've have established an important communication channel with Sacramento to help combat poor legislation that could potentially cripple this industry. We've always emphasized education, compliance, best practices and advocacy for our members.

Two years ago, when Shafiq was considering taking on the important role of President, he posed a very simple question to me:

"What vision do you have for CMA going forward?"

Without hesitation, I replied:

I feel CMA needs to get confident/direct with its messaging by keeping it simple. We have some of the sharpest minds in private money whose experience not only stretches post great recession, but across multiple decades.

I don't really care how much volume a lender has done over the past seven years with the cheapest and loosest money we may ever see. Tell me how you survived through the 80's, 90's, and the Great Recession.

Flashy comes and goes in every cycle. The room will look quite different 12 months from now, and it will look even more different 24 months from now. If we can reduce the noise, and stress education, compliance, best practices, and advocacy with some confidence, it will be great for membership and the entire private money industry.

I didn't join CMA to quadruple my volume with CMA referrals. I joined CMA to learn what steps I can take to avoid becoming the next case study. As others come and go, I plan on being here 10 years from now. Sometimes less is more and CMA has a ton of value it brings to the table.

As President, what does my crystal ball show for CMA over the next 12 months?

CMA will continue to focus on our core competencies and deliver on them with an increased level of confidence. We'll continue to lead the industry by example and drive value to our members through education, compliance, best practices and advocacy. Through our committees comprised of CMA members, we'll continue to be efficient and direct with our messaging, bringing unparalleled education to our members while rolling out new value-add events for all participants of the real estate industry.

CMA's members are the backbone of the private lending industry. Their networks

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FROM THE EDITOR

Mayumi Bowers
Editor, POINTS OF INTEREST

The Paris Olympics just recently came to an end. I read or listened to a lot of the background stories and really emphasized the challenges and hurdles that had to be overcome to get to the games. Many times, it seemed as if the challenges could not be overcome, and yet they were. Recently, there have been a number of challenges within the industry: In Re Moon; increased defaults; Honchariw; the NAR Settlement; increased litigation and fraud. At times it felt like these challenges were almost insurmountable. But this is a marathon, a long journey, and along the way, there are challenges and bumps in the road, but nothing that can't be overcome. Thus, these Olympic stories reminded me that we have to keep working hard, persevere, learn from the challenges, and never stop getting better and soon enough, we will turn into being the best that we can be. The articles in this edition, really do emphasize that you can overcome the challenges.

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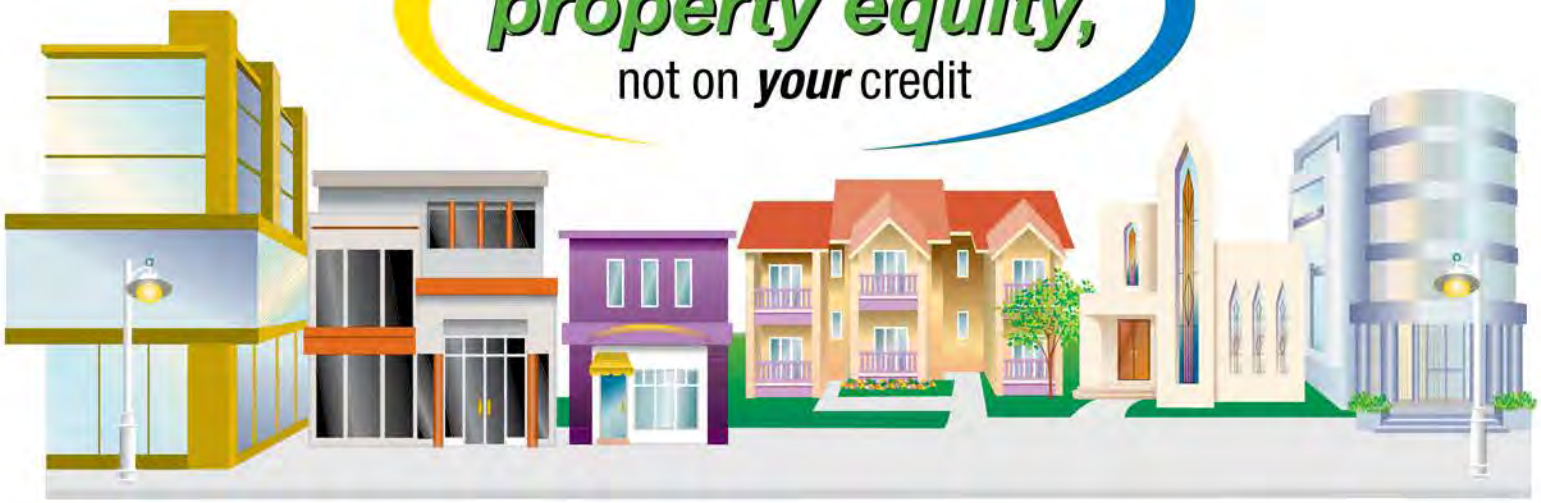

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SACRAMENTO SUMMARY

Michael D. Belote, Esq.
CMA Legislative Advocate

Closing

As this column is written, there are only 11 working days remaining in the 2023-2024 two-year session of the California legislature. Under the state constitution, the session must end by midnight, August 21. Incredibly, in earlier times the legislature would literally stop the clock at 11:59 pm and pretend that midnight had not arrived, passing laws into the wee hours. Now, with the advent of cell phones, time stamps and the like, the midnight deadline is observed precisely.

Incredibly also, there are well over 500 bills still moving through the legislative process, even at this late date. While that can be cause for concern, there are some bills that we actually want to see passed. Chief among them is CMA co-sponsored SB 1146 (Wilk), which resolves questions about the statutory usury exemption raised by the Moon decision. The bill simply clarifies that the exemption from usury limits applies whether a transaction is denominated as a loan modification, extension or forbearance, and whether the real estate broker making or arranging the modification also made the underlying loan or not. This critical but quite technical change promotes the sensible public policy favoring modifications, rather than discouraging them.

While nothing is certain in the legislative process, at this point SB 1146 is moving forward without controversy or opposition. Obviously usury can be a sensitive issue, but CMA leaders (especially Legislative Chair Liz Knight) have explained the problem to consumer groups, which have not raised concerns. Should the bill achieve passage by the legislature prior to adjournment, it will proceed to the desk of Governor Newsom, who will have the month of September to sign or veto it. Assuming a signature, SB 1146 would become effective on January 1, 2025.

All told, there are a shocking 160 bills in the CMA legislative system, available for member information and review through the association website. Every bill introduced, and every amendment to every bill, is reviewed for potential impact on CMA members. There certainly are plenty of bills to watch very carefully, like SB 278 on elder abuse, which as written does not apply to real estate licensees, and SB 1482 on commercial financing, which covers factoring and other asset-based financing, but not real estate-secured loans. But that is why every bill must be read!

Also worthy of mention, and moving through the process is AB 3108, relating to mortgage fraud. This bill amends the "covered loan law" in Section 4973 of the Financial Code, and the mortgage fraud provisions in Section 532f of the Penal Code. Although the Penal Code section already is very broad, the bill adds express language that it is a criminal act to make a business purpose loan knowing that the loan proceeds are actually intended primarily for personal, family or household purposes. In other words, do not call a consumer loan a business purpose loan. The bill also includes similar language relating to mischaracterizing "bridge" loans. Hearings on AB 3108 included a number of horror stories in these areas, and there is no opposition to the bill. Passage should be considered very likely.

At the end of the day, real estate law and occupational licensing remain largely a matter of state concern. That is why the legislative program for CMA, the only organization working in the state capitol

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Lender Beware

The Traps and Tricks of "Borrower" Fraud, Forgery, and Identity Theft in Real Property Lending

John L. Hosack, Esq.
Buchalter

Jason Goldstein, Esq.
Buchalter

Fraud and deception by "fraudsters" who pose as "borrowers" is rampant and very costly to lenders. While most lenders attempt to insulate themselves from the risks of fraud and deception by purported "borrowers" through the use of well-drafted escrow instructions and title insurance policies, the escrow agents and the title insurers frequently attempt to avoid liability to the lender. Therefore, the knowledgeable lender must be prepared to avoid the traps and tricks of the purported "borrower" and must also anticipate the efforts by the escrow agent, title insurer and others to avoid liability to the lender.

A common type of real estate loan fraud by a purported "borrower" is identify theft. This is where the purported "borrower" impersonates an individual or "hijacks" a business entity, by impersonating the management of the business entity, such as the manager of a limited liability company.

The extensive use of the internet allows the "fraudsters" to hide in the shadows and avoid detection by even the most zealous lender. Similarly, the extensive use of loan brokers provides additional

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cover for "fraudsters" who like to hide and avoid direct interaction with the lenders they are seeking to defraud. Unfortunately, even the most zealous lender, from time to time, will be deceived by a "fraudster" and will discover what was believed to be a legitimate loan secured by a valid and enforceable first priority lien on real property is actually "a fraud" and the lender's mortgage is not only a worthless "piece of paper," it is also slandering the title of the true owner of the subject real property.

