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Looking Back at a Year of Accomplishments for the California MBA

by
CHRISTOPHER M. GEORGE,
CMG Financial,
California MBA Chairman

A fter an extremely busy and productive year, my term as chairman of the California MBA is drawing to a close, with CBRE’s Kevin Randles set to be installed as the new chair in July, I wanted to take a moment and look back and measure our accomplishments against our expectations and goals. One year ago, I set the following three goals for our organizations:

• Revitalize the California MBA brand and increase brand awareness
• Improve our educational offerings
• Increase our state’s participation in the MBA’s Mortgage Action Alliance (MAA)

As you all know, a company or organization’s logo creates a lasting first impression on an audience, and it is critical that the logo properly reflect the organization, its purpose and mission. After months of consulting with our members, stakeholders, and board of directors, it became clear that our logo was lacking. It didn’t reflect our state, our innovative spirit, and frankly looked old and stodgy. We went through an exhaustive survey, and lengthy logo design process, and arrived at our new logo, which we think breathes new life in our group and better exhibits who we are. You should notice the following changes:

• Emphasis on California—our state is the most innovative, vibrant state in the nation, and the most consequential mortgage market. Our new logo clearly puts the focus on California, using color, text style, and imagery in the form of waves and sunlight.

• You’ll note we’ve changed our name from ‘CMBA’ to ‘California MBA’—this was done to further emphasize our state’s prominence, as well as help distinguish us from other trade associations that use a similar acronym. Additionally, this should remind everyone that, while we have no official relationship with the national Mortgage Bankers Association, our industry should speak with one voice, and our two organizations will continue to work together to further common goals.

• Our new tagline restates our long-held mission: our most critical task is to represent and advocate for the industry in Sacramento before the Legislature and regulators. We’re also charged with providing industry great education through our conferences, webinars, and other events. Finally, in an industry where who you know is almost as important as...Chairman’s Corner continued on page 31
New Programs Provide Many Opportunities to Get Involved

by SUSAN MILAZZO, California MBA Executive Director

As you may have noticed, 2015 has already shaped up to be an active year for the California MBA! In addition to another busy year on the advocacy front, we’ve introduced a number of new programs for our members. I wanted to take a moment and talk to you about one of them, as well as remind our residential members about a significant regulatory development.

If you are with a commercial mortgage banker member company, you should have received an invitation to our 2015 Commercial Executive Forum and Property Tour. This is a redesigned format from previous years with an added twist! Traditionally, this event has been our opportunity to invite the senior management and deal makers to discuss industry trends and challenges. However, this year our leadership decided that while that interaction is valuable, it would be interesting to start incorporating property tours into this event. On June 18th we launched our first Commercial Executive Forum and Property Tour in San Francisco and visited the world headquarters of Twitter, at 1355 Market Street. This property is also home to other companies we visited that have incorporated the open space office format with no set offices, the need for quite a bit of general open space and a very relaxed work environment. Is this the trend of the future or a fad? To discuss how the transition to the open space work environment has been implemented by at least one major company, we started the day with a presentation over lunch from speakers from CBRE’s Workplace 360 Team. Changing the daily work habits and familiar surroundings of thousands of employees has not been a simple undertaking but the results have been impressive. After lunch, we caught our chartered bus to 1355 Market Street for our tour and on the way back, Paul Chandler, CEO of Property Sciences provided us a presentation on his views of the developments in the South of Market area of San Francisco, views on the market outlook and the value of leasing as it relates to the trends towards modernizing office design. Back at the hotel, we convened for an early cocktail hour and dinner. We are excited at the opportunity to offer this event to our membership and look forward to putting together similar events in the future. It’s a great chance to spend the day with your peers, discuss the state of the industry, where the market is moving, and how trends in creating an innovative office space will impact future lending. And, this event is exclusively for those who are with member companies of the California MBA, so if you’re not a member, this is just one more reason you should join today!

For those in residential lending, you should have seen a clarification in the April DBO newsletter regarding branch offices for companies licensed

...Executive Director Letter continued on page 36
One of the main headlines in the state capital over the last few weeks is that California state income tax revenue continues to exceed expectations. Income tax collections in April were approximately $1.6 billion more than estimated by the Brown administration and that is on top of the $1.3 billion in extra revenue through March. That is good news for the state and is a reflection of an improving economy. The majority of the extra revenue will go to schools and community colleges under the state’s constitutional funding guarantee and more money may be diverted to the state’s rainy day reserve.

In stark contrast to the better than expected tax revenue, California is experiencing a severe drought and state and local government agencies are scrambling to respond. State regulators approved mandatory water cuts of up to 36 percent following the Governor’s unprecedented order that the state reduce its overall water usage by 25 percent. A key question being asked by policy makers and by business leaders, is what impact will the drought have on the state economy if it continues. Housing related industries are undertaking a significant effort to improve water conservation to help meet the competing needs of new housing and more efficient use of water. Ultimately, if the drought continues it will create additional costs for builders and will have a negative effect on the state economy in general.

The first few months of legislative activity this year have been very busy, with a higher volume of introduced legislation and several bills that would directly impact the membership of the Californian Mortgage Bankers Association.

**AB 244—DECEASED BORROWER & SUCCESSOR IN INTEREST—HBOR**

*In Assembly Committee on Banking and Finance.*

AB 244 (Eggman) would include a “Successor in Interest” under the definition of borrower for the purposes of the California Homeowner Bill of Rights (HBOR). The bill extends the rights and benefits of the HBOR to successors in interest, including the consideration of a foreclosure prevention alternative even in circumstances where the successor in interest is not financially distressed, the provision of a single point of contact and access to a private right of action with draconian penalties. The bill applies to any successor in interest natural person who is a personal representative, a spouse, a joint tenant, or a trustee or beneficiary. The California Mortgage Bankers Association opposes AB 244.

A fundamental principle of the HBOR is the consideration of foreclosure prevention...
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www.plazahomemortgage.com
‘Behind the Scenes’ Look at our New Brand

by DUSTIN HOBBS,
Communications Director,
California MBA

In this space, I plan to provide you with perspective on branding and marketing your company, as well as an occasional look at the interaction between our industry and the media. Essentially, I’ll focus both on how we can better present our companies and our industry to potential business partners and consumers alike.

To kick off the column, I wanted to provide some more in-depth information about the new California MBA brand, including the process and purpose behind our new look. In addition to helping you better understand our new logo, I hope this is information you can use when launching a new brand or product.

One of the big takeaways for us was the importance of having a clear understanding of our organization—its nature and mission. That seems fairly self-explanatory and simple, but getting to that point of knowledge was a long and deliberate process. We (staff) had our own assumptions about what the California MBA is to its members and the industry, but basing our look and brand on that alone would be dangerous. We made a concerted effort to interview our board of directors and a representative sampling of our general membership—part of the success of that process was that we did phone and in-person interviews, and didn’t rely on online surveys, which can only go so far. It was immeasurably helpful to be able to press an interviewee on a specific question, beyond the simple ‘yes’ or ‘no’ answer in order to fully understand their point of view.

Through this process we learned that our members value the organization’s responsiveness, innovation, strength, and position as an advocate for the industry in the mortgage market’s most important state. Those characteristics can be seen in the new logo—from the colors and text emphasizing California to the bold font used for ‘MBA.’ We also took the opportunity to change our name from ‘CMBA’ to ‘California MBA,’ which accomplished several goals. Our group has increasingly grown closer (while retaining our independence) to the national MBA over the years, and many in the industry already refer to us as the ‘California MBA.’ Additionally, the new moniker will also help distinguish us from other state-based trade associations that use similar letters, from the Connecticut Mortgage Bankers Association to the California Bankers Association, California Mortgage Association, California Association of Mortgage Professionals, and more.

In addition to making sure we knew who we are to our members, the process of involving them in the re-design helped ensure that we would have significant ‘buy-in’ from our membership, and built-in champions and...
Much has been said about Millennials—American youth sandwiched between the ages of 18 and 34. Currently 80 million strong, they are on the cusp of taking over the workforce. In 10 years, three out of every four global workers will be a Millennial. Mortgage companies on a growth path will need to recognize the effects Millennials are having on their workforce, and on the products this generation will consume.

**MILLENNIALS AS EMPLOYEES**

How can we get Millennials to consider a career in the mortgage industry? One of the challenges today’s successful mortgage employers face is that they are set up to cater to Boomer workers rather than their younger counterparts, who learn differently, have developed different skillsets and mindsets, and have grown up with the latest technology at their fingertips. Access to instant information, constant social sharing, and sophisticated personal devices have changed everything.

How should companies adjust to this new reality? Training programs are key—the transfer of knowledge from the existing workforce to Millennials coming on board. At Plaza, we’ve beefed up our e-learning department in the last few years, having added new training leadership with fresh insights into how the
younger workforce learns.

We’ve added a new e-learning “university” with 24-hour and mobile app accessibility, gamification strategies (through our partnership with Morf Media, Inc.*) that make online training more palatable to the younger generation, more than 500 learning modules, and social, reward and feedback mechanisms. We have more work to do in this area, but we are on the right path.

It’s not a secret that Millennials are accustomed to a more relaxed approach to traditional office rules and workplace hierarchies. In addition to an “open door” policy to company leadership and a casual dress environment here at Plaza, our workforce connects to the office from any location 24/7, which offers the flexibility that Millennials crave. Our technology is set up so that workers can log on to our systems and work from their own desktop from any office or personal device, with ease. Additionally, today’s employers need to accept that Millennials require access to their personal devices at work. The blend of work-time with personal-time, and vice versa, is simply a new reality.

Further, employers need to encourage younger workers to consider a career in the mortgage industry. We help Americans realize the dream of home ownership, and a promising and fulfilling career awaits Millennials willing to work hard and learn the business. We can all benefit from the fresh thinking that smart Millennials bring to the workforce.

MILLENNIALS AS CONSUMERS

Most of us have observed that younger consumers have a different set of challenges than their older counterparts: Millennials are deferring home ownership in favor of paying down debt accrued at college, underemployment is a fact for many, and as a result, more young people than ever are moving back in with their parents after college. Additionally, having witnessed parents, friends and others struggle through the financial crisis, Millennials are more cautious about their financial future than their older counterparts were at their age. Clearly, many are not ready to buy a house anytime soon.

However, recent research from the 2015 National Association of Realtors (NAR) Home Buyer and Seller Generational Trends study shows that despite these obstacles, the largest group of homebuyers is the Millennial generation, although 13 percent of their purchases were made as part of a multi-generational household.

Just as Millennials are not the same types of employees as their Boomer counterparts, they follow a different set of rules when it comes to consuming products and services. Mortgage companies and others need to consider the following facts, according to NextGenerationCatalyst, about Millennials’ purchasing habits when planning their selling strategies:

• 60 percent of Millennials “rate” products and services;
• 59 percent say friends influence their purchase decisions;
• 81 percent care more about fast, than friendly service;
• 84 percent report that user-generated content on websites influences what they buy;
• Millennials are 247 percent more likely to be influenced by blogs or social networking sites than their older counterparts.

According to the NAR study, the Internet was the top source millennials used to find the home they purchased, but 90 percent of them used a real estate agent to purchase the home.

At Plaza, we conclude that Millennials will seek the help of professional mortgage brokers when they need a loan, but will use friends and technology to vet their broker, rate them online, and share their purchase experience with others using a variety of means.

Surely, Millennials are changing the way that every generation uses media and consumes products. It would be wise for all of us to watch Millennials’ habits closely, and adapt our businesses to meet their needs as we position ourselves for future business growth.
**Breaking Through**

**EDITOR’S NOTE**—This is the latest in a series dealing with the issues facing the real estate finance industry. Each issue we touch on a different topic, asking CMBA’s experts for their thoughts on the issue at hand. In this issue of CMFN, we ask three industry players about some of the challenges in today’s market. **Bill Lowman** is President of American Pacific Mortgage, a Roseville, CA-based residential lender with over 900 originators, 150 branches in 19 states; **Mike Dirrane** is Chief Sales Officer of National MI, a private mortgage insurer based in Emeryville, CA; and **Michael Simmons** is SVP with Axis Appraisals, a San Rafael-based appraisal management company.

_The views and opinions expressed are solely those of the authors._

**Q: WHICH IS A BIGGER CHALLENGE—LACK OF HOUSING SUPPLY OR LACK OF CONSUMER DEMAND?**

**Lowman:** While I think that answer may vary depending on the market you serve, I would say the lack of supply in housing is more problematic than the lack of demand. Take the Bay Area for example. The number of new residents is about 400% more than the new housing units that have been approved. When you consider the affordability aspect I think the lack of housing supply becomes the bigger challenge.

**Dirrane:** California is a very large state with great diversity in its population, demographics, markets and housing characteristics. In Northern California, housing is in short supply and expensive, particularly in the San Francisco Bay Area. The San Francisco Business Times reported in April that permit approvals are falling far short for the entire region. Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma counties only permitted about half of the housing units needed to satisfy projected growth in those areas. Complicating things further, the permits being approved are favoring the higher end of the market. 84 percent of the properties catering to people with above-moderate income are being approved, but only 26 percent of those targeting moderate income buyers and 24 percent for low-income people are approved.

In Central California, it’s a different story altogether. The Central Valley was pummeled during the housing crisis and remains an area where consumer demand is very low compared to other regions, largely due to shrinking employment opportunities.

For the main population centers, the...Roundtable Article continued on page 41
New Partnership with Bankers Insurance Service revitalizes non-QM lending
A projected $600 billion dollar market by 2017

Litigation Guard, LLC and Bankers Insurance Service (BIS) announced recently an on-line product for lenders that will revitalize lending in the non-QM market. Litigation Guard and BIS are providing an industry leading technology and insurance solution that is aimed at reducing lender risk by providing a valuable defense against “Ability-To-Repay” claims, while also educating borrowers on the mortgage process and terms of their loans.

Litigation Guard provides third-party verification that borrowers have the ability to repay their loans. Litigation Guard uses a proprietary algorithm, along with online assessments, educational videos and other web-based tools that mortgage originators use during the underwriting approval process. This verification system, which takes only minutes for the borrower to complete, gives the mortgage originator confidence that the borrower has the ability to repay the loan and is educated on the mortgage lending process. Importantly, once the loan receives an approval from Litigation Guard and the loan closes, unique E&O insurance applies.

The insurance program will be administered by BIS, coverholder at Lloyd’s, and underwritten by certain underwriters at Lloyd’s.

Christopher Tiso, Litigation Guard’s CEO, stated, “Our company pioneered technology that reduces the biggest legal risk in non-QM lending. Backing our product with innovative E&O insurance that is underwritten and placed by two pillars in the industry who have been insuring the mortgage lending industry for sixty-plus years is the perfect complement to our product offering.”

“We are thrilled to be able to place innovative E&O insurance behind Litigation Guard’s cutting edge and robust on-line risk management tool,” said Tom Delaney, BIS’ Managing Director.

The firms will work together over the coming months to provide clients with tools that will protect both loan originators and investors in the non-QM lending space.

By bringing together these respected firms and approaching risk management challenges from an educational and technology-minded vantage point, mortgage lenders will be able to enter the non-QM lending space equipped with a new tool that will help them manage their exposure to third party liability.
WHO’S WHO

SHAWN BANKSON

The law firm of Kimball, Tirey & St. John LLP is pleased to announce its newest partner, Shawn Bankson.

Mr. Bankson joined Kimball, Tirey & St. John LLP in 2004 and during his first nine years he assisted residential and commercial clients in unlawful detainer litigation. In 2007, he began conducting fair housing trainings for clients and joined the firm’s Fair Housing Practice Group full-time in 2013. Mr. Bankson has been a featured speaker at various industry associations, including the California Apartment Association, National Association of Residential Property Managers, the Rental Housing Association of Sacramento Valley, and the State Bar of California.

“We are pleased to recognize our new partner and excited about Mr. Bankson’s expanded role in the Fair Housing Practice Group,” said Ted Kimball, founding partner of Kimball, Tirey & St. John LLP. “The demand for fair housing related issues has increased significantly and Mr. Bankson’s expertise will allow the firm to expand the firm’s offerings within the Fair Housing Practice Group.”

For more information, go to www.kts-law.com.

MATTHEW KECK

Matthew Keck has recently joined Mountain West Financial as Regional Vice President of Production in the Orange County/Los Angeles Area. Matthew brings over 14 years of mortgage banking and wholesale lending experience to his new position where he will be responsible for managing wholesale and retail production activities with and for the OCLA Operations Center. Prior to joining Mountain West Financial, Matthew has held every production position from Wholesale AE to Retail MLO, Managers at both Wholesale only and Retail Only Companies through his current position as RVP of Production in OCLA. Matthew has even co-owned a business where he oversaw and successfully grew production divisions at various sized mortgage lenders; most recently as the Western Regional Sales Manager at Residential Bancorp and then as a Regional Sales Manager at Motive Lending.

For more information, go to www.MWFInc.com.

JENNY Y. PARK

Geraci Law Firm has recently hired Jenny Y. Park. An associate at the firm, Ms. Park represents and advises financial institutions, investment funds, real estate investment trusts, brokers, loan servicers, and individual investors, in all aspects of general business and commercial matters. She has extensive experience in the workout, restructuring, and enforcement of commercial and real estate loans, including foreclosure actions and receiverships. To read more, go to www.GeraciLawFirm.com.

...continued on page 17
GREG SMITH

Mortgage Contracting Services, LLC (MCS), a nationwide provider of property preservation, inspections, REO property maintenance and valuations to the financial services industry, has named Greg Smith assistant vice president of compliance in the company’s Ruston, Louisiana, office.

In his new position, Mr. Smith will oversee the Quality Assurance and Quality Control functions in Ruston for both MCS’ field services and valuations operations. He also will handle operational reporting and supporting data analytics. Before joining MCS, he was trust operations manager at Argent Financial Group in Ruston.

“Greg has a proven track record of exceptional client service and technical expertise in the financial services industry,” says MCS CEO Caroline Reaves. “Our company, clients and the communities in which we operate will benefit by having Greg oversee these QC and QA processes that support the quality initiatives for all of MCS.”

To find out more, go to www.MCS360.com.
The industry has started the year with a blockbuster first quarter. Lower than expected rates coupled with moves at FHFA and FHA to drop MI premiums, expanded LTV’s, and improved pricing have driven much higher than expected refinance activity. The second quarter will be profitable as well driven by a strong start funding the remainder of the refinance pipeline and a strong finish with the purchase money season.

As we look beyond Q2, it’s important to remember a couple of sobering projections from the MBA:

• Rates are projected to increase 150bps by the end of next year.
• Refinances are supposed to drop 40% from the Q1 levels by the end of next year.

Don’t let the rate projections get you down. The purchase money business will remain strong and grow even in the face of rising rates. We’ll still be at historically low rates (average conventional rates in the 2000’s were 6+%, 1990’s 8+% and 1980’s 12+%) and the credit box will open again for more borrowers with your focus.

We’ve been stuck in a rut for years post-crisis where borrowers face a binary path:

• Fit the government box and you get one of the best rates of all time
• Fall outside the government box and you can’t get a loan at all (unless you’re a wealthy jumbo borrower coveted by the banks)

Private capital is starting to return to the market, providing high quality options for responsible borrowers to get back off the sidelines. Many borrowers are embracing these options, even at higher rates driven by risk and liquidity-based pricing. Forward thinking mortgage companies and loan officers that embrace the return of responsible non-agency lending (including non-QM and non-prime) will continue to thrive and grow with the borrower segment. Many estimate that non-QM lending will grow to be $100 billion or more!

**WHO ARE TODAY’S NON-AGENCY BORROWERS**

Non-QM and non-prime borrowers today are very different from the pre-crisis subprime borrower. Many of these borrowers are our friends and neighbors—the friend who moved for a job and was forced to let his underwater home go into foreclosure, the self-employed brick mason contractor, the aunt with past collections due to a divorce, the friend who is investing in real estate and has to seek out the hard money option. We know the story or have someone close to us who has experienced it.

**BOOMERANG BUYERS**

According to RealtyTrac®, a leading provider of comprehensive housing data and analytics for the real estate and financial services industries, there are 7.3 million potential boomerang buyers, who lost their...
How Will Rising Rates Impact Lending?

by JIM GOING, CEO, ReadyCap Commercial, LLC

Since the financial crisis, the Federal Reserve has held short-term interest rates near zero. Based upon a more stable US economy, the Fed is currently analyzing the need to raise rates. If you were to ask five people their opinion of the Federal Reserve’s current position related to interest rates, you would likely receive five different answers. There are those who say that with the economy improving and unemployment rates moving lower, a case should be made to raise rates at the next meeting. Others believe that the Fed needs to experience several more months of labor market improvement, along with the stabilization of energy prices, before initiating any rate increases.

If there is one common dominator, it is that most everyone agrees that the Fed will raise interest rates at some point in the future. Trying to predict when the first rate hike will occur is anyone’s guess.

IMPACT ON PROPERTY VALUES

Rest assured when the Fed does decide to raise rates, there will be an impact on commercial real estate lending and property values. The materiality of the impact on the economy and particular commercial real estate will depend on the initial rate increase amount and the frequency of subsequent hikes. However, any level of a rate increase likely will have consequences either immediately or in lagging manner. Those consequences may include increased cost of debt capital, increased capitalization rates (or “cap rates”) and ultimately lower property values.

As the economy continues to improve and the Fed raises rates to control inflation, commercial real estate property values will likely become stressed and experience a period decline in markets absent offsetting rental increases.

In order for property values to remain stable during periods of rising interest rates and subsequent increases in cap rates, additional cash flow is required. A property’s ability to increase cash flows is contingent on contractual rental increases in existing leases; timing of lease expirations; the ability to renew leases at higher rates; and the property’s occupancy level and overall fundamentals of the submarket.

IMPACT ON LENDERS

The risk of default is a common characteristic found in all loans. General underwriting guidelines are designed and applied to assist lenders to mitigate potential default risk. However, it must be understood that each commercial real estate property is unique due to its position in the market, the condition of the property, the current tenancy, the economic climate and the management of the subject. Therefore, the risk analysis should always be property-specific.