When a lender discovers that it has been the victim of fraud, *prompt, focused* action by the lender is required. The lender's first step should be to identify all potential sources of recovery. Typically, these sources of recovery, at a minimum, will include the notary public, the escrow agent, the underwritten title company, the loan broker and the title insurer. Concurrently, the lender must be aware of its need to mitigate its potential liability to the true owner of the subject real property, without reducing or eliminating the liability of the notary public, the escrow agent, the underwritten title company, the loan broker[1] and the title insurer.

POTENTIAL SOURCES OF RECOVERY FOR THE LENDER

Introduction

While there are a few instances in which the "fraudster" was not successful in escaping with all of the loan proceeds which were fraudulently obtained from the lender, those instances are quite limited and rare. Unfortunately, reporting the fraud to the police or other governmental authorities is rarely beneficial. In the authors' experience, a fraud of less than $1,000,000.00 rarely attracts the interest of any governmental authorities. In addition, if the fraud does attract the interest of a governmental authority, that governmental interest may reduce or eliminate the ability of the lender to conduct discovery in civil litigation. This is because persons of interest may cite their Fifth Amendment rights against self-incrimination and decline to cooperate or respond to civil discovery until after the governmental investigation has been concluded.

The Notary Public Who Acknowledges the Trustor's Signature on the Lender's Deed of Trust

The signature of the purported "borrower" on the lender's Deed of Trust must be acknowledged by a Notary Public before the Deed of Trust can be recorded. Unfortunately, this is one of the greatest areas of risk for the lender. Because of convenience, it has become all too common for the acknowledgement on the Lender's Deed of Trust to be performed by a "mobile notary." Unfortunately, far too frequently these "mobile notaries" have no assets and only a minimal bond.

Therefore, the authors recommend that the lender's written escrow instructions to the underwritten title company ("escrow agent") which will record the lender's Deed of Trust, require that the signature of the purported "borrower" on the lender's Deed of Trust be acknowledged by an employee of the title insurer or underwritten title company ("escrow agent") which will record the lender's Deed of Trust. An alternative, not one which is recommended by the authors of this article, is for the lender's written escrow instructions to require that the signature of the purported "borrower" on the lender's Deed of Trust be acknowledged by a notary public who is selected, retained and instructed by the underwritten title company ("escrow agent"). The Notary Public should not be selected by the lender or directly hired by the lender or the lender's broker.

The "National Closing Office" of One of the "Big Four" Title Insurers

For a number of years title insurers, in large measure, directly dealt with their customers, except in areas where they had no "direct operations." In some areas, the title insurers dealt with customers through local agents, which might be owned by or otherwise affiliated with the title insurer. In addition, there were independent agents. Depending upon the circumstances, a lender still might be able to deal directly with the insurer since the "big four" title insurers (i.e. First American Title Insurance Company, the Fidelity National Financial, Inc. "family" of title companies, Stewart Title Guaranty Company and Old Republic National Title Insurance Company) all maintain and operate national closing offices. Depending upon the size and the volume of loans done by the lender, the lender may be able to have its loan closings conducted by a "national closing office" of one of the "big four" title insurers.

The Underwritten Title Company/ Agent Which Will Record the Lender's Deed of Trust

If the lender is not able to deal directly with a "national closing office" of one of the "big four" title insurers, the lender will probably be required to deal with an underwritten title company or agent ("Title Escrow Agent"), which will record the lender's Deed of Trust. The party which acknowledges the signature of the purported "borrower" on the lender's Deed of Trust and records the lender's Deed of Trust is the most important person in a secured real estate loan transaction. Therefore, it is the authors' recommendation that the lender take extreme care in selecting the Title Escrow Agent. In parts of the United States, the role of the Title Escrow Agent will be performed by a title agent who typically is a lawyer or a business entity which is affiliated with a lawyer.

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There are hundreds of underwritten title companies and title agents in the United States. Unfortunately, not all of them have sufficient assets to respond to a claim by a defrauded lender. Therefore, it is the authors' recommendation that the lender use an underwritten title company ("escrow agent") which is a wholly owned affiliate of one of the "big four" title insurers (i.e. First American Title Insurance Company, the Fidelity National Financial, Inc. "family" of title companies, Stewart Title Guaranty Company or Old Republic National Title Insurance Company). As stated above, the lender's written escrow instructions to the party who will record the lender's Deed of Trust should require that the signature of the purported borrower be acknowledged by a person who is employed by the Title Escrow Agent.

"Independent" Escrow Agents

In some parts of the United States, especially Southern California, there are a large number of "independent" escrow agents ("Independent Escrow Agent") which are able to handle certain aspects of the escrow for the real estate loan – excluding the recordation of the lender's Deed of Trust, but including acknowledging the signature of the purported "borrower" on the lender's Deed of Trust. The biggest challenge presented by a lender's use of an Independent Escrow Agent is whether it has sufficient assets to satisfy claims by the lender, especially where there is a fraud which has been perpetrated on the lender which has rendered the lender's Deed of Trust void because the purported "borrower's signature on the lender's Deed of Trust has been forged. Frequently the Independent Escrow Agent will inform the lender that it has errors and omissions insurance to cover any claims by the lender. Unfortunately, your authors have seen instances where the Independent Escrow Agent's errors and omissions insurance policy was exhausted by the cost of litigation and there remained no money to pay the lender's claims. In other instances, your authors have seen situations where the Independent Escrow Agent's errors and omissions insurer denied the Independent Escrow Agent's claims.

In addition to the ability to fully compensate the lender for any loss or damage caused by fraud, forgery and identity theft, title companies, which would otherwise have unquestioned liability as an escrow agent for the lenders, with all of the fiduciary duties attendant there to, will claim that they have no liability to the lender because they are a mere "sub-escrow agent" whose only responsibility is to follow the instructions of the Independent Escrow Agent.

The "Closing Protection Letter"

The American Land Title Association ("ALTA") promulgates a "closing protection letter" ("CPL") which is available to be used when a lender-or another customer-uses an underwritten title company or another

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agent of the title insurer, rather than dealing directly with the title insurer as the escrow agent and the title insurer. While the CPL arguably provides some benefits to a customer who is not dealing directly with the title insurer as both the escrow agent and the title insurer, a number of people criticize the CPL as not providing meaningful protection.

The "Authorized Agent Letter"

In addition to the CPL, some title insurers also provide an "authorized agent letter" for their customers. The "authorized agent letter" confirms that the agent is in fact the authorized agent of the title insurer and, in addition, purports to authorize the agent to "... conduct settlement closing services in connection with real estate transactions where ..." the title insurer's policies of title insurance are issued. However, the "authorized agent letter" goes on to state that the title insurer "... provides indemnification for the actions of an agent 'in good standing' in connection with those settlement services to the extent described in the closing protection letter issued to an insured for a specific transaction for which a title insurance policy is issued." Since the "authorized agent letter" is issued in addition to the CPL, it is the authors' opinion that it should be understood to provide additional assurances to those provided in the CPL (i.e. assuming liability for conducting the settlement closing services).

The Lenders Escrow Instructions to the Settlement Agent

The most important document in a loan transaction is the lender's written escrow instructions to the settlement agent and, if possible, to the title insurer, which at a minimum, provide the following instructions: (1) The lender's loan funds are not authorized to be disbursed, or otherwise used, until after the lender's valid, enforceable and duly executed Deed of Trust has been duly recorded as a valid and enforceable first priority lien on the real property described in the lender's Deed of Trust (subject only to the lien of current real property taxes on the real property which are not yet due or payable); and (2) The settlement agent is not authorized to use or rely on any indemnity agreement, bond or similar arrangement without the informed written consent of a specific person at the lender.

While there are a number of additional instructions which can be sent to the settlement agent, it is the authors' opinion that the lender's requirement of a valid and enforceable first priority lien is the single most important instruction. Unfortunately, from time to time, a lender may encounter resistance from a settlement agent to this instruction and the settlement agent will claim that it can only issue a loan policy of title insurance to the lender. If the lender encounters that resistance, it is the authors recommendation that the lender "shop around" to determine if it can identify a settlement agent which will agree to record the lender's Deed of Trust as valid and enforceable first priority lien on the real property described in the lender's Deed of Trust.

The 2021 ALTA Loan Policy of Title Insurance (Extended Coverage – No "Regional Exceptions")

A lender rarely has a claim on a loan policy of title insurance if the settlement agent (i.e. underwritten title company, agent, escrow agent, etc.) has strictly complied with all of the lender's express and implied escrow instructions. Therefore, the lender's claims on the loan policy of title insurance are normally secondary to the lender's primary claims for the settlement agent's breach of the lender's express and implied escrow instructions.

While the loan policy of title insurance may ultimately provide some financial benefits to the insured lender, the policy's Exclusions from Coverage, the Exceptions from Coverage and the Conditions are apparently drafted to materially reduce or eliminate the ability of the insured lender to receive financial benefits under its loan policy of title insurance. One of the more troublesome Exclusions from Coverage is Exclusion 3(a) for matters which were "... created, suffered, assumed or agreed to by the Insured Claimant." This Exclusion is the most litigated provision in the loan policy of title insurance and provides the insurer with its "first line" of defense to claims by the lender on the loan policy of title insurance. The second most troublesome exclusion is Exclusion 3(b) for matters which were "... not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date that the Insured Claimant became an Insured under this policy."