As a result of rising interest rates and the possibility of declining property values, commercial real estate lenders will likely reevaluate and modify their underwriting...
Newmark: $12,500,000 For Newly Constructed Medical Office Building

Newmark Realty Capital, Inc. has arranged the financing of Los Alamitos Medical Plaza, a three-story, 70,000 square foot multi-tenant medical office building located on the campus of Los Alamitos Medical Center in Los Alamitos, CA.

Mark Ritchie, Principal in the Los Angeles office, along with Jamie Dick, Vice President of Newmark’s San Diego office, and assisted by Production Associate Jay Dick, arranged the refinancing for the borrower, a private medical office building developer and operator. The lender is a Newmark correspondent life insurance company. All other terms and conditions were not disclosed.

In addition to attractive loan terms, Newmark’s client was able to fund at project at the time of the Certificate of Occupancy. At closing, Los Alamitos Medical Plaza was 68% leased. The combination of a low loan-to-value loan, a high quality asset and excellent track record of the owner with medical office buildings provided comfort to the lender to fund the loan prior to the property being full stabilized.

For more information on this transaction please contact Mark Ritchie at (310) 846-5303, Jamie Dick at (858) 793-8400 or Michael Heagerty at (415) 956-9854.

Walker Dunlop Arranges $11.4 Million Deal for Sunkist Center

Walker & Dunlop, Inc. (NYSE: WD) announced it recently arranged a $11,400,000 refinance—first mortgage loan to Sunkist Shopping Center located in La Puente, California. Walker & Dunlop’s Mark Grace arranged financing through Starwood Mortgage Capital with an accelerated timeframe reducing significant interest rate risk to the borrower. The borrower was in the beginning stage of construction and lease commencement with a national credit tenant that brought about the necessity to carve out this piece of the deal. Walker & Dunlop and the borrower’s counsel successfully structured the deal such that the to-be-constructed portion of the center was removed from the collateral and is now free and clear.

Built in 1948 and renovated in 1974 and 1985, Sunkist Shopping Center is a 170,084 square foot multi-tenant shopping center with anchor tenants Rite-Aid and Big Saver Supermarket who has been a tenant at the property since 1999.

...continued on page 21
NorthMarq Capital’s Los Angeles office finalizes $20.672 million for Latitude 37 in San Jose, California

Ory Schwartz, senior vice president/managing director of NorthMarq Capital’s Los Angeles based regional office arranged the $20.672 million refinance of Latitude 37, an 86-unit multifamily property located at 1255 Babb Court in San Jose, California. The transaction was structured with a floating rate 7-year term and 30-year amortization schedule. NorthMarq arranged financing for the borrower through its Seller-Servicer relationship with Freddie Mac. For more information, go to www.NorthMarq.com.

Barry Slatt Mortgage Closes $15.3 Million Deal in Rancho Cucamonga

Cody Charfauros of Barry Slatt Mortgage recently closed a $15,300,000 portfolio deal for two storage properties located in Rancho Cucamonga, California and Salt Lake City, Utah totaling 244,000 sqft. The unique nature of the XL Storage business presented a number of challenges, with the lack of standard self-storage market comparables and metrics chief among them. XL Storage operates like very few other self-storage properties. Despite the large rentable space of the facilities, there are only a total of 400 units between the two properties. The extra-large nature of the units caters to a very special type of clientele who require secure, gated and 24-hour access to units with exceptionally large footprints. The expense schedule of the properties, as evident by their history, was also unique to the extra-large type.

The company’s first challenge was identifying a lender who could understand these unique properties, properly underwrite their cash-flow, and further ensure a deliverable loan. While Barry Slatt Mortgage has many lenders that could potentially fit the bill across the lending spectrum, it became clear after an extensive marketing and competitive auction effort that one of our correspondent CMBS lenders was the best fit. In addition to their expertise in general capital markets spaces, this lender has an extensive portfolio of self-storage properties. And due to our correspondent relationship, the lender’s credit committee was able to review the special nuances presented by the extra-large properties.

...continued on page 22
Freddie Mac To Purchase HFF Largest Single Property Loan—$878 Million Loan For Park La Brea In Los Angeles

HFF

Multifamily and HFF announce the closing of an $878 million loan for Los Angeles’ historic Park La Brea, the largest apartment community on the West Coast.

HFF arranged the financing for repeat borrower Prime Residential to retire existing debt. Freddie Mac expects to securitize the loan through its K-Deal program.

The 4,245-unit property is rent-controlled, with about 10 percent of the units having below market-rate rents. The community includes 18 high-rise towers and 175 garden-style apartment buildings on 144 acres. Approximately 10,000 residents live in the community, which resembles a small city with 24-hour security patrol, courtyards, Wi-Fi cafes, fitness trails, a movie theater, hair salon and business and fitness centers. Originally built between 1944 and 1952, Park La Brea underwent renovations between 1995 and 2014. The 96.4-percent-leased complex is located at 6200 West Third Street, about seven miles west of downtown Los Angeles near the Miracle Mile district.

“Park La Brea is one of a kind. Aside from being the largest single property that we have ever financed, it is a storied asset, with a rich and evolving history, in a dynamic neighborhood, with a beautiful and timeless design,” said David Brickman, EVP of Freddie Mac Multifamily. “We are thrilled to have been able to work so closely with HFF and Prime Residential to very rapidly rate lock the loan and contribute to the preservation of this unique community.”
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Negligent Servicing Dispute Escalates in First and Fourth Appellate Districts

by WILLIAM G. MALCOLM, Shareholder, Phillip Silvestri, Partner, Silvestri Gidvani, PC

It is well-settled law in California that a lender owes no duty of care to a borrower when their involvement "does not exceed the scope of its conventional role as a mere lender of money." In recent years, this standard was applied to loan servicers to allow our clients to avoid claims of negligent servicing, and in particular, negligent processing of loan modification applications. In contrast to the general rule, in February 2013 First Appellate District issued its decision in Jolley v. Chase Home Finance, LLC, in which the Court held that a borrower could assert a colorable claim for negligent servicing as it relates to a construction loan modification application.

Thankfully, both state and federal courts chipped away at this opinion as soon as it was published. The Fourth Appellate District, in Lueras v. BAC Home Loans Servicing, L.P. flatly rejected the Jolley analysis, holding that a loan modification is the renegotiation of loan terms, which falls squarely within the copy of a lending institution’s conventional role as a lender of money.” The Ninth Circuit limited Jolley to the point of near obsolescence in Benson v. Ocwen Loan Servicing, LLC finding that the "duty of care imposed on construction lenders... does not apply in the residential loan context." At this point, it appeared that we had seen the last of negligent servicing claims.

Apparently unfazed by the opinions of a fellow District and the Ninth Circuit, the First Appellate District escalated the dispute shortly after in Alvarez v. BAC Home Loans Servicing, LP. In Alvarez, the First District explicitly extended Jolley to residential loan servicing, holding that a loan servicer owed a duty of reasonable care to a borrower when reviewing for a loan modification application. The Court acknowledged the Lueras case but instead followed the reasoning of an unpublished 2010 U.S. District Court case, Garcia v. Ocwen Loan Servicing, LLC to reach its opinion.

The Garcia court followed a six-part test established in Biakanja v. Irving in determining that a duty of care exists when undertaking a review for a loan modification.

In following this reasoning, the court highlighted the weak bargaining power of a borrower. Additionally, the court went so far as to cite to a 2009 article that indicates "servicers may actually have positive incentives to mis-inform and under-inform borrowers." The Court summarized their reasoning, stating “[t]he borrower’s lack of bargaining power, coupled with the conflicts of interest that exist in the modern loan servicing... Negligent Servicing continued on page 48
Local Municipal Registry Ordinances Proliferate Throughout California

by Rando Newman, President, Founder, Total Lender Solutions, Inc.,

Think you’re not affected? Better think again.

1 State
58 Counties
482 Municipalities
137 enacted or proposed Local Ordinances affecting vacant or defaulted properties

Over the past several years, the federal and state governments have sought to quell the “foreclosure crisis” that has overtaken the public discourse. While I do not believe there ever was a foreclosure crisis, states such as California have enacted legislation such as the homeowner’s bill of rights to purportedly afford additional protection to delinquent borrowers. On the federal level, the Dodd-Frank Wall Street Reform and Consumer Protection Act likewise requires lenders and servicers to take additional steps once a borrower is in default.

Apparently feeling neglected with all that activity, a considerable number of local jurisdictions throughout the country have gotten into the act and have enacted various registry ordinances, all of which create additional work and paperwork for the lender and may very well increase the costs involved in servicing the loan. The vast majority of these ordinances were enacted in order to prevent or limit blight in residential neighborhoods. Registration under some of these ordinances are triggered by the commencement of a non-judicial foreclosure, others are triggered when the property is vacant. Some of these ordinances apply solely to residential property; others to both residential and commercial property. Certain municipalities also require weekly or monthly inspections by the lender. In all cases, however, the lender may ultimately be liable for payment of registration fees, inspection fees, and in a worst case scenario, draconian penalties for failure to timely comply.

These municipal registry ordinances can be broken down into two major groups: those that require registration upon vacancy of the property (called vacant property registration or “VPR”) such as in the City of Alameda and those that require registration upon commencement of a foreclosure (called foreclosure registry ordinances or “FRO”) such as in the City of Los Angeles. Let’s look at a comparison of the two.

THE VACANT PROPERTY REGISTRATION
In Alameda, a property is required to be...
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The Power of Being a Likeable Person

by MARLENE MINITE, President, AAA-AMC, California MBA Future Leaders Class of 2015

The Mortgage Industry is a powerful, interesting, stressful and yet exciting business. There is never any shortage of action happening, and there are no limits to how much one can grow as long as they are dedicated and motivated to do so. I feel as though no matter how long we've been in this industry and how much we feel we may know it, there is always so much more to learn—especially when it comes to the ever changing compliances and guidelines that keeps us all on our toes. Although these changes may be challenging, it is comforting to know that the mortgage industry is here to stay and there is no limit to its potential.

Though there are numerous industry roles and positions, each one is essential to complete and master the game. The saying “one hand cannot clap on its own,” illustrates the reliance needed from every player to complete the task at hand. What I have learned as I move up this complex yet rewarding ladder is that regardless of your position, it takes a common set of strengths to succeed.

The first is the ability to be likable. In order for a person to be likable, they should emulate integrity in everything they do. Integrity is the ability to do the right thing at all times regardless of the pressure at hand. People like and trust those with integrity and if others are not able to connect with you, it may impact their desire to do business with you. Being likable and trustworthy are not simply characteristic traits, but rather a choice; and developing these skills should become a tool that is utilized when dealing with those around you. We should all be striving to go in the same direction as we all want to grow and thrive in this industry, and our journey will be much more enjoyable if we are all cordial with those we interact with on a daily basis.

Furthermore, as we achieve success, it is important to remain humble, as the path to success is not always a straight one. Try never to burn any bridges, as you can never foreshadow the difficulties you may encounter along the way. Our industry is nationwide, which gives us the opportunity to work with others in various states, therefore being professional at all times and leaving a positive impression with each player is extremely important as you never know how you may be connected to someone. Always keep in mind that regardless of how big you perceive our industry to be, it is still a small world.