Exclusions 3(a) and 3(b) are claimed by the title insurers to merely provide the title insurer with defenses to matters which were the insured's "own darn fault." However, a fact which may appear to the lender to be totally harmless before the close of escrow can become very challenging after the close of escrow. The authors are aware of a case where the insured's lender's claims were rejected by the title insurer where the unrecorded Deed of Trust had on it a forged notary stamp of the notary public which contained an inaccurate commission number for the notary public and the insurer unsuccessfully claimed that the lender knew that the notary stamp on the Deed of Trust was fraudulent.

For a lender to reduce or eliminate the risks presented by Exclusion 3(b), the lender, at a minimum, should attempt to provide to the title insurer or its agent, copies of all documents or information which the lender has in its possession on the proposed loan. This disclosure can be accomplished in a

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variety of ways, including, but not limited to, providing copies of the loan file to the insurer, providing a link to the loan file to the insurer or by providing access to the loan file to the insurer.

The challenges of Exclusion 3(a) are more difficult because it may be necessary for the lender to "unring the bell." In one action, of which the authors are aware, the lender had a credit report which disclosed a recorded abstract of judgment against the proposed borrower. In addition, the lender had a commitment for title insurance which concealed and did not disclose the existence of the recorded abstract of judgment against the proposed borrower. The lender assumed that the commitment for title insurance was accurate and that the credit report was not. However, the credit report was accurate and the commitment for title insurance was false and misleading. After the loan closed, based on the false and misleading commitment, the judgment creditor executed on the real property which was encumbered by the lender's insured deed of trust. The lender submitted its claim to its title insurer, and the title insurer denied the claim based on Exclusion From Coverage 3(a), on the ground that the lender knew of the recorded abstract of judgment. Accordingly, the borrower fraudulently obtained the loan by not admitting to the recorded judgment against him and the title insurer avoided liability based on Exclusion from Coverage 3(a).

The Purported "Borrower's" Loan Broker

It is commonplace in real estate lending for a potential borrower to contact one or more loan brokers in an attempt to obtain the desired financing. While the vast majority of loan brokers are honest, like any other profession there are a few "bad apples" in the loan brokerage profession. Accordingly, as a lender you may receive a referral from another loan broker where that broker is less diligent or less honest than you. In the authors' experience, many of these loan brokers have few assets and those assets which they do possess are hidden. Accordingly, while you may have a "bad apple" who refers a fraudulent loan to you, they may possess limited or hidden assets which may not furnish a good source of recovery.

DISBURSEMENT OF LOAN FUNDS

It is not uncommon for the lender to want to "hand the check" for the loan proceeds to the borrower. While that act might make for good customer relationships, it may also create issues for the lender, especially if the purported "borrower" is an imposter and the lender "hands the check" for the loan proceeds to the wrong/fake person. Therefore, it is the authors' opinion that loan proceeds should be distributed to the borrower by the settlement agent after the recordation of the lender's valid and enforceable first priority Deed of Trust.

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PROMPT WRITTEN NOTICE OF CLAIM TO BE GIVEN BY THE INSURED CLAIMANT TO THE TITLE INSURER AND THE SETTLEMENT AGENT

Condition 3 of the 2021 ALTA Loan Policy imposes on the insured an obligation to provide prompt written notice to the insurer in the event that the insured has knowledge of any "... matter ..." for which the insurer "... may ..." be liable under the policy. This provision is read by the insurer as imposing a burden of eternal vigilance on the insured lender which is combined with a duty of providing prompt written notice to the insurer. In summary, it is the authors' recommendation that the lender should always provide prompt written notice to the insurer where the lender has knowledge of a matter which "... may ..." give rise to the insurer's liability on the policy. Failure to provide the prompt written notice may result in a reduction of coverage to the extent that the insurer is prejudiced.

THE POLICY PROVIDES THAT THE INSURER IS NOT LIABLE FOR "LIABILITY VOLUNTARILY ASSUMED BY THE INSURED"

Condition 9(c) of the 2021 ALTA Loan Policy states that the insurer is not liable for "... loss or damage to the Insured for liability voluntarily assumed by the Insured ... without the prior written consent of the Company." While this Condition limits what the lender can do to modify the terms of a loan without the insurer's prior written consent, it also presents a significant risk to the insured lender if the insured lender were to discover that it had received a false, forged or fraudulent Deed of Trust which had been recorded by the settlement agent on an innocent person's real property, which is now slandering title to that person's real property.

This is because, frequently, the title insurer will want to exercise Condition 9(b) in the loan policy of title insurance and attempt to prove that the insured Deed of Trust is in fact valid and enforceable. Unfortunately, that action by the insurer can create potential liability for the lender whose Deed of Trust is slandering the title to the real property where the false, forged or fraudulent Deed of Trust had been recorded. This is because the property owner, whose title is being slandered by the recorded false, forged or fraudulent Deed of Trust, will not realize that the settlement agent-not the lender-recorded the false, fraudulent or forged Deed of Trust and that the lender cannot reconvey it without the prior written consent of the title insurer.

Therefore, if you submit a claim based on a false, forged or fraudulent Deed of Trust, you should concurrently request the title insurer's (and the settlement agent's) written consent to reconvey the Deed of Trust without altering , changing or reducing your rights.

UNDERWRITING THE LOAN VERSUS UNDERWRITING THE LIEN

The lender makes the underwriting decision as to whether a potential loan should be funded or not. The title insurer, normally by and through its underwritten title company agent, makes the underwriting decision as to whether a lien has been created or not in favor of the lender. However, when a title insurance claim or an escrow claim arises, title insurers frequently claim that the lender's alleged negligent loan underwriting results in Exclusion 3(a) barring the lender's claim.

The "negligent loan underwriting" defense has routinely failed under scrutiny. However, when a title insurance claim arises, a lender should be prepared to have its underwriting of the subject loan scrutinized by its title insurer and potentially used as a ground proffered to deny the tendered claims.

PROMPT AND DILIGENT CLAIMS BY THE LENDER TO THE SETTLEMENT AGENT AND THE TITLE INSURER

If an apparent false, fraudulent or forged loan transaction is discovered, prompt written notice should be given by the insured lender to the settlement agent and the title insurer by email and Federal Express (or another overnight delivery service where a signed receipt is obtained). Most of the states have adopted, in one form or another, the Unfair Claims Settlement Practices Act, which was promulgated in June of 1990 by the National Association of Insurance Commissioners. In California, it is termed the Fair Claims Settlement Practices Regulations and is found at 10 Cal. Code of Regulations, Section 2695.7 and should be your "handbook" for your title insurance claims. Since escrow law and insurance law, especially title insurance law, is arcane and complex, you should retain a lawyer who is experienced with the issues in both of these fields when potential claims arise.

CONCLUSION

Real estate fraud, especially loan fraud is rampant. If you are engaged in real estate lending, your need to deal with loan fraud because it "comes with the territory." While you cannot eliminate loan fraud, you can take measures to attempt to prevent or mitigate your becoming a victim of loan fraud. If you are victimized by loan fraud, by following the measures summarized in this article, you should be able to reduce or eliminate any loss, which you might otherwise suffer.

ENDNOTES

1 This article does not contend that there is a rule that loan brokers are always liable to lenders when a purported borrower defrauds a lender. This is because there is no such rule.

Loan brokers are included in this article because they are part of the "cast of characters" which are involved in the origination and servicing of most private money lending transactions.

John L. Hosack, Esq. is a shareholder with Buchalter, located in their Los Angeles office. Jason Goldstein, Esq. is a shareholder with Buchalter, located in their Irvine office.

CMA Fall Conference

September 11-13, 2024 | Balboa Bay Resort, Newport Beach

KEYNOTE SPEAKER

David Luna

Industry Expert

SESSIONS

- Broker Roundtables
- Attorney Town Hall
- Legislative Update
- Networking

Register Online at www.CaliforniaMortgageAssociation.com

GENERAL INFORMATION

LOCATION:

The CMA Fall Conference will be held September 11-13, 2024 at the Balboa Bay Resort, located at 1221 West Coast Highway, Newport Beach, CA 92663. For room reservations, call the hotel at (949) 645-5000. Ask for the "CMA 2024 Fall Conference" rate. (Room rate is $299 + $20 resort fee per night Single/Double) through August 9, 2024 or until sold out.

CONFERENCE FEES:

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

	Registration received on or before August 29, 2024	Registration received from August 30, 2024 to date of seminar
CMA Member	$495	$595
Additional Attendee Same Company	$395	$495
Non-Member	$695	$795
Guest for Wednesday Night Mixer	$ 50	$ 50
Registration Total	$_____	$_____
PAC Raffle Tickets (voluntary; $20 or more)	$_____	$_____
TOTAL ENCLOSED	**$**_____	**$**_____

REFUND POLICY:

Cancellations received in writing on or before August 29, 2024 will receive a credit toward a future conference. Cancellations received in writing on or after August 29, 2024 will not receive a credit or refund.