The second strength I would like to discuss is the importance and power of networking. Often times when we think about networking, we perceive it as an outlet that benefits us personally. However, in order to participate effectively, you must think of it as mutually beneficial relationships that are built on trust and time. In the end what is important is not the quantity of individuals you know, but the quality of individuals who know you! It is extremely important for you...
Loan participations have become an increasingly common feature of the lending landscape for numerous reasons. From the originating/lead lender’s perspective, a loan participation allows the lender to lay off a portion of the risk of an uncomfortably or impermissibly large loan or overly broad lending relationship without giving up control of the loan or the relationship and/or to increase lending volumes and associated origination and servicing income.

From the participating lender’s perspective, a loan participation provides an opportunity to diversify its portfolio to different borrowers, industries, locales and product types without the need to invest in business development, new offices and additional expertise.

In a loan participation, the lead lender extends credit to the borrower and later sells out undivided portions of its loans to other lenders; primarily traditional banks (participants). The loan contract with the borrower is signed only with the lead lender. The lead lender then enters into a separate participation agreement (Loan Participation Agreement) with the participants. Thus, the borrower’s and participants’ relationships are solely with the lead bank, and there is no direct relationship between the participants and the borrower or the participants themselves, if more than one.

The typical Loan Participation Agreement will confirm the sale of the participation interest(s) and appointment of the lead lender to collect, account for and remit payments in connection with the loan and to manage the relationship with the borrower including enforcement of the loan if required. Most Loan Participation Agreements further provide some mechanism for consultation and collaborative decision making among the owners of the loan on limited issues (reduction in amounts owed, waiver of security or release of guarantors). However, many Loan Participation Agreements fail to fully address the issues that arise out of the participants’ lack of direct contact with the borrower and control of the lending relationship and the separate relationship among the lead lender and the participant(s).

All too often, important issues including those relating to conflict of interest, scope of authority and duty of care, impasse resolution and assignment are inadequately addressed or entirely omitted thereby creating ambiguity and risk for both the lead lender and the participant. This tendency is ironic given lenders’ typical dealings with their borrowers in which they “worry every little detail” and often “document the deal to death”.

Conflict of interest is often one of the greatest perils facing the participating lender. Commonly, the lead lender has a broad relationship with the borrower and/or its affiliates and is selling participation interests in one or more but not all of the lead lender’s loans to the borrowing group. Several questions arise in these situations.

...Perils continued on page 51
Guarantees—True or Sham?

by

ROBERT M. ZELLER, Esq., Musick, Peeler & Garrett, LLP
BRIAN L. HOLMAN, Esq., Musick, Peeler & Garrett, LLP

In CADC/RAD Venture 2001-1, LLC v. Bradley, 235 Cal.App.4th 775, 185 Rptr.3d 684, 2015, 2015 WL 1523156 (2015), the Court of Appeal reversed a jury verdict that found that a guarantee signed by the ultimate principals of a borrower on a loan secured by real property was a “sham guarantee” and therefore unenforceable following a non-judicial foreclosure sale of the collateral. Although the Court upheld the guarantee on the facts of the case before it, the Court’s analysis could support a sham guaranty defense in a more typical commercial real property loan transaction.

Under California’s anti-deficiency laws, a lender may not pursue a deficiency claim against a borrower following a non-judicial foreclosure sale of real property securing the borrower’s loan. Lenders may pursue deficiency claims against guarantors, but “only true guarantors.” If the borrower and the guarantor are the same, or if guarantor is liable for the borrower’s obligations as a matter of law, the guaranty is considered an unenforceable sham. In CADC/RAD, the borrower was Nohia Napa Gateway, LLC (Nohia), which was owned by a Washington corporation, No Boundaries, Ltd (No Boundaries), which in turn was owned 50/50 by the defendant guarantors Richard Bradley and G. Reynolds Yates. The loan arose in connection with a purchase of the target real property in a tax-deferred exchange for real property owned by No Boundaries. The original purchase offer was signed by Bradley, who approached the lender, Charter Oak Bank, for a loan, and the original loan application was submitted by No Boundaries. No Boundaries was an existing company that owned the exchange property and, as such, had not been formed for the purposes of the loan transaction. Charter Oak initially approved a loan to No Boundaries as borrower with Bradley and Yates as guarantors. Prior to closing, Bradley and Yates decided to switch the borrowing entity from No Boundaries to Nohia, which was an LLC whose managers were Bradley and Yates and whose sole member was initially an exchange Accommodator Title Holder (an EAT) that would subsequently exchange its interest to No Boundaries when the tax-deferred exchange was completed. Nohia was formed at the suggestion of Bradley and Yates’s tax consultant for the purpose of avoiding California withholding tax consequences. Charter Bank relied on the credit of Bradley and Yates in approving the loan. The bank’s loan officer testified that “Charter Oak was willing to allow Nohia to assume the loan because defendants [the guarantors] had enough money to justify an extension of credit and the name of the borrower was not a critical component of the deal.” Subsequently, the Loan was acquired by CADC/RAD Venture 2001-1, LLC (Lender), which commenced foreclosure proceedings and purchased the property at a foreclosure sale. The unpaid

...Guarantees continued on page 52
Mark your calendars now!

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SINDEO, INC.
Residential Mortgage Banker
San Francisco, CA

Chairman’s Corner continued from page 6...

what you know, it’s important that we do our part to give you every opportunity to connect with friends and potential business partners.

Hopefully you are as proud of our new logo and brand as I am—our board and staff worked hard to find a look that truly does justice to our forward-looking and innovative industry!

My second goal for this year was to improve what we offered in the way of education, particularly through our annual Future Leaders Program. I’m excited to let you know that we have succeeded in sparking new life into the program by partnering with Pepperdine University to add a new academic and leadership curriculum led by top professors at the school’s Graziado School of Business. In addition to attending California MBA events and conferences to get an up-close look at what our organization does for the industry and get the latest information and analysis, the participants will now be returned to their companies as more well-rounded employees, brimming with new ideas learned through rigorous training and group interaction. This year’s participants include (see more on page 32:
Andrew Boylan
McCarthy & Holthus, LLP
Joe Cabrall
CMG Financial
Tonya Coye
The Compliance Group
Kat Foster
Guild Mortgage

...Chairman’s Corner continued on page 31
Meet California MBA

FUTURE LEADERS CLASS OF 2015

Our first look at some of the California MBA Future Leaders Class of 2015. Stay tuned for more profiles in our next issue!

ANDREW J. BOYLAN
Associate, McCarthy & Holthus, LLP

Andrew J. Boylan is an Associate Attorney with McCarthy & Holthus, LLP and Director of the firm’s Risk Management and Compliance Department. After graduating from the University of San Diego, where he earned his Bachelor of Arts degree in Political Science and Spanish, he received his Juris Doctorate degree from the University Of San Diego School Of Law and his MBA from the University Of San Diego Graduate School Of Business Administration. He is a member of the United Trustee’s Association and the California Mortgage Bankers Association’s Future Leaders Program. He has spoken on regulatory and legal compliance issues at numerous mortgage industry events including the Five Star Conference and Expo and the American Legal & Financial Network Regional Training. Mr. Boylan is admitted to practice law in the States of California and Washington.

KEVIN LOWMAN
Corporate Retail Production Advocate, American Pacific Mortgage

Kevin is a CSU, Chico graduate and has worked for American Pacific Mortgage in various capacities since 2009. He grew up in the Sacramento area and currently resides in Santa Rosa, CA. His hobbies include sports, traveling, cooking and reading. In his spare time, he enjoys playing golf and spending time at beautiful AT&T Park watching the San Francisco Giants.

His current role consists of providing branch support, recruiting, developing and implementing corporate training, and driving production throughout the company’s growing Corporate Retail channel. He is a firm believer in the value of superior customer service, and the shared commitment to supporting the company’s producers. He is very excited about the future of American Pacific Mortgage, and sees many positive opportunities in the mortgage industry in 2015 and beyond.

ANDREW MACLEOD
Senior Loan Analyst, Barry Slatt Mortgage Co.

After spending nearly four years in national advertising, Andrew decided to pursue a new career in real estate and finance at Barry Slatt. He now works with production officers Laura Millichap, Gregory Gray, Rich Davidson, Ryan Gray, and John Souza. Andrew MacLeod graduated from the University of Southern California with a B.S. in Business Administration, a concentration in Advertising and Promotions and certificates in SAP Enterprise Resource Planning and Cyber Security.
Meet California MBA

FUTURE LEADERS CLASS OF 2015

Our first look at some of the California MBA Future Leaders Class of 2015. Stay tuned for more profiles in our next issue!

**BEN MADICK**
President, Mortgage Quality Management and Research, LLC

Ben is also the President of Mortgage Quality Management and Research, LLC and the President of MQMR’s subsidiary, Subsequent QC, LLC. In 2014, Ben launched HQ Vendor Management, MQMR’s newest product where he is responsible for the strategic direction of the product.

In addition to the management of these businesses, Ben is on the advisory board of Mortgage Compliance Magazine and an advisor to numerous mortgage banks and lenders across the country. Ben is a founder and on the board of directors of Matic Insurance, an online insurance brokerage specializing in automated homeowners insurance policies specifically originated during the home mortgage process.

Prior to founding MQMR, Ben spent five years with Bank of America Correspondent Lending managing relationships with large independent mortgage lenders throughout the nation. Prior to that, Ben leveraged his experience in financial strategies by working with global financial markets and institutions in London, England. Ben received a B.S. in Business Administration and Finance from the University of Arizona.

**NATHAN PEREZ**
Operations Manager, Catalyst Mortgage

Nathan Perez is the Operations Manager of Catalyst Mortgage, a premiere mortgage company serving the Sacramento region—the state capital city and the heart of California. With responsibility for all day-to-day operations of a thriving mortgage banking office, Perez’s goal is to make sure systems and procedures work smoothly and efficiently to provide clients with the best possible outcome.

Perez began his career in the mortgage business eight years ago and has been with Catalyst for seven of those, working his way up from client liaison. He was drawn to the mortgage industry because he saw it as career path that would allow him to help people and contribute to his community. His focus is on the individual rather than the sale, on the long-term perspective rather than the quick payoff.

Perez is an active volunteer with the Active 20/30 Club of Sacramento, an organization of men in their 20s and 30s dedicated to forming lifelong friendships and helping the youth of the Sacramento region. He is committed to personal fitness and loves to exercise, eat healthfully, and give back to his community.

Three words to describe Nathan Perez: Glass half full.

**TONYA TODD**
SVP, Mountain West Financial, Inc.

Tonya Todd is the Senior Vice President of Affordable Housing Programs and joined MWF in early 2012 as the leader of the Affordable Housing Programs team. She is responsible for the company’s participation and involvement in Down Payment Assistance programs and works closely with nonprofit organizations and housing finance agencies to develop lending products that meet the needs of first-time homebuyers.