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

Wednesday, September 11, 2024

1:00 pm – 3:30 pm

1ST Annual Pickleball Tournament

Join us for an exciting Pickleball Tournament to support the CMA PAC! Whether you're a seasoned player or a beginner, this event promises fun and friendly competition for all. Enjoy an afternoon of pickleball, camaraderie, and community spirit while contributing to a great cause. All proceeds will benefit the CMA PAC, helping to advance important initiatives and support advocacy efforts. ***Separate fee and registration.***

5:30 pm – 8:00 pm

Wednesday Night Network Mixer

Join your colleagues on the Bayfront Lawn at the Balboa Bay Resort for cocktails and appetizers on Wednesday evening. Enjoy beautiful Newport Beach, catch up with your peers and start networking early!

Thursday, September 12, 2024

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/Lender Roundtables

MODERATED BY Pam Sosa, President, Standard Mortgage Financial Services, Inc.

Who has the answer, the idea, that one strategy for the next step in your business? How do you find out "who knows what?" and get help the help you need? It's called, "CMA Broker/Lender Roundtables."

Experienced/smart CMA members at each table lead a discussion on a selected topic. But that's not all! You can get just as good – and sometimes better – ideas from other colleagues at the same table.

And the networking value! Meet someone new and be doing business together the following week. This session provides tens of thousands of dollars' worth of knowledge. How much are you willing to "leave on the table?"

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

10:30 am – 12:00 pm

Fund Manager State of the Union (1.5 General MCLE Credit)

MODERATED BY Brock VandenBerg, President, TaliMar Financial | Shafiq Taymuree, Executive Vice President, Stonecrest

The California Mortgage Association is excited to host the annual "Fund Manager State of the Union" session where we bring in industry experts to discuss various elements of the mortgage fund industry. We will cover a variety of topics such as key performance indicators of mortgage funds, updates from our legal experts, and how private loans are being priced nationally. This session is open to (and beneficial to) ***all*** CMA members and is an excellent opportunity for professionals in the private lending industry to stay informed and engaged with peers. Be prepared to share insights and ask questions because this session is interactive.

12:00 pm – 1:30 pm **Luncheon**

Thursday, September 12, 2024

1:30 pm – 3:00 pm

Market Forecast

KEYNOTE SPEAKER David Luna, Industry Expert

Do you know where interest rates might be headed? We sure don't, but David Luna may. Known as one of the most important thought leaders in the mortgage industry, David Luna has been sought after by news media and professional organizations for his insight into what affects real estate markets, and why. Expect his keynote to touch on inflation, the Fed, interest rates, housing inventory, and local and national mortgage trends. David has spent his career in mortgage education and compliance, and he has held executive positions for banks, credit unions, mortgage bankers and brokerages. A truly engaging speaker, David has spent a lifetime paying attention to what is going on in the economy, and how it affects the mortgage industry. He'll share it all with you.

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

3:30 pm – 5:00 pm

Building Your Company – How to Drive Profits

MODERATED BY Glenn Goldan, Founder & CEO, ReProp Financial

We have all seen presentations on "growing your company" which tend to be personnel driven. This discussion will be focused on your profits whether you want to remain a one-man band or grow an orchestra. We will focus on growth, but growth that maximizes your company's net profit potential regardless of size. Join Glenn Goldan, CEO of ReProp Financial who will host a panel of guests with companies, small and large, for a raw, honest discussion on the successes and pitfalls they have encountered.

5:00 pm – 6:30 pm **Cocktail Reception**

Friday, September 13, 2024

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

What's New with ADU? (1.5 General MCLE Credit)

MODERATED BY Sandy MacDougall, President, Mortgage Vintage, Inc. | Marcus Carter, President, La Mesa Fund Control & Escrow, Inc. | Dennis Doss, Esq., Founder, Doss Law | John Lloyd, President, Fidelis Private Fund | Kathryn Moorer, Esq., Senior Associate, Wright Finlay & Zak, LLP

What's New with ADU's? This expert panel will provide important updates on new legislation, construction best practices, and lending guidance in the exploding Accessory Dwelling Unit (ADU) industry. The presenters will look at comprehensive aspects of development, construction, and lending in the ADU environment from a lending, funds control and legal perspective. Whether first or second, Owner Occ. or Non-Owner Occ., SFR or Duplex, or One lot or Two lots, you will learn and get practical guidance on what can be done legally while staying in compliance.

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

10:30 am – 12:00 pm

Attorney Town Hall and Legislative Update

Mike Belote, Esq., CMA Legislative Advocate, California Advocates, Inc. | Robert Finlay, Esq., CMA Legal Counsel, Wright Finlay & Zak, LLP | Brad Rogerson, Esq., CMA Securities Counsel, Hanson Bridgett, LLP

Stay up to date with the legal and legislative activities that affect our businesses and our bottom lines. Brought to you by Michael Belote, CMA's legislative advocate, and Robert Finlay, CMA's legal counsel, this program will cover all the new legislation and case law that you need to know. Don't just cover your head and cry! Staying informed is the best way to protect your private lending business.

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FROM THE PRESIDENT – *continued from page 2*

run deep and there is amazing value in that network. I want members, without fear or hesitation, to be willing to contact each other in the event a deal does not fit their lending profile. Though we are all competitors, getting difficult deals done allows us to grow together.

We will continue to form relationships with other groups and associations that are just beginning to see the value of private money.

With Sacramento single-handedly becoming our biggest competitor, it is imperative we continue to educate the industry and its participants. As we exponentially grow membership and expand our visibility past just the private lending industry, we will also increase contributions to the PAC and expand our voice in Sacramento.

Most importantly, we are going to do it together and have FUN along the way.

Until next time....

Bradley Laddusaw, CPA

SACRAMENTO SUMMARY – *continued from page 5*

exclusively for private lenders, is so important. And the last weeks of the legislative session arguably are the most important time. Just like closing loans, it is this time of year that we "close" on legislative issues!

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I'm Over Moon

All the Questions You Ever Wanted (or Didn't Want) to Ask About the *Moon* Case

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

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

Does it feel like you've been thinking about the Moon a lot, and not the big round rock in the sky? Brokers, lenders, and servicers have been considering the effects of the *In Re Moon*[1] case since the decision came down in 2022. This article will not delve into the *Moon* case and its holding – that has been handled very competently in other articles. Instead, this article will address some common questions that have been posed in the wake of the *Moon* case.

Moon Holding:

The court in the *Moon* case interpreted Cal. Civil Code § 1916.1 as requiring that a modification, extension, or forbearance is exempt from usury under the "real estate broker exemption"[2] only if the broker had acted as a broker in the selling, buying, leasing, exchanging, or negotiating the sale, purchase, lease or exchange of real property or a business in the loan transaction.[3] For purposes of private mortgage lenders, the court appears to hold that not only must a real estate broker negotiate the loan, but the *same* broker must also negotiate the modification, extension or forbearance, and that broker must also be the broker who negotiated the purchase or sale of the property. This leaves the question of what happens when the loan was refinanced? Under a strict reading of the court's ruling, it seems that no broker would meet the criteria of Civil Code 1916.1, and therefore no modification, extension, or forbearance of the refinance would qualify for the broker's exemption from usury.

NOTE: nothing contained in this article should be considered as legal advice or relied upon as legal advice. Please consult with your preferred counsel before entering any agreement that could implicate the *Moon* holding.

COMMON QUESTIONS:

If I am a California Finance Lender ("CFL"), does *Moon* apply to my loans?

The answer to this is more complicated than it seems at first blush. If a CFL licensee makes a loan and services it, it is not covered under Civil Code 19161.1 and the *Moon* case. If a CFL licensee makes a loan, and then an REB licensee services the loan, there is an argument that the transaction is covered under 1916.1, and therefore covered by the *Moon* case. Before running out and getting a CFL license or using your existing CFL as the rationale for disregarding the *Moon* case, it is best to talk with your counsel.

Can I charge points and fees & lower the interest rate to below 10%?

You can, but the points and fees may be considered when determining the rate of interest for purposes of the usury rate. Therefore, be careful of lowering the rate to below 10% and then steeply raising the points and fees.

If the interest rate on the loan is 10%, the loan is not usurious, right?

In most instances, the usury limit is 10%. But it is generally safer to stay under 10% in case there is some margin for error.

Can I just have the borrower sign a 6 month extension – not changing the terms at all except the maturity date?

Unfortunately, extension of the loan is specifically mentioned in Civil Code §1916.1,

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and therefore, is subject to the *Moon* decision. As a result, having the borrower sign a 6-month extension when the loan rate exceeds the usury rate could be risky, unless the loan was a purchase money loan, and the broker arranging the extension is the same broker who arranged the purchase of the property.

What if I write the option to extend into the original loan documents?

This may work, but there are risks. The idea is that the terms of the extension are written in as part of the loan, so that there is no after-closing extension agreement. The more automatic the extension, the lower the risk that the extension will be considered a separate extension and therefore subject to *Moon*. However, risks include: (1) that your lender may be locked-in to giving the borrower an extension when they would rather not; or (2) that a court would find that the extension violated *Moon*. Seek the advice of counsel before implementing this to make sure you understand all of the risks.

I'd rather take my chances and extend the loan with a rate over 10% – most borrowers don't sue and if they do, I just get a lower interest rate, right? What's the harm if I just do it anyway!

If your loan is found to have violated the usury limit, the penalty is not just a lower interest rate. You may lose all of the interest and interest paid to date could be ordered applied to your principal. Also, usury could be considered a crime under some circumstances.

Does default interest that takes a loan over 10% IR violate *Moon*?

This question appears to be conflating two recent cases, *In Re Moon*, which pertains to the DRE broker exception from usury for loan extensions or modifications arranged or made by DRE licensed brokers, and the *Honchariw* case, which pertained to the ability to charge pre-maturity default interest rates on the entire unpaid principal balance of the loan. So, let's break it down:

1. Read narrowly, *Moon* requires that, in order for an extension, modification, or forbearance to be exempt under the broker exemption from the usury limit of 10%, the broker who makes or arranges the extension, modification or forbearance must be the same broker who arranged the sale of the property. In that respect, if a default rate is in effect and the default rate is under 10%, the *Moon* case is inapplicable, because the interest rate is under the usury level. If there is a default rate above 10% on the loan, but the note rate is under 10%[4], and the default rate is not in effect, then the extension, forbearance or modification is not subject to the *Moon* holding.

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2. But that doesn't necessarily mean that default interest is allowed. The court in the Honchariw case stated that charging pre-maturity default interest on the unpaid principal balance is an impermissible penalty, and therefore unenforceable. So, if the lender modifies a loan, and the loan has a default rate, and there is a pre-maturity default, the lender would still be prohibited from charging the default interest on the entire unpaid principal balance. It could make a difference if the default rate is not very high, because there is a greater chance that the default interest could be construed as being reasonably related to the amount of damages suffered by the lender as a result of the default, and not an impermissible penalty. The most conservative approach is still to refrain from charging pre-maturity default interest on the unpaid principal balance of the loan.

Can I just foreclose on the loan?

Absolutely. The safest route is just to foreclose. But lenders generally don't want to foreclose, which is why you are working with the borrower to begin with.

Does postponing a foreclosure sale violate Moon?

Merely postponing a foreclosure sale, without any sort of agreement with the borrower, should not violate the *Moon* case. In general, lenders should be careful to refrain from verbally promising anything to the borrower regarding a postponement or workout. Verbal promises could be: (1) considered an oral modification agreement; and/or (2) subject to misinterpretation or misrepresentation by the borrower. To be safe, lenders can send a "reservation of rights" letter to the borrower if the foreclosure sale is postponed, so that: (a) the borrower knows that the sale has been postponed; (b) the lender is not waiving any rights under the loan documents by postponing the sale; and (c) the lender reserves any rights it has to enforce the loan documents.

Is there a legislative solution to the problem?

Yes! Help is hopefully on the way. Your California Mortgage Association drafted language to resolve the issue. Our longtime Lobbyist, Mike Belote, found Senator Wilk to sponsor Senate Bill 1146. With Mike's guidance, SB 1146 is working its way through the Legislature. We are optimistic that it will pass, creating a solution starting January 1, 2025. Until then, lenders still have to navigate the issues outlined above.

Navigating loan defaults under the *Moon* and Honchariw cases can be confusing. Lenders and servicers are encouraged to seek the advice of their preferred counsel when drafting their policies and procedures regarding modifications, extensions, forbearances, and also default interest and when negotiating with borrowers.

If you have any questions on this issue, please feel free to contact Michelle Rodriguez at mrodriguez@wrightlegal.net or Robert Finlay at rfinlay@wrightlegal.net.

Endnotes

1 *Moon v Milestone Fin. LLC* (*In Re Moon*), 639 B.R. 190, January 31, 2022.

2 Cal. Const, Art. XV §1

3 *Moon* at 200.

4 The usury law applies to loans with a rate above 10%, so technically, if the rate is 10% it should not violate the usury law. But I recommend that a lender concerned about usury set the rate slightly under 10% to allow for errors in calculation.

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

Litigation Trends In the Private Money Space

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

With access to conventional loan sources tight these days, many private money lenders are having their best months or years ever. Of course, with making more loans comes increased risk. This article will explore the types of litigation that are keeping private money lenders up at night and how to minimize their risk.

Elder Abuse Claims

When someone thinks of elder abuse in the lending context, it's usually in the context of a bad lender making a loan to an elderly borrower who lacks capacity to know what they are even agreeing to. Most lenders and, in particular, CMA members, do a great job of weeding out those potential borrowers. However, in the current lending landscape, "elder abuse" means something totally different, much harder to identify and far more dangerous.

Our firm is currently seeing a wave of a different kind of elder abuse litigation. Instead of claims limited to capacity issues, the current trend involves business purpose loans to anyone over the age of 65, where the loan was allegedly for a "wrongful use." More specifically, the lawsuits allege that California's Welfare & Institutions Code § 15610.30 defines "financial abuse" as when a lender (in our context) "takes" or "retains" real property of an elder (anyone over 65) for a "wrongful use", which is further defined as when the lender knew or should have known that taking or retaining the real property is likely to harm the elder. As you can imagine, it would be very easy for a crafty attorney to argue that the high fees and interest on private money loans was not in the elder's best interest and therefore, harmed the elder.

In one recent case (not handled by our firm), the elder was awarded damages in excess of $600,000 AND had two loans voided without any obligation to repay the funds the borrower received! In addition, the case is headed to a second phase to determine whether punitive and treble (triple) damages are warranted. While the allegations in that case appear particularly egregious, borrowers' attorneys argue that the same concept applies anytime the over-65 borrower is harmed by the terms of the loan. (See *Brown v. Abayachi, et.al.*, Alameda Superior Court Case # RG20079500.)[1]

Practice Pointer – While lenders cannot simply refuse to lend to anyone over 65, they can look at those loans more closely before approving or buying the loan. In addition, keep an eye out for a pre-lawsuit demand. At least one attorney, Sil Vossler, generally sends a demand before filing suit. If you receive a letter from him, we recommend immediately involving counsel to discuss your response options.

Usury Litigation (*In Re Moon*)

Note – this issue only applies to California loans where the interest rate is over 10% and the usury exemption used at origination involved a licensed real estate broker.

California loans secured by real property that contain an interest rate over 10% are considered usurious unless one of the many exemptions apply. One of the most common exemptions is when the loan is negotiated or arranged by a licensed real estate broker. In that event, the interest rate can exceed 10%. In 2023, the Bankruptcy Appellate Panel out of the 9th Circuit ("BAP") dealt lenders using the "broker exemption" a blow when it held that, in order to maintain the broker exemption following a forbearance, the forbearance itself must be negotiated and arranged by the licensed broker who

continued on page 27

originated the loan itself AND that loan was in connection with a sale, lease or other transaction (e.g., a purchase money loan). As a result, the BAP's decision in *In Re Moon* arguably restricts the use of the broker usury exemption to any forbearances! This leaves lenders with few options – (1) if it was a purchase money loan, use the original broker to negotiate the forbearance; (2) refuse to do a forbearance, i.e., foreclose; (3) lower the interest rate to below 10% as part of the forbearance; or (4) risk exposure for not following the BAP's opinion.

The lender in the *Moon* case appealed the matter to the 9th Circuit. Industry groups rallied behind the lender (who was just trying to help the borrower avoid foreclosure). To that end, our office filed an amicus brief on behalf of the CMA and NPLA. Unfortunately, the 9th Circuit affirmed the BAP ruling (in an unpublished decision), agreeing with its holdings that: (1) the settlement agreement was a forbearance for purposes of the usury laws, (2) it was not subject to an exception under 1916.1 (*as this was not a credit sale* and no broker was involved in the forbearance), (3) it did not matter that the interest rate was lowered since it was still above 10%, and (4) the lender was nonetheless entitled to post-judgment interest on the principal.

Although the 9th Circuit's decision is unpublished and, therefore, not citable in court, the BAP and underlying bankruptcy court decision are still citable. More importantly, the "bell has been rung" on this issue and, as a result, we are seeing lots of litigation from borrowers arguing that any type of forbearance on a loan with an interest rate over 10% is usurious.

Practice Pointer – Consult with counsel before entering into any type of forbearance, modification or extension where the interest rate is over 10%.

Finally, please note that our office, in conjunction with the CMA, drafted a legislative solution that would allow lenders to help defaulted borrowers via a forbearance, without the fear of reprisal for allegedly violating the usury statutes. Please tell your representatives to vote for SB 1146 (so that you can help your borrowers). Please also contribute to CMA's PAC, which helps its lobbyists advance bills such as SB 1146.

My Business Purpose Loan Is Actually A Consumer Loan!