Operationally, Tonya is responsible for the implementation, administration, and maintenance of these programs and works daily with internal divisions including Loan Underwriting, Loan Purchasing, and Secondary Marketing and also works externally with Loan Servicing to ensure programs are successful for both MWF and our housing partners. Prior to joining MWF, Tonya worked for nearly nine years at Bank of America on the Affordable Housing team where she managed master servicing programs. Tonya holds a BBA in Finance from the University of Memphis. In December of 2014, Tonya was selected by National Mortgage Professional Magazine as one of the Forty Most Influential Mortgage Professionals Under Forty for 2014.
Look to hear more from this group in the coming months as they go through the program. These are some of our industry’s rising stars, and I’m excited to see how they can help improve and strengthen our industry.

Finally, since the housing crisis, and the subsequent creation of the Consumer Financial Protection Bureau (CFPB), many of the regulatory changes we’ve seen have happened in Washington, D.C. With that in mind, our board committed to improving our state’s participation in the Mortgage Action Alliance (MAA), the free, voluntary, non-partisan, grassroots effort led by the MBA that allows us to speak directly with our members of Congress, state legislators and federal regulators about the impact...
Chairman’s Corner continued from page 34…

I would like to close by saying ‘thank you’ to the entire Board of Directors, as well as all of the staff (especially Susan Milazzo), for helping our organization truly have a banner year. I am in awe of all of your abilities and humbled by your contributions and results. There is a famous line from a pretty popular song that goes like this: “You can’t always get what you want, but if you try sometime, you find, you get what you need.” Well, this year the California Mortgage Bankers Association got not only what we wanted, but also what we needed. Thank you all again.

Although much has been achieved during the past 12 months, the work does not end here. I’m excited to see where Kevin and the leadership of the California MBA take us next year. The work of the state mortgage banking association has never been more important, and I hope you’ll join me in continuing to support the work done by our organization to advocate on our behalf in Sacramento, provide valuable educational opportunities and avenues by which we can better connect with each other, as colleagues and friends. Those three pillars—advocacy, education, and connection—are the same fundamental principles that guided Urban Wilde and Willis Bryant over 60 years ago, when they founded the California Mortgage Bankers Association.

I’m excited to report that since last September, our state’s MAA participation has roughly doubled, expanding our voice in Washington and helping support MBA’s efforts to advocate for our industry in DC.

Our board has done a great job encouraging their employees to participate and join MAA, and we’ve seen great improvement, but we can’t stop now. Hot topics like TRID will continue to dominate the conversation, and we must stay vigilant. I urge you to consider joining MAA—if you are an executive at your company or firm, then take time to encourage your employees to join. MAA has many tools to help make this a turn-key operation for you. For more info, go to https://www.mba.org/get-involved.

The August 1 TILA-RESPA Integrated Disclosures deadline is just two months away. Train on the new forms and get 8 hours of NMLS continuing education credit at the same time!

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under the California Residential Mortgage Lending Act (CRMLA). The California MBA recently brought to the attention of the state regulator that licensees were being required to license all branch offices. This process took time and incurred additional expenses. A review of the regulation showed that CRMLA licensees only have a branch office notification requirement, not an approval requirement. In other regulatory news, we requested earlier this year that DBO provide revised translated documents that supervised financial institutions must provide to prospective borrowers pursuant to California Civil Code Section 1632.5 if the lender negotiates primarily in one of the five enumerated foreign languages. With the implementation of the TILA/REPSA integrated disclosures on October 1, 2015, California lenders will need to have these updated documents available to remain compliant with this California statute. We recently received word that the new translated documents are available. Make sure to contact our office at (916) 446-7100 if you have any questions or need links to the documents. This process has been a great example of the product of member companies being active and working with the association to identify key issues that can help the mortgage industry thrive. In our current legislative and regulatory environment, it is crucial that we take advantage of all opportunities to work together as we continue to promote the real estate finance industry.
alternatives for distressed borrowers. By definition, “foreclosure prevention alternative” means a first lien loan modification or another available loss mitigation option. As such, a loan modification is an amendment to the original mortgage. Successors in interest wishing to become the borrower, who were not a party to the original mortgage contract, would be granted an opportunity under AB 244 to seek a modification of the mortgage they weren't a part of. Ultimately, if a successor in interest is defined as the borrower, as is done in AB 244, and desires a foreclosure prevention alternative, it’s really a new loan to a new person rather than a modification of the original mortgage contract for the original borrower.

AB 244 raises more questions than it provides answers. What specifically must a mortgage servicer do to comply with the measure? Does a mortgage servicer need to restart the non-judicial foreclosure process? Does the successor in interest have to assume the mortgage? Does the successor in interest assume the full obligations, including arrears? What degree of underwriting can the mortgage servicer perform?

The Consumer Financial Protection Bureau (CFPB) has acted extensively on this issue at the Federal level. It issued implementation guidance in October of 2013 for lenders to maintain policies and procedures to identify and communicate with the successor in interest of a deceased borrower. The CFPB issued a clarifying rule in July 2014 saying, essentially, that a successor can be added to a mortgage without triggering Ability-to-Pay Rule if successor satisfies a two-part test: 1) previously acquired property (i.e., trust or divorce); and 2) agrees to take on the debt obligation. Further, the CFPB has released pending regulations for public comment that would amend the national mortgage serving standards found in the RESPA and TILA. These amendments propose to: 1) apply all of the mortgage servicing rules to successors in interest once a servicer confirms the successor in interest’s identity and ownership interest in the property; 2) adopt rules for how a mortgage servicer confirms a successor in interest’s status; and 3) ensure that to the extent the mortgage servicing rules apply to successors in interest that the rules apply with respect to all successors in interest who acquire an ownership interest in a transfer protected from acceleration and foreclosure.

**AB 99—FORGIVEN MORTGAGE DEBT AND BORROWER STATE TAX RELIEF**

*In Assembly Revenue and Taxation Committee.*

The California Mortgage Bankers Association supports AB 99 because it extends important state tax relief to borrowers, in conformity with federal law, who are not required to report the amount of debt forgiven by a lender resulting from a negotiated short sale or principal reduction. By extending the sunset date for this tax relief to January 1, 2015, AB 99 eliminates a significant impediment for homeowners seeking viable alternatives to foreclosure during these tough economic times. When debt is forgiven by a lender as part of an agreement with a borrower using the short sale process or a principal reduction, the borrower should not be penalized on their state income taxes. Many borrowers, who faced foreclosure last year and successfully negotiated a loan modification, may well find themselves once again unable to make their mortgage payment if they are saddled with a tax burden resulting from forgiven debt.

**AB 268—CALIFORNIA FINANCE LENDERS LAW—CONSUMER LOANS**

*In Assembly Committee on Banking and Finance.*

Under the California Finance Lenders Law (CFLL) there are restrictive interest rate and fee caps for consumer loans of less than a bona fide principal amount of $2,500. AB 268 would repeal those consumer loan provisions and would instead require the commissioner to establish an installment loan rate review process for licensees that intend to offer unsecured full amortizing installment loans of a minimum principal amount upon origination of at least $300 and a maximum principal amount of $2,500. The current statutory interest rate and fee restrictions make it difficult for CFLL licensees to offer these types of small loans to consumers. The bill would require a licensee applying to make loans under this process to provide to...
the commissioner information in order for its loan product to be considered for approval, including information about the proposed loan fees and other charges associated with the loan and the length of the loan.

The Chair of the Assembly Committee on Banking and Finance, who is the author AB 268, has expressed a desire to update/revamp the California Finance Lenders Law, with a focus on expanding the ability of licensees to offer small loans to consumers in need while still providing consumer protections for credit challenged borrowers. He will be holding a series of meetings on this topic and hopes to have a legislative proposal on the topic by the end of the year which may be amended into AB 268. Even though the effort is focused on small loans, it is also clear that he is looking at re-writing or updating the entire CFLL because it covers such a broad group of financial products and types of lenders. One of the concepts that the Chair is reviewing is moving real estate lending out of the CFLL so that only the Residential Mortgage Lending Act would cover real property secured loans/licensees. The California Mortgage Bankers Association is reviewing this concept to determine its position.

AB 1341—DEPT OF BUSINESS OVERSIGHT—COSTS OF LICENSING & REGULATION

In Assembly Committee on Banking and Finance.

AB 1341 is sponsored by the Department of Business Oversight and is an attempt to create more uniformity across regulated licensees as to how yearly licensee assessments are calculated. The changes being proposed reflect the existing assessment model used for credit unions and state licensed banks. The Commissioner of Business Oversight is currently authorized to require licensees such as check sellers, proraters, escrow agents, finance lenders and brokers, residential mortgage lenders or servicers, and businesses making deferred deposit transactions, to pay their pro rata share of the costs and expenses of the department’s licensing and

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regulating activities. This bill would revise these provisions to require a licensee under the supervision of the department to pay to the commissioner its pro rata share of all costs and expenses in an amount sufficient, in the commissioner's judgment, to meet the expenses of the department in administering the applicable licensing law for the next year. It would further authorize the commissioner, whenever he or she found it is necessary or advisable, to conduct a non-routine examination of any licensee and charge and collect from that licensee the department's expenses and would authorize the commissioner to maintain an action for the recovery of these costs in any court of competent jurisdiction. The bill would raise the minimum assessment for a licensee under the California Finance Lenders Law from $250 to $800. The bill would also increase the maximum annual assessment under the California Residential Mortgage Lending Act from the current $5000 to $15,000 or more. The Legislative Committee of the California Mortgage Bankers Association has established a Subcommittee to analyze and determine potential impact of the changes to the licensee annual assessment calculation proposed by AB 1341 for California Finance Lenders and Residential Mortgage Lenders.

**AB 1335—BUILDING HOMES AND JOBS ACT**

*In Assembly Appropriations Committee.*

AB 1335 is the Speaker's bill to promote affordable housing in California, and it would help to replace funding for affordable housing projects lost when redevelopment agency funding was done away with by the state several years ago.

AB 1335 would impose a new $75 recording fee on real estate documents beginning January 1, 2016. It would apply to each single transaction per parcel of real property and would not exceed an aggregate of two hundred twenty-five dollars ($225). This new fee will be assessed at the time of recordation for any real estate instrument paper or notice required or permitted by law to be recorded, including: deeds, grant deeds, trustee deeds, or deeds of trust, reconveyance and quit claim deeds, fictitious deeds of trust, assignment of deed of trust, request for notice, notice of default, abstract of judgment, subordination agreement, declaration or abandonment of homestead, release or discharge of lien or easement, notice of trustee sale, notice of completion, UCC financing statement, mechanics' lien, maps, covenants, conditions, and restrictions. The measure specifically excludes from the fee any document recorded in connection with a transfer subject to a documentary transfer tax, essentially exempting property transfers or on any real estate instrument, paper, or notice recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier.

**SB 684—CORPORATE TAXATION**

*In Senate Governance and Finance Committee.*

SB 684 would, for taxable years beginning on and after January 1, 2015, revise the rate for taxpayers that are publicly held corporations and instead impose an applicable tax rate from 7% to 13%, or for financial institutions, from 9% to 15%, based on the compensation ratio of the corporation. This bill would increase the applicable tax rate by 50% for those taxpayers that have a specified decrease in full-time employees employed in the United States as compared to an increase in contracted and foreign full-time employees.