This is a very popular lawsuit these days. The common scenario usually looks something like this: a private money lender makes (or investor buys) a non-owner-occupied loan with a signed certification that the loan was for a legitimate business purpose. After the loan matures or the borrowers otherwise default, they file suit claiming that their business purpose loan was actually a consumer loan. Naturally, the lender points to the borrowers' representations in the loan documents. In response the borrowers claim that their "broker made them do it" and that everyone knew all along that this was a consumer loan.

While the borrowers' business purpose statement is helpful, it unfortunately does not end the discussion. Courts often look at a variety of factors to determine whether the loan was, in fact, for a legitimate business purpose. If it was not, the lender may have violated a series of state and federal laws that apply to the origination and servicing of consumer loans. Of course, it hardly seems fair that the lender would be liable for relying on borrowers' representations. For this reason, we often file cross-complaints against the borrowers for loan origination fraud.

Practice Pointer – Be sure to document the business purpose and remember that, while borrowers are your friends at loan origination when they need the money, they quickly turn on lenders when they go into default.

Affirmative Litigation

In addition to defensive litigation, we are also seeing an increase in lender-initiated actions. Specifically, with some LLCs walking away from unprofitable projects, we are seeing an uptick in demands and lawsuits to enforce ***personal guarantees.*** Often, enforcing the guaranty is enough to re-engage the borrower and get the loan paid off.

Likewise, we are having more frequent discussions with lenders about appointing a receiver to collect rents. Most private money loans have ***Assignment of Rents*** language, allowing them to put a receiver in place to collect rents. Whether moving to appoint a receiver makes sense is generally an economic decision; but, when it makes sense, the ability to start collecting rents is a great way for lenders to offset their losses while the loan is in default.

We are also seeing a significant increase in ***fraud-related matters*** on several fronts, including appraisal, broker and borrower fraud. We are not sure if there has been an actual increase in fraud or whether the fraud is just being exposed more as a result of an increase in defaults. Either way, fraud claims are definitely on the upswing.

Lastly, ***title claims!*** While title claims are a regular part of private money lending, we have definitely seen an increase in claims and (questionable) denials. If you believe

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Litigation Trends – *continued from page 27*

the title company wrongfully denied your claim, we recommend immediately consulting counsel. In addition, if the title company accepts your claim, it is usually prudent to have counsel oversee title appointed counsel to make sure they are protecting you.

Conclusion

There are lots of ways for lenders to get sued, especially in California. These are just a few of the current trends we are seeing. If you are seeing other types of litigation, please let us know as we are always curious to find out what the new theories are being bounced around the courts. In addition, if you end up losing a case that could impact the private lending space, please reach out to our office or the CMA for a potential amicus brief on appeal.

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.

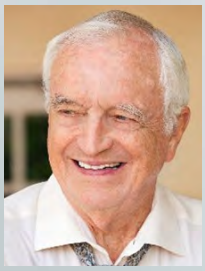
Endnotes

1 Please note that this decision is not final and is likely to be appealed.

Robert Finlay is a founding Partner of WFZ.

NATIONAL ASSOCIATION OF REALTORS

The National Association of Realtors Settlement – Some Facts



Duane Gomer
Duane Gomer Education

We have all heard about the big NAR (National Association of Realtors) Sitzer-Burnett Lawsuit. The lawsuit began in 2019, with the verdict arriving in late October 2023. The trial lasted eleven days and the jury deliberated only three hours. The penalty assessed against NAR and two real estate companies was $1.78B. There were stories about NAR never giving up and appealing the verdict, but instead, NAR settled the lawsuit for $418,000,000 in March of this year. At the time, many rumors began to crop up, such as:

Realtors agree to axe 6% commission in NAR lawsuit.

Nothing was ever mentioned anywhere about maximum commissions.

NAR to cut commissions.

NAR never set commissions. Commissions are negotiable.

Realtor settlement to lower home sale prices.

Does anyone really know the answer to that question?

The Number of agents will drop 60 to 80% and income and fees will drop 30%.

These prognostications. They were quoted in several articles in March. The comments were in a report by Keefe Bruyette Woods, an East Coast financial company in October 2023. This was before the verdict and before the settlement. They must have an all-encompassing crystal ball.

HOW ABOUT SOME FACTS?

You all have your different reliable sources. One of mine is Gov Hutchinson, Esq., Vice President and Assistant General Counsel, California Association of Realtors®. He is their Roving Storyteller presenting outstanding Purchase Agreement Courses all over California and leading panel discussions at CAR meetings. I have heard him speak many, many times, and keep going back.

Gov discussed the Settlement at the Orange County Realtors® Association Annual Meetings, March 25th in beautiful downtown Irvine. He did not disappoint. Some items discussed:

1. Effective around mid-July all agents must get a Buyer's Agency Agreement signed with any prospect before any property may be shown.

2. There must be a communication concerning commissions and a decision made as to who will be paying and how much will be done.

3. No commission information or agreements can be posted on any MLS service. However, commission information could be posted on an agent's website and other locations.

4. Commissions can be paid by sellers or buyers, or a combination of the two.

5. There is no information currently available on how the mandatory contracts will be handled when showing open houses. This will come later. Hopefully by July.

6. The NAR agreement only covers residential, one to four, owner occupied transactions.

BUYER'S AGENT CONTRACTS:

Where can you get information about a BUYER REPRESENTATION AND BROKER COMPENSATION AGREEMENT (BRBC) before July? The California Association of Realtors (CAR) has had this contract for many years. There may have to be a few tweaks made before July according to Gov,

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but the contract should be studied now. Get it at your friendly CAR website.

The BRBC agreement is a three-page form. It discusses broker compensation, whether the contract is Non-Exclusive or Exclusive, payment by others, agency relationships, obligations of buyer and broker, and many other things. Required information for all of us.

WHAT'S NEXT?

Now that you have the form, what should be your next step? You should consider the NAR designation, Accredited Buyer's Representative®. This designation has been available for many years, but we were told that there are only 31,000 ABRs at this time. With the new regulations coming in July the designation could be very valuable to you for the education that it offers.

To earn the ABR® designation you must be a member of NAR, complete the required courses, (the ABR® designation course and an elective course), and complete the required number of ABR® transactions. The ABR® course focuses on "the key information and skills you need today when working with buyers, so you can be prepared to articulate and demonstrate your value and help buyers understand written buyer representation agreements," says NAR President Kevin Sears. NAR has announced that it will provide its members access to this course, at no cost, helping REALTORS® communicate their value to buyers in this ever-evolving real estate landscape.

MORE INFORMATION ABOUT THE SETTLEMENT:

NAR has released a valuable FAQs entitled NAR Settlement Facts, dated March 26, 2024. It is 13 pages of interesting information. It is available at www.nar.realtor/sites/default/files/documents/nar-settlement-faq-03-26-2024.pdf. I recommend it unequivocally. Reading it will make you feel a little more optimistic and you will sleep better.

IN CONCLUSION:

There is a newly introduced bill in the California Assembly (AB 2992) that discusses the mandatory use of a Buyer's Agent Contract. Remember that all the settlement talks and MLS discussions involve only Realtors®. Over 60% of the licensees in California are not Realtors®. And they also sell. This Assembly Bill would require all licensees to use Buyer's Agent Contracts.

Finally, for those of you who think being a Buyer's Agent is a new concept, I found an article of mine that was written in 1989 on Buyer's Agents. I posted it to our blog recently without having to change one word.

Duane Gomer is the founder of Duane Gomer Education (DGE), a California company offering educational courses for real estate licensees, Mortgage Loan Originators, and Notaries Public. DGE is widely recognized for their outstanding instructors, comprehensive materials, and unmatched customer service.

MEMBER SPOTLIGHT:

Glenn Goldan

Lori Randich
Bay Laurel Financial

If you can't imagine anyone within CMA's radius who doesn't know who Glenn Goldan is, you would not be alone. Long a mentor to others in this industry, presentation moderator 'par excellance', and a key leader in CMA's formative years, Glenn is the approachable guy who's always ready to answer a question or join a conversation. For those who are interested in how Glenn got where he is today, here's his story, in his own words. And if you've ever wondered about his entrepreneurial spirit, read on.

Tell us a little about your childhood and your family growing up.

I was born and raised in Westfield NJ which is a bedroom community of NYC about 25 minutes by train from Manhattan. I have a brother eight years my senior and a twin brother and sister, two years my junior who inadvertently sought to ruin my 'baby of the family' status when I was four. I grew up loving everything urban and rural – and nothing in between.

I remember many trips by myself to Manhattan or the Bronx at the age of nine on. One vivid memory was a trip to Yankee Stadium for a double header on Bat Day, when full size Louisville Sluggers were given away without worry. I was ten at the time, and was reminded repeatedly by my mother to watch my eight-year-old brother who was tagging along. The trip was uneventful until we reached the Bronx subway as we got closer to the stadium. About two stops from the stadium the train got so crowded I lost contact with my brother and could hear him screaming "Glenn, I am not touching," as his little body got jostled so his feet were off the ground. Fans laughed and passed him overhead to me and we forgot to mention the episode to mom.