"Compensation ratio" for a taxable year means a ratio where the numerator is the amount equal to the greater of the compensation of the chief operating officer or the highest paid employee of the taxpayer for the calendar year preceding the beginning of the taxable year and the denominator is the amount equal to the median compensation of all employees employed by the taxpayer, including all contracted employees under contract with the taxpayer, in the United States for the calendar year preceding the beginning of the taxable year.

California is a high-tax state, a fact known across the nation and around the globe. Despite the passage of Proposition 30, giving California one of the highest marginal personal income tax rate and the highest state sales tax rate in America, the number of legislative proposals seeking even more revenue is staggering. Higher corporate tax rates put California companies at a tremendous competitive disadvantage that is likely...
to worsen as other states and nations reduce rates to encourage their own economic growth. Corporate tax rates play a major role in determining whether companies will invest capital in any given location. The California Mortgage Bankers Association opposes SB 684.

**SB 8—TAXATION**

*In Senate Governance and Finance Committee.*

SB 8 seeks to impose a broad-based sales and excise tax on services, and it is estimated to raise billions in state revenue a year, with tax exemptions only for healthcare services, education services, and small businesses with gross sales of less than $100,000. The measure is also intended to reduce the personal income tax for low-income earners, while “evaluating” the current corporate tax rate and a possible increase in the state’s minimum wage. Supporters of this bill argue that a sales tax on services in California is needed to reflect a modern economy that is heavily supported by service providers and to help stabilize cyclical fluctuations in state tax revenue that until recently have resulted in severe state budget deficits. A tax increase on services totaling billions a year would likely prove harmful to California’s economy so the California Mortgage Bankers Association opposes this measure.

A few other tips to remember when working on a new product or brand:

- Ask yourself: is this truly a new product/brand, or are you just refreshing (think ‘new look, same great taste!’)? The answer to that question will help drive your process and launch. Nothing takes the excitement out of a launch faster than overselling a simple refresh—don’t make your customers ask ‘Where’s the beef?’ when it comes to your brand or product.
- Don’t be afraid to change your look—even if you’ve got the brand power of Apple, Pepsi or Nike, remember that they have modified their imagery and logo many times over the years. Very little (if anything) should be ‘untouchable’ with your brand, so don’t be afraid to be bold!
- Don’t reinvent the wheel! Many have gone down the same road you have, so make sure and talk to folks and read some of the great information available for free on the web.

Hopefully you’ll see the new California MBA look as an improvement on our previous logo, and one that will carry us forward in a market that is ever-changing. One of the themes in this issue is the industry’s efforts to reach out to millennials—both to build the next generation of mortgage industry professionals, and to reinvigorate our companies by bringing in new energy and fresh ideas. I hope our journey encourages you to think about ways you can improve that first impression your company makes with your logo and brand.

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**Media & Marketing continued from page 11...**

ambassadors for our new brand. As you well know, no company representative is as valuable a salesman as a happy customer.

Another lesson learned during our re-branding was the importance of extending and broadening our launch. After a long pre-launch process, it can be easy to see the launch date as sort of a finish line, but, of course, it’s just the beginning. It’s critical to extend the launch and maintain the momentum and excitement you’ve built. We accomplished that in a number of ways, including engaging our members to become ‘brand ambassadors’ by posting our new logo on their website or social media platform. In our multi-media market, it is also important to broaden your reach by using every available platform to promote your product or brand. We’ve done that by using social media, traditional email marketing, print advertising, our own publications (printed and electronic), our mobile app, and more.

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**Media & Marketing continued from page 11...**
California metrics indicate that if you build it, they will come—and they will buy.

Simmons: First, I think we need to recognize that, over the long haul, markets tend to be efficient. Since supply and demand are inextricably linked through principle and practice, the above two components are really just parts of a bigger question: what drives markets? I believe it’s always demand. Consumer demand—or the expectation of imminent demand—will usually drive the creation of new housing, but that demand is largely absent from the market today.

We’ve just been through a prolonged period of stagnant job creation, and when job growth is constrained, housing markets become moribund and the supply of listings either stagnates or falls. Ownership declines as a percentage of our population. What does rise is the demand for more rental units and that segment of the market grows and, consequently, rents rise. This actually can skew demand upwards for home ownership as new value opportunities are created. This is what I’d call a fringe dynamic; something that influences markets but doesn’t fundamentally drive them. Important if you build rental units or are a builder contemplating a subdivision—but minor in terms of the real driver—is the job market robust and stable enough to entice today’s home buyers.

All of this is a function of time since real estate doesn’t exactly lend itself to immediate gratification. These are longer arcs played out over interlocking economic forces. But at the core, it’s about confidence. Do we believe that we’ve left the risk of another housing market crash behind us? Has our economy rebuilt itself to the point that the majority of us feel as if we’re participating in its growth and success? When that answer is yes, consumers will compel builders to meet their demand for new housing and existing housing stocks will return to their equilibrium point. Until the next time.

Q: HOW CAN INDUSTRY TAKE THE

...Roundtable Article continued on page 43
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LEAD IN EXPANDING ACCESS TO AFFORDABLE CREDIT?

Dirrane: For lenders, I believe it is government regulation at the moment. Regulation is a tremendous concern due to the August 1st deadline for the implementation of the TILA/RESPA integrated disclosures. Not only is there concern among lenders regarding how to comply, there is also concern on how strict the CFPB will be in their enforcement, particularly in the early going. Lenders are turning their attention to implementing new processes, increasing and/or reassigning staff, and onboarding new vendors to help them meet the fast-approaching deadline. These measures have increased the cost to produce loans. Anecdotally, we’ve heard from lenders that the cost to manufacture a loan has increased from $3,000 per loan to $6,000 per loan since Dodd-Frank has been implemented.

Borrowers are a different story—I believe macro-economic conditions are hindering the ability for borrowers to enter or re-enter the housing market. They see the markets improving, interest rates at historic lows and rents becoming more expensive than potential mortgage payments in many cases. Yet economic conditions are making it difficult for many of them to buy a home and the mortgage credit box remains tight due to stricter underwriting parameters.

As a mortgage insurer, we are seeing both ends of this play out with our customers. Our business is all about reducing risk for lenders and investors when they provide low down payment opportunities for borrowers who are creditworthy. Mortgage insurance is more important than ever before to broaden the market for deserving homebuyers. Without MI, the market shrinks dramatically.

Simmons: From my viewpoint, that’s an easy question; it’s always the macro-economic conditions that pose the bigger challenge. They can produce forces that can depress entire segments of an economy. They can often cause disruption on a global scale and can threaten the strongest companies. Or they can bring forces for change and innovation. We see different examples of this every day in the news; the catastrophic fall in oil prices—or anything out of the research laboratories of Apple would be two.

Government regulations on the other hand have proven to be opportunities for companies that possess the will and vision to be disruptive—or even in some cases to just embrace the changing rules. Regulations don’t appear in a vacuum. They’re spawned, for better or worse, out of a perceived need to fix or punish those things that are broken. They encourage innovation and reward those who ‘get it right.’ Is there collateral damage? Yep. Is it always fair? Clearly not. But I’ve met with many regulators who’ve spent the better part of their adult lives intent on protecting the public and, while some of what they propose is grating, I’ll take that any day.

While I realize this is arguable with many, I believe regulations themselves are transparent. They tell us what is acceptable and what isn’t—although in Dodd Frank’s 2,200 or so pages, I’ll allow that there are certainly exceptions to that intended clarity. And there are some regulations that are, well, just plain stupid and wrong. But we can manage through them. It’s what we do every day. And given the successes in our industry, it is being done reasonably well.

Lowman: I think government regulation is a much bigger challenge than macro-economic conditions. Embedding TRID into the home buying and loan process as well as gaining a greater understanding of how to meet the requirements of our regulator is first and foremost on the minds of most mortgage companies.

Q: WHICH IS A BIGGER CHALLENGE FOR FIRST-TIME BUYERS—ACCUMULATED DEBT OR CHANGING PERCEPTIONS ABOUT HOMEOWNERSHIP?

Simmons: Here again I’d have to say Door #2…the changing perceptions about homeownership pose the bigger challenge. I think a large segment of potential first-time buyers see homeownership as a financial risk, instead of an investing opportunity. Remember that their recent experience is colored by the economic fragility of the last eight years and the impact it had on their parents. While this same period has seen a rate environment that should...Roundtable Article continued on page 45
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have been conducive in spurring homeownership, for the most part it hasn’t. I think that the general widening disparity in earnings and what it buys you coupled with the consistently limited inventory in most markets has had a dampening effect on the psychology of home buying. In a word, I think, on some level, people are still scarred and scared.

I readily admit that there are many markets where values have enjoyed a decent recovery and the local housing market is healthy. But there are also many markets where values have yet to reach pre-2007 levels. We’re surrounded by a sea of negativity; credit is hard to get, regulations are oppressive and act as an obstacle to most lender’s ability to lend, limited inventories give an uneven advantage to those buying with cash—and a hundred other tiny cuts that go into fueling perceptions that homeownership is difficult and risky. We have become victims of what I call our own Culture of Complaining.

Yet there are many lenders and vendor partners who’ve enjoyed record years in volume and growth. We have adapted to the challenges and turned barriers into merely obstacles. We need to continue to find better ways to carry that message to our customers if we’re to change the perceptions of today’s buyers.

Lowman: Accumulated debt is the biggest challenge for first time homebuyers. Millennials really drive the first time homebuyer market. The student debt crisis and the amount of debt millennials are accumulating to pay for their college education is significant and is something they will struggle with for many years to come.

Dirrane: Perceptions about homeownership have definitely changed since the mortgage crisis. In the years leading up to the crisis, homeownership was in large part taken for granted as something almost everyone was entitled to. A home was typically considered a good investment because housing prices were mostly on the upswing. Since the housing crisis, a new attitude has emerged for various segments of the market, notably the millennials. Many, especially in California, believe that they will never be able to afford their own homes, largely due to down payment assumptions that are incorrect.

This is also the generation dealing with monumental student debt, lower salary expectations, and housing costs that seem stratospheric. In that way, both accumulated debt and perceptions—whether correct or not—are at work in millennials’ attitudes about homeownership. In fact, the mortgage industry has coined a new term for millennials—the “basement generation”—because one-third of all millennials still live with their parents.

With median prices where they are in California, it can take a very long time to save up a 20 percent down payment, up to 15 years. This is especially frustrating for young people who are paying rents that are higher than their mortgage payment would be for a similar or greater amount of space. By providing the credit enhancement that enables down payments far below 20 percent or even 10 percent, private mortgage insurance dramatically reduces the time needed to accumulate the needed funds, cutting it by half or more. Our industry needs to work harder to make the younger generation of Americans aware that homeownership is attainable, and provide them with the education and guidance on obtaining the mortgage credit to do so.
home to foreclosure or short sale nationwide, poised to recover homeownership in the next 8 years. What if you could provide access to responsible financing options for these borrowers today? With non-agency products and reduced foreclosure and bankruptcy seasoning requirements, you can help these borrowers gain well deserved access to credit and homeownership. Many of these borrowers have the reserves and down payments and are ready to purchase today!