At the age of eight and for years after, I was sent to camp in the Poconos for two months each summer. I hated going to camp but after six weeks, I hated the thought of going home. I became the first ever one-feather-brave at the age of eight, an enormous honor at Camp Hugh-Beaver! These furry mountains were as much a home to me as was NYC. I developed my deeply rooted love for the outdoors and all the skills that go with that lifestyle. As a teen, my buddies and I would spend summers canoeing down the Delaware, camping, trapping small animals and snakes (yes, copperheads and rattlers)

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and selling them to many of the summer camps in the area for their nature exhibits.

As a kid, our basement was my domain. I learned to grow orchids on one end, and I set up a dark room on the other. Indirectly through these meager construction projects, I also developed an interest in all things wood. When I was told I had to get a part-time job, I couldn't stand the thought of going downtown and getting a retail job, and to this day, I have never received a W-2 or a 1099-NEC from anyone but myself.

Since my mom was a pretty well-known artist in the Tri-State area, I asked her if I could start framing her paintings for one-third the cost she was paying and asked for an advance to buy a chop saw and framing material. From there, I started framing for her artist friends and voila!, I was making tons more than any of my friends. I also took to candle making and made the rounds at craft fairs selling my candles and hawking my framing business.

A little older, the allure of California was all any teenager with a ponytail from Jersey thought about, so I headed off to USC with my Irish Setter in my VW Microbus, reconstructed as our home. However South-Central, or for that matter LA in general, was not my vision of 'urban,' and my job at nearby La Raza, as a staff photographer, paid less than nothing. Shortly after, a couple of my new friends said they were heading up to Humboldt State (now Cal Poly Humboldt) to see old friends and invited me along to see the Redwoods. Rural won out over urban and for the next 45 years, Humboldt was home.

What got you started in this industry? What kept you in it?

My neighbor and close friend owned a title company and over a couple of years convinced me to come to my senses and get into the real estate profession. He introduced me to a commercial real estate mini titan with a national reputation in the burgeoning discourse of 1031 exchanges. Thirty-five years my senior, I mentored under Bob Fulda, and we operated five real estate offices from Humboldt to Lake Tahoe. When he retired seven years later, he left me with all of his clients, who were also 35 years or so my senior, and the headache of managing over a hundred agents. I was now the guy responsible for all of NorCal, and all of their baggage.

Bob and his buddies were divesting their real estate holdings, and by doing so wanted to get on the debt side, which forced me to open ReProp Financial. By then, I had a pretty good background in real estate and a deathly fear of losing other people's money, so while they were of the mindset of 'loan to own,' I wasn't, and I started to work my way up the investor tree.

This sideshow business crawled along for about ten years before I thought: Eureka! – I don't need the headache of managing a bunch of independent contractors with varying opinions of the definition of business ethics. Over the next few years, I sold off the brokerage offices and property management operations. The best lesson I learned was from owning two property management companies: reoccurring revenue was what I would grow through ReProp Financial.

Who is ReProp Financial's ideal/ target customer?

Any customer the rest of the industry is not typically serving. While we do everything everyone else does, we differentiate when it comes to special purpose, rural/land, Ag and other types of real estate which have traditionally been hard to serve.

What sets your company apart from others?

Because of where we are located behind the Redwood Curtain, we have been forced to become unique. We continue to scale a viable, potential multi-generational company from probably the most rural market in the industry, which took us across state lines and across asset classes before other CA private lenders.

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

I backed into trade association affiliation. My buddy Quentin Kopp, the independent senator from SF and the man that married Shelle and me, got ripped off by another 'friend' of ours who also stole from other friends and from ranking political figures in California, selling the same trust deed investments over and over again. Lesson: Don't steal from the makers of policy! This caused 'Q' to contact Jim Ant, DRE Commissioner at the time, who came up with a list of reforms in 1998 that, if enacted, would have made this Newsletter and my article obsolete. I rang the bell with my software provider who was a mucky muck with a thing known as CTDBA.

Immediately, I found myself awkwardly on the Board of Directors and Chair of its Legislative Committee, which led to an even more awkward first meeting with Mike Belote, and the beginning of a 25+ year friendship. The end result was two pieces of mortgage reform legislation, back-to-back in consecutive sessions, that I am proud of to this day. Among other things, we expanded and refined the lending matrix found on the LPDS, and, my personal crucible, the lowering of the reporting threshold by half, and then by half again the following year. My greatest

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hope is that CMA continues its quest to eliminate the threshold altogether making it impossible for crooks to hide underneath it, thereby allowing us free range to 'out' the bad guys.

Any CMA board positions or committees?

Shortly after getting my feet under me and appreciating the happenstance that got me involved in the industry, CTDBA was approached by the other private lender trade association known as MAC, and after a year of talks, we negotiated a merger of the two associations. I give Bill Watson of the Money Brokers, much credit for the merger. After an 18-month period of co-presidencies by the two respective former presidents, I became the first elected president of CMA and have been a member of the board ever since.

I continued with the Legislative Committee for several years, and along with my Co-Chair Liz Knight and our legislative advocates, we worked through the then DRE Commissioner's industry concerns, with CMA sponsoring two more pieces of legislation allowing us to continue in the multi-lender construction lending and multi-collateral lending businesses.

In 2005, I recommended we form Focus Groups which, as the name implies, focus on a specific discourse such as consumer lending, construction lending, etc. Until recently, I led the Securities Focus Group, and particularly the Pool Manager's Group. My passion is education, having presented or moderated over thirty-five live content programs, always trying to deliver content in an understandable way with a dash of humor.

What is your favorite benefit offered by the California Mortgage Association?

It's hard to pick one area. Yes, the networking; yes, the legislative and legal advocacy; yes the education. But yes, yes, yes – we have been trailblazers, and I believe CMA will continue leading the private lending industry nationwide as it grows and morphs, as long as we can embrace change.

What goals are you hoping to accomplish in this year? (personal and professional)

Personally, Shelle and I want to travel more and just today set up a biking trip to Croatia. We have two old fur babies and we have let our lives revolve around them for too long. Having replaced several body parts with durable metal, I will get back on the river – as some know, flyfishing is my passion. Professionally, I am cycling off the Board (no pun intended) and hope my much younger and brighter partner, Dane Valadao, can serve on the Board for years to come.

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

Change. While I embrace it, we seem to battle with being one step behind the competitive razor's edge.

What is your favorite part of your job?

The art of the deal. If tomorrow I need to be on a plane to Houston to meet with a new customer, so be it – I am a deal junkie and the quicker we close, the quicker I am on to the next.

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

Blinq. You are never out of business cards with Blinq or a similar QR virtual business card ... assuming your phone has juice!

What is the last book you read and why?

I love to read anything historical, whether fiction or non. I'm currently reading *The River of Doubt* about Teddy Roosevelt's harrowing navigation down an uncharted Amazon tributary. Of the hundred or so books loaded on my phone I always have 6 – 10 books I hope to read next.

What's your favorite vacation spot?

Our backyard in Fountain Hills, AZ. It's truly a paradise.

Anything else you want to share?

Is there anything else I want to share? Knowledge and acquired wisdom, which is often painful to acquire.

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INVESTOR DISCLOSURES: REVIEW, UPDATE & IMPROVE

Joffrey Long, *Southwest Bancorp.* | Dennis Doss, Esq., *Doss Law*

Could your investor disclosures be better? Of course they can! Find out:

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Spend an hour with Dennis and Joffrey. They'll cover disclosures for DRE brokering, funding and re-selling loans, DFPI permits, and protecting our "sacred" securities exemption. Even if your investors never lose a dime, better disclosures help if regulators decide to "take a peek." And, your improved disclosures will make for even better investor relations.

10/15/2024 • 11am

MAKING BUSINESS PURPOSE LOANS

Joffrey Long, *Southwest Bancorp.* | Robert Finlay, Esq., *Wright, Finlay & Zak*

The business purpose loan. If the borrower sticks to their story, that is was for a business purpose – all good. If they don't – not good. Laws, regs, and lawsuits "kick in" if/when they claim it was for a "consumer purpose."

What can you do? Can you arrange or make a loan, to "be on the right side?" How? Does that sworn "business purpose affidavit" cover everything? Maybe not.

Joffrey and Robert will help with practical and "how-to" steps to consider in setting policies, screening loans, documenting, and closing, and staying on the right side of the laws/regs/requirements. Each presenter brings a useful perspective: Robert, CMA General Counsel, is highly specialized in private money and Joffrey is a private money lender/broker who has served as an expert witness in cases about business purpose loans.

Industry Calendar

— 2024 —			
AUGUST			
Aug 14, 2024	NMLS		Q2 Mortgage Call Report
OCTOBER			
Oct 30, 2024	CA DRE	RE 882	Trust Account Report
Oct 30, 2024	CA DRE	RE 854	Trust Fund Non-Accountability Report
Oct 30, 2024	CA DRE	RE 855	Trust Fund Status Report
Oct 30, 2024	CA DRE	RE 856	Trust Fund Bank Accont Reconciliation

— 2024 —			
NOVEMBER			
Nov 1, 2024	NMLS		NMLS Renewal Opening Date
Nov 14, 2024	NMLS		Q3 Mortgage Call Report
DECEMBER			
Dec 8, 2024	NMLS		SMART Deadline for NMLS Renewal
Dec 15, 2024	NMLS		At-Risk Deadline for NMLS Renewal

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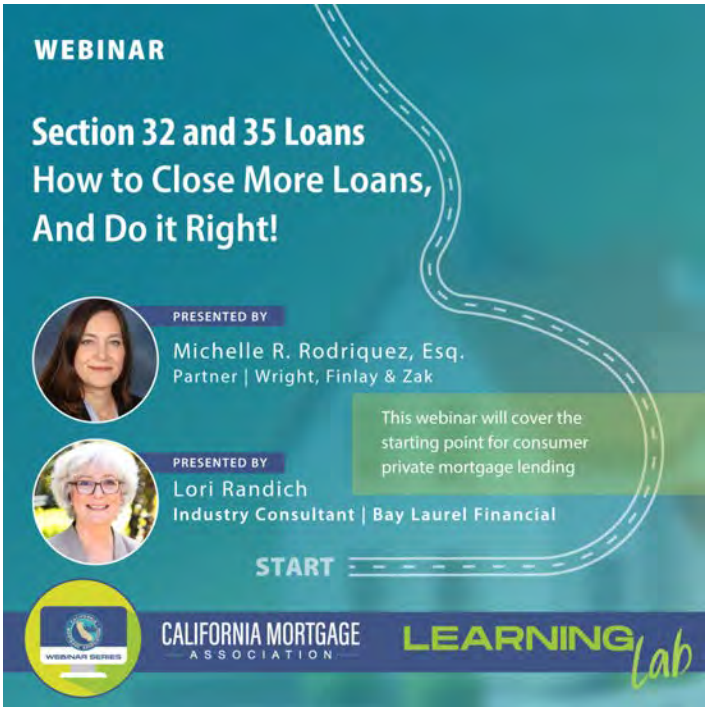

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ASIC Invest
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sivau@yahoo.com

MIGUEL VAZQUEZ (Educational)
Home Central Financial
7847 Florence Avenue, Suite 101, Downey, CA 90240
(562) 881-9811 | miguel@homecentralfinancial.com

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Membership Application

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Has your license or that of an affiliated company ever been suspended or revoked or have there been any complaints within the last ten years? If yes, please provide details:

_____

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Tell us about your professional work history:

_____

_____

_____

Tell us about your current company history and business focus, branches, employees, and other pertinent details:

_____

_____

_____

How did you become aware of CMA?

_____

_____

Do you know other CMA members? If yes, who?

_____

_____

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(revised 8/11/16)

Power of Membership

MISSION STATEMENT

The California Mortgage Association is committed to providing legislative advocacy, legal resources and education programs for our members to enhance their professionalism. We believe that the public good is served when professionals serve the public.

Regular Member

Any reputable individual, sole proprietorship, corporation, limited liability company, or partnership primarily engaged in the Mortgage Business in the state of California.

Affiliate Member

Any reputable individual, sole proprietorship, corporation, limited liability company or partnership who regularly provides services or products to persons engaged in the Mortgage Business.

Educational Member

Any reputable individual, sole proprietorship, corporation, limited liability company or partnership engaged in the Mortgage Business who is not subject to the provisions of Business & Professions Code § 10232(a)-(b) ("threshold broker"), or under any successor statute.

In which CMA Committee or Committees are you interested?

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

☐ **Continuing Education** ☐ **Legislative** ☐ **Other**

I would be interested in participating in the following focus group:

☐ **Commercial:** For those members whose interest is commercial finance. While we meet as a whole, we have organized into two chapters – Northern and Southern California. Select the location where you do the most lending.

☐ **Northern CA** ☐ **Southern CA**

☐ **Securities:** For those members who are using "non-DRE" methods of raising capital for your loan investments or would like to learn more about securities like pools and permits.

☐ **Consumer:** For those members who are arranging owner-occupied 1-4 unit loans, want to stay up-to-date on the laws and invent new possibilities in this lending arena.

I hereby make application for membership in the California Mortgage Association and pledge myself, if accepted, to abide by the requirements of their By-Laws and Code of Ethics as they are now and as they may be amended. Applicant acknowledges that the use of the Association logo is exclusive to members only, and applicant agrees to cease utilizing the logo upon termination of membership. By becoming a member, applicant authorizes CMA to send information on products and services by phone, fax or e-mail under U.S.C. 47 sec. 227. Applicant certifies that the foregoing information and annual gross closings are correct.

Signature *(required)*_____

DUES PAYMENT OPTIONS: Dues are based on your annual gross closings. Please select one:

☐ **Regular Member —** ($1 million and above per year): $125/month

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Contributions or gifts (including membership dues) to CMA are not tax deductible as charitable contributions. Pursuant to the Federal Reconciliation Act of 1993, association members may not deduct as ordinary and necessary business expenses, that portion of association dues dedicated to direct lobbying activities. Based upon the calculation required by law, 18% of the dues payment only should be treated as non-deductible by CMA members. Check with your tax advisor for tax credit/deduction information.

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Fall Issue: July 15th
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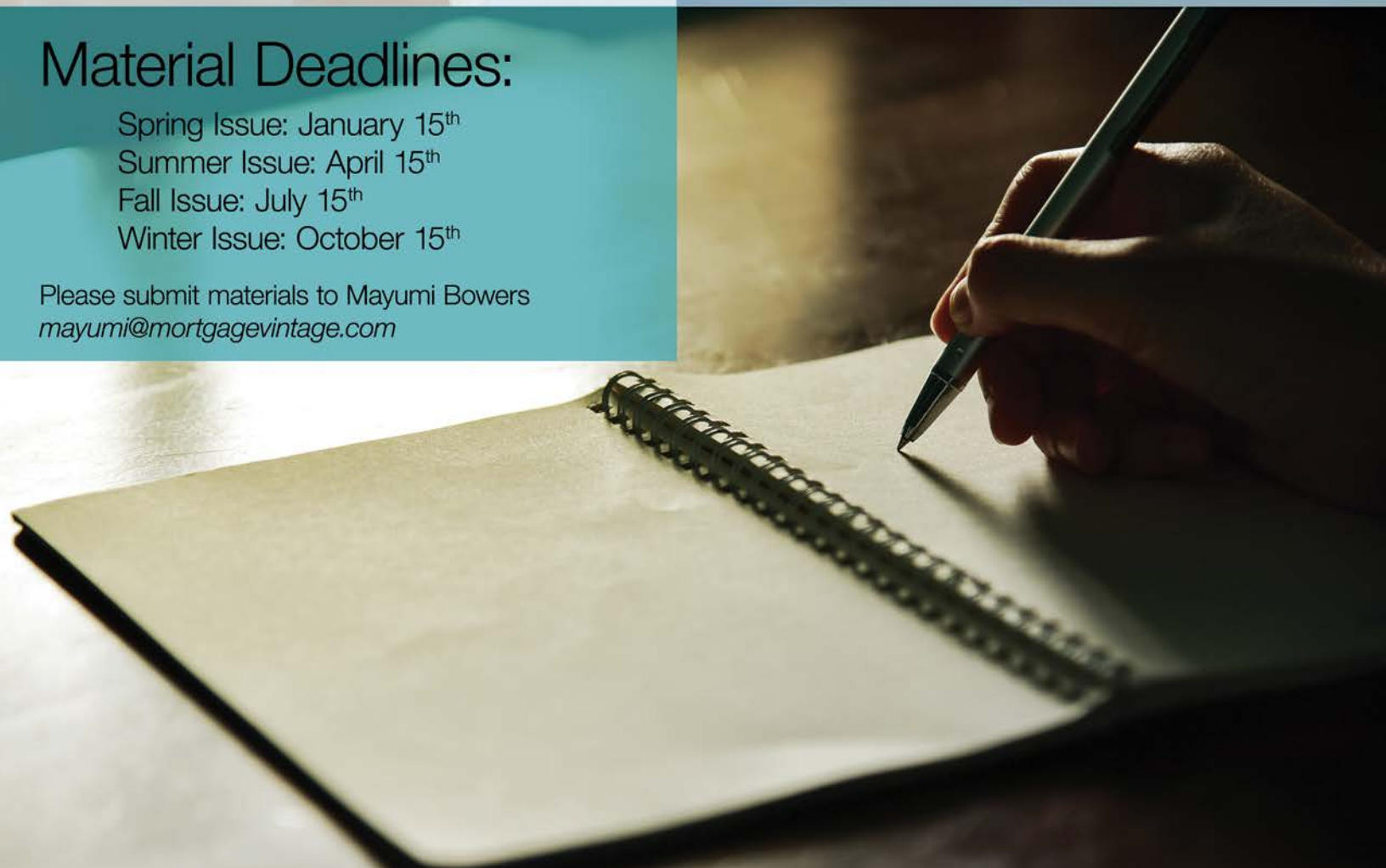
Please submit materials to Mayumi Bowers
mayumi@mortgagevintage.com



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- Broker Roundtables
- Attorney Town Hall
- Legislative Update
- Networking

KEYNOTE SPEAKER

David Luna

Industry Expert

CMA Fall Conference

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