SELF-EMPLOYED BORROWERS
Think about the size and scale of the self-employed population in the U.S. workforce and you’ll get even more excited. According to the Bureau of Labor Statistics there are 14 million self-employed borrowers in the U.S. The perks of being your own boss can be a great thing, but when it comes to qualifying for a mortgage, it can be very challenging. Self-employed borrowers typically have to provide two years’ worth of tax returns when seeking approval from most programs. We learned in the last cycle that stated income lending is NOT a good answer, but legitimate alternative income documentation can provide more options for these borrowers.

LOWER FICO BORROWERS
It’s hard to get a loan without a 700+ FICO score. According to Fair Isaac Corporation in 2014, 47% of the population have a FICO score below 700. 34% are below 650. CoreLogic looked at “normal” pre-bubble credit availability and found that 29 percent of 2003 purchase money originations were made to borrowers below 620. That may still be too aggressive, but we’ve been closer to 0% for the last couple of years.

INVESTOR PROPERTIES
Lastly, consider the investor community and their needs in financing and expanding their portfolio. This borrower class has its own set of challenges in meeting agency guidelines, particularly when using their LLC or other investment vehicle.
Close More Loans

1. Focus on products that are good for the borrower. Affordable homeownership opportunity does not always mean conventional rates. For many borrowers, higher rates are still better for them than renting and can accelerate their homeownership goals.

2. Be an industry leader. Bringing more borrowers to the market is great for your realtor and builder referral partners. Differentiate yourself from the big banks and educate your partners on the new availability of credit with proactive marketing.

3. Embrace Ability-to-Repay. It’s common sense and good for borrowers and the industry.

4. Work with the right investors. Look for partners who:
   - Understand the organic nature of the mortgage origination process including the needs of your borrowers and referral partners
   - Prioritize superior customer service to you, so you can do the same to your customers
   - Provide transparent and reliable products that adhere to all regulatory requirements
   - Invest in the long term performance of the loans they purchase—true alignment ensures responsible behavior

We look forward to growing and succeeding with you.

Featured Commercial continued from page 19...

standards, and implement revised risk mitigating strategies that consider current economic conditions.

There are fundamental risks associated with commercial real estate lending. In periods of rising interest rates and declining property values, components of commercial real estate loans have to be evaluated for the potential risk of default. Lenders will analyze the value of the collateral, the liquidity of the borrower and the tenancy of the property. All three elements assist the lender in assessing risk by calculating the equity in the transaction, projecting the ability of the sponsor to supplement or support the property debt service, if needed, and the probability of tenants renewing their lease terms at market rates.

IMPACT ON BORROWERS

As the Fed continues to evaluate the need to raise rates, some borrowers are exhibiting an extraordinary sense of urgency to get their purchase transactions or refinancings completed. The objective of many property owners is to “lock-in” a long-term fixed rate solution in the event that the Fed’s action has either an immediate or lagging effect on the commercial real estate market.

Now may be the time for borrowers to evaluate their long-term financing needs, given the possibility of rising interest rates over the foreseeable future. Historically, commercial real estate investors tend to take advantage of low long-term fixed rates in a rising interest rate environment. Some borrowers see the cost of existing prepayment penalty structure as prohibiting them from refinancing, while others calculate the benefit of locking in at today’s low rates and refinancing before interest rates rise more than offset the cost.

Borrowers benefit from working with their mortgage broker in order to evaluate their financing options. Those options will likely take into consideration the structure of the transaction; possible payment of prepayment penalties; equity available; strategy for the property and various types of loan products to consider. Loan products may include, but are certainly not limited to, permanent; bridge; or mezzanine. The mortgage broker’s knowledge in these areas provides the borrower with the timely and meaningful information needed to make an informed decision.

CONCLUSION

The words "rates are going to rise" have been quoted for several years. Even the most cynical observer has to agree that the Fed cannot keep rates near zero indefinitely. Regardless of when the Fed decides to give serious consideration to a rate hike, the outcome will impact many sectors of the economy, and commercial real estate will not be exempt. The materiality of the hike and the amount of time for the full effect to take place will influence the severity of any Fed action.

Commercial real estate investors and borrowers alike who are contemplating financing their properties are beginning to evaluate various options in order to hedge against possible cap rate increases and valuation declines.

No one knows for sure when the Fed will act, but we do know for sure they will at some point in the future.
Negligent Servicing continued from page 24...

industry provide a moral imperative that those with the controlling hand be required to exercise reasonable care in their dealings with borrowers seeking a loan modification.” Finally, the Court concluded, without explanation, that “[r]ecognizing [a general duty of care] will not...have a chilling effect on borrowers’ ability to obtain loan modifications.”

While we are glad the Court believes their opinion will not have a chilling effect, ultimately this decision created rights and duties that didn’t exist previously. The duty of care imposed appears to be an end-around of the alternate civil remedies included in the California HOBR and the CFPB’s servicing rules under RESPA. Further, the Court imposed a higher duty of care on those who service loans than those who originate loans despite the fact that these processes are nearly identical. Unfortunately, until the Supreme Court weighs in, those who practice in California are in for a wild ride.
registered with the City upon the occurrence of either (a) the boarding up of the building by the voluntary action of the owner or as a result of enforcement actions of the City or (b) when the property is vacant for more than 90 days for any reason and the owners do not intend to return. The registration fee for vacant or boarded property in the City of Alameda (called a "monitoring" fee) is in excess of $600 per year and is imposed upon the owner of the property who is required to complete the registration. The fee is, according to the municipal code, to cover the costs to the city for monitoring the property. If the fee is not timely paid, the registration fee can become a special assessment against the property and collected in the same manner as real property taxes. From a reading of the ordinance, it appears that this special assessment will be treated as a super-priority real property tax and prime any deeds of trust on the property. Additionally, there may also be imposed an administrative penalty of up to $5,000 that will also be part of the special assessment. Of course, this means that although the liability is the primary obligation of the property owner, the lender may nevertheless have to pay the registration fee and fines in the event the lender takes the property back either through foreclosure or some other loss mitigation vehicle.

THE FORECLOSURE REGISTRY ORDINANCE

The City of Los Angeles has what is probably the most onerous and expensive program to deal with. Registration with the City of Los Angeles is triggered by the commencement of a non-judicial foreclosure proceeding on residential property located within the city limits. Within 30 days following recordation of a notice of default, either the "lender or beneficiary or trustee who holds or has an interest in the deed of trust" (any of the foregoing is a "Responsible Party") must register the property on the City’s online registry. The annual fee is $155 and must be paid at the time of registration and by January 31st of each year thereafter. Thereafter, the Responsible Party who registered the property must have the property inspected on a monthly basis and upload the inspection report on the registry website. The monthly inspection, which is an exterior inspection, must include photographs and answer a few questions on the registry. If there is any change in the property’s status (e.g., sold, foreclosure cancelled, etc...), then that information must be updated within 10 days of the change. This change in status includes a discovery (upon inspection) that the property is vacant. Once vacant, a declaration must be recorded with the county recorder that the property is now vacant, it shall remain vacant, and it has been secured against trespassers. Curious, though, is that the Responsible Party may have no way of knowing whether the property will remain vacant (what if the property owners are temporarily away?) and entry onto the property may very well be an act of trespass, the very thing the ordinance is supposed to prevent.

If the foreclosure completes and the property reverts to the foreclosing beneficiary, then the property’s status must be changed to REO and a (current) fee of $356 must be paid. The penalties for non-compliance or delayed compliance are severe. The City of Los Angeles imposes a $250 per day penalty for each day that the registration or inspection is late up to a maximum of $100,000 per property. The penalty is not enforced until 30 days after the City of Los Angeles sends a notice to the address on the notice of default that the property needs to be registered. Failure to pay within the 30 day window results in penalties being assessed from the time that the property should have been originally registered. The notice is sent only by first class mail and there is no appeal process for the penalty. As the City of Los Angeles is comprised of many localities that do not have "Los Angeles" as their mailing address, you should proactively check the foreclosure registry to determine whether compliance is required.

Please make sure that your organization is aware of these new ordinances and that they are in compliance with all of the requirements.
and your organization to remain on the minds of key members in this industry especially because it is quite a competitive one. Continually strive to meet new people, and connect with them often—not only when you need them. Remember to send cards during the holidays, to keep in mind important life events that may have come up during conversation, and be sure to check in on them so they know you genuinely care about and are committed to the relationship you have developed. As mentioned above, people are more likely to do business with those that they like and trust, so building a healthy network of professionals who like and trust you is key to mastering the game.

One great way I have personally been able to network and stay present in this industry is by frequently attending the conventions hosted by the California Mortgage Banker Association. This has helped me not only cultivate an amazing network, but has really played a key role in how far I have been able to grow my business thus far. I have planted roots with the California MBA that have had a tremendous impact on my company; after all, if we don't focus on building strong roots, we don't have a strong foundation to fall back on and more importantly, to build on.

To conclude, I truly feel that focusing on these two important strengths—being likable and networking—will help any player in this industry (and other industries!) to succeed. Likable people are more likely to have favors granted to them, have valuable information provided to them, and believe it or not, be forgiven for their mistakes when needed. Being likable also goes hand in hand in networking as key individuals in any business are more likely to employ those who are recommended to them by others. Individuals who are likable have also been able to leverage their network successfully and be the first to be promoted and provided a raise. After all, everyone wants to surround themselves among those they admire and feel good around as it can't be argued that positive energy is contagious!
Perils continued from page 28...

Is the lead lender obligated to fully disclose all such relationships to the participant? Must the lead lender advise the participant of any adverse developments relating to the other loans, affiliated borrowers or information obtained in connection with the other loans? Should the lead lender consider the impact of its actions or potential actions relating to other loans to the borrower group upon the security for and collectability of the participated loan? These conflicts can strongly influence the lead lender’s attitudes and decisions regarding administration of the loan particularly with regard to extensions, workouts and loan enforcement alternatives. It is not uncommon for the participant to learn belatedly that lead lender has improved its position with respect to its other loans to the borrower by obtaining payment of all available funds and/or liens on all available assets leaving nothing to shore up the participated loan just when additional support is most needed.

Inadequate definition of the lead lender’s scope of duties and/or authority to act or refrain from acting can be a source of controversy and risk when the loan goes bad or the lead lender is in trouble. Is the lead lender obligated to pursue enforcement or does it have discretion to forbear? Can the lead lender grant extensions, capitalize delinquent payments, waive collection of costs, modify the loan documents, accept additional collateral, make protective advances, release guarantors, etc. Is the lead lender a fiduciary with respect to the participant’s interest in the loan such that the lead lender must set aside its conflicts and act in the best interests of the participant even if to the detriment of the lead lender? Are the funds collected by the lead lender from the borrower required to be held in a segregated or trust account pending disbursement? Will the funds held by the lead lender be safe from claims of the creditors of the lead lender in the event of its insolvency?

Even when the lead lender’s duties and scope of authority are clearly defined, the lead lender and the participant risk finding themselves at an impasse as the participant’s consent will likely be required for specified actions such as acceptance of a deed in lieu of foreclosure, release or waiver of collateral or guarantors, acceptance of partial payment and the like. The simplistic resolution mechanism included in many Loan Participation Agreements allowing either party to buy out the other party’s interest at par is unhelpful in default situations. What happens then? Do the parties try to wait each other out or seek costly and untimely judicial intervention? Who is responsible for the payment of those costs?

With ever increasing frequency, one or more of the lenders at the outset of the participated loan will need to assign its interest in the loan or cease to exist either through consolidation or closure by the FDIC or another governmental agency. Is consent required from the other lender(s) to a voluntary transfer of a lender’s interest? Can the role of “lead lender” be transferred—is consent required? Must consents be reasonably provided or is consent discretionary? What are the successor lender’s rights under the Loan Participation Agreement? Does the successor lender merely have an economic interest but no right to participate in decision making?

All of the foregoing questions and situations, and the significant risks arising therefrom, can and should be dealt with at the outset of the participation relationship. Candid discussion among the lenders and clear drafting of the Loan Participation Agreement up front will eliminate many of the noted perils of participation.

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Guarantees continued from page 29...

balance of the loan exceeded the sales price, and $1.3 million remained due and owing under the guarantees.

If “true borrower” meant the entity relied on by the Lender for repayment, clearly in this case the guarantors were the true borrower. The Court, however, in analyzing prior case law, determined that whether the Lender relied on the guarantors for repayment was not determinative. Rather, the Court, after a review of prior case law, summarized the principles for determining whether a guarantor can invoke the sham guarantee defense as follows: “(First), a guaranty is a sham where the guarantor is the principal obligor on the debt, either because he or she personally executed the note or deed of trust or because the guarantor is liable for the debts of the borrower by operation of some other applicable principle. (Second), where there is legal separation between the borrower and guarantor, however, the guaranty is enforceable unless the loan transaction has been structured to subvert the anti-deficiency laws.” 2015 WL 1523156 at *6 (emphasis added).

Supporting this conclusion, the Court cited Valinda Builders, Inc. v. Bissner, 230 Cal.App.2d 106 (1964), where the court had found “there is no evidence that the corporation [borrower], was anything other than an instrumentality used by the individuals [guarantors] or that defendants were ever removed from their status and obligations of purchasers. Thus, the alleged guaranty of [the corporation’s debt by] defendants was no more than a promise to pay their own debt.” Id. at *5. Citing Union Bank v. Brummel, 269 Cal.App.2d 836, 837–838 (1969), in which the court had held that the guarantees were “shams” where a “lender ‘advised or required’ the transfer of title to the property to a pre-existing corporation solely owned by the defendants,” and River Bank America v. Diller, 38 Cal.App.4th 1400 (1995), the Court noted that “a triable issue of fact as to whether the lender structured the transaction to avoid the purposes of the anti-deficiency laws,” was critical in determining whether a guaranty was a sham.” Id. The Court noted River Bank’s finding that “it was not conclusive that the general partner was a long-standing corporation that adhered to all the formalities or that the debt did not directly obligate the corporation shareholders and officers, reasoning that the lender structured the transaction to relegate the obligors to the position of guarantors.” Id.. In contrast, the Court cited California Bank & Trust v. Lawlor, 222 Cal. App.4th 625 (2013), which found a true guaranty based upon “a legal separation between [the guarantors] and the borrowing entities which were a limited liability company and a limited partnership.” Id. at *6. The Court noted that “Unlike in Brummel and Riverbank, there was no evidence the lender structured the transaction to relegate the defendants to the role of guarantors.” Id.

Based on this analysis, the Court first concluded that there was adequate legal separation between the borrower (Nohia) and the guarantors, such that “to the extent the jury’s verdict was based on such a finding, it cannot be squared with the law.” Id. at *8. However, the fact that there was a legal separation between the borrower and the guarantors was not the end of the Court’s inquiry. The next part of the test is whether the transaction was structured by the Lender for purposes of subverting the anti-deficiency laws. The Court stated its conclusion as follows: “Ultimately this issue turns on a question of law: Can guarantors disclaim their anti-deficiency waivers if they decide to borrow through a shell entity for their own purposes and there is adequate legal separation between the guarantors and borrower? While the anti-deficiency statutes and case law do not directly speak to this issue, we believe the answer must be no. Where individuals purposefully take advantage of the benefits of borrowing through a corporate entity, they must also assume the risks that come with it.” Id. at *9.

While in the instant case, this resulted in the Lender’s being able to pursue its claim against the guarantors, it calls into question the more typical loan transaction where the loan application requires the borrower to be a single-purpose entity owned or controlled by the guarantor. In those circumstances, the reasoning of this case may in fact result in a different conclusion resulting in a guarantor’s ability to assert a sham guaranty defense.
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North LA After Hours
May 7, 2015, Offices of Peak Corporate Network

Thanks to our hosts and co-sponsors, Eli Tene of Peak Corporate Network for a great event that helped bring together professionals from across the northern Los Angeles region!

We also want to thank Hank Lopez and the team at Prober & Raphael for their support as the event’s co-sponsor!


From left: Dean Prober, Prober & Raphael; Vivian Walker, ServiceLink, A Black Knight Company; Chris Breakfield, T.D. Service Company.

Among the attendees were two of the California MBA’s past presidents—Matt Soto of National Mortgage Advisors (left) and Robert Satnick of Golden Empire Mortgage (right).
Newport Beach After Hours
May 12, Offices of Wright, Finlay & Zak, LLP

Our next Regional Networking Event, held in Newport Beach, was hosted by our friends at Wright, Finlay & Zak, LLP. Special thanks to Robin Wright, Robert Finlay and the rest of the firm for their support! Photo from left: Robin Wright, Wright, Finlay & Zak, LLP; Wade Pyun, U.S. Bank; Gwen Ribar, Wright, Finlay & Zak, LLP

The event included representatives from both the residential and commercial industries. The commercial contingent included (from left): Scott Calder, Pacific Southwest Realty Services; Ray Rowshankhah, Bank of the West; Bahman Mirhashemi, Newmark Realty Capital, Inc.; John Calder, Sabal Financial

Attendees enjoyed the pleasant outdoor atmosphere and ample opportunities to connect with friends and colleagues. From left: Paul Minite, AAA-AMC; Marlene Minite, AAA-AMC; Will Fisher, Citadel Servicing Corporation.

Photo from left: Melody Pike, Commercial Real Estate Advisory Services; Charles McKenna, Wright, Finlay & Zak, LLP; Jered Ede, Green & Hall; Nicole Valentín-Smith, Accenture Mortgage Cadence

Photo from left: Bryne Owens, van Wagenen Financial Services; Ron Morrison, Impac Mortgage Holdings, Inc.
Our Road Trip started 2015 in Carlsbad, at the offices of The Compliance Group, a service-oriented firm supported by unrivalled expertise and its proprietary technology, LicenseTracker®. The firm is a top compliance and regulatory organization, and we're proud to have the support of Annemaria Allen (right) and her team! For more information, call (877) 654-6824 or go to www.TheComplianceGroup.net.

Next, Susan travelled to Orange County to meet with executives at Comergence, another excellent compliance-focused firm, headquartered in Mission Viejo. The firm provides effective risk management tools and information for residential mortgage bankers. Photo from left: James Deane, EVP; Rebecca Atchison, Director, Marketing; Greg Schroeder, President; and Susan Milazzo, California MBA Executive Director. To find out more, go to www.ComergenceCompliance.com or call (714) 489-8860.

“We can’t do our job serving our members, unless we get to know them in their own environment first.”
— SUSAN MILAZZO,
California MBA Executive Director

Staying in the area, Susan met with Ed Reilly, Regional Sales Manager for Flagstar Bank, one of the top wholesale lenders in the nation. Thanks to Ed for his support for the California MBA! For more info, go to www.Wholesale.Flagstar.com or call (866) 945-9872.
In Costa Mesa, Susan stopped off at the offices of AAA-AMC, an Orange County-based appraisal management company dedicated to high quality products and services. Thanks to company president Marlene Minite for her support! Photo (from left): Nada Safain, Sara Johnson, Marlene Minite, Susan Milazzo. To find out more, call (949) 330-7680 or go to www.AAA-AMC.com.

Down the street, Susan met with Staci Dao, Marketing Manager (left) and Binh Dang, President (center) of LendingQB, a provider of 100% web browser-based, end-to-end loan origination software for the industry. For more information, go to www.LendingQB.com or call (888) 285-3912.

Back in Sacramento, Susan stopped off at the offices of a new California MBA member, Vitek Mortgage Group, a residential lender founded in 1987 with branches in California and Washington. Photo (from left): Tom Putnam, VP, Strategic Business Development; Harry Duncan, President; Susan Milazzo; and Philip Duncan, EVP. To find out more, go to www.TeamVitek.com or call (800) 570-5300.

Next, Susan headed back to Orange County to meet with Dan Perl, Chairman & CEO of Citadel Servicing Corp., a top servicer located in 12 states, specializing in non-prime loans for residential properties on both an owner occupied and non-owner occupied basis. For more info, call (949) 900-6630 or go to www.CitadelServicing.com.
In Santa Ana, Susan continued meeting with our members by visiting with Green & Hall, a business litigation law firm that represents commercial, real estate, and individual clients in complex litigation matters. Thanks to Howard Hall, Partner (left) and Jered Ede, Associate (right) for their time and support! For more info, call (714) 918-7000 or go to www.GreenHall.com.

Next, Susan stopped off at the Impac Mortgage Holdings, Inc. offices in Irvine, and met with company Chairman and CEO Joe Tomkinson. Impac is a publicly traded company and through its subsidiaries, offers a wide range of integrated consumer and business services within the mortgage and real estate marketplaces. To find out more, go to www.ImpacCompanies.com or call (800) 597-4101.

Also in OC, Susan met with folks at Black Knight Financial Services, a leading provider of integrated technology, services and data solutions that facilitate and automate many of the business processes across the entire loan lifecycle. Photo (from left): Matt Harrick; Managing Director, Advisory Services Group; Chris Wyman; Divisional Marketing Director; Ben Graboske; SVP and Chief Technology Officer; Susan Milazzo. To find out more, go to www.bkfs.com or call (844) 474-2537.
Building Stronger Relationships

In Orange County, Susan met with company reps from Ellie Mae, a well-respected firm focusing on helping lenders achieve compliance, quality and efficiency. Thanks to Angela Cheek, VP & Counsel, Product Compliance (left) and John Aslanian, VP, Mid-Market Sales (right) for their time and support! For more, call (877) 800-9630 or go to www.EllieMae.com.

Next, Susan stopped by the offices of the Geraci Law Firm, an Orange County law firm serving the real estate finance industry. Special thanks to Anthony and Christina Geraci and the entire team at Geraci for their support! Photo from left: Jaspreet Kaur, Dennis Baranowski (back), Nema Daghbandan (front), Amy Martinez (back), Anthony Geraci (front), Kevin Kim (back), and Christina Geraci. For more, go to www.GeraciLawFirm.com or call (949) 379-2600.

Susan also stopped by the Peak Corporate Network offices in Woodland Hills, prior to a networking event. The Peak Corporate Network is a brand that represents a group of related separate legal entities, each providing its unique set of real estate services. Thanks to Scott Sawyer, EVP, Commercial Evaluations (left) and Eli Tene, Managing Director & Principal of the Peak Entities for their support! To find out more, call (818) 591-3300 or go to www.PeakCorp.com.
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