The SBREFA
A New Tool in the Fight Against Excessive Regulation by the CFPB?
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Why Every Mortgage Professional Should Be Part of MAA and Give To CAMPAC

by MATT OSTRANDER, California MBA Chairman, Parkside Lending, LLC

Yes, I know you are solicited often to do things for your children’s school or for a cause that is very worth your time and that these things add up. I realize that life is fast paced and busy and it’s hard to stop and think clearly about what is important and just noise- this is not noise.

Have you taken a look in your own backyard lately? Does the mortgage lending industry seem to be headed in the direction you want or would you like to change some things about the recent legislation? I think it’s no secret that the industry is now filled with regulatory hurdles that are costing you and consumers real money. Some of these regulations are very well intentioned but some are missing the mark (they neither make consumers safe nor spur innovations or create opportunities).

Perhaps the Trump administration will change regulations and perhaps not but this is not about one administration- it’s about the long haul and staying organized so that the industry that provides needed liquidity for millions of homeowners and consumers remains strong and well thought out with regards to policy making.

To make sure our industry voice is heard, I am strongly urging all mortgage professionals, from fresh-faced originators to seasoned executives, to join the Mortgage Bankers Association’s Mortgage Action Alliance® (MAA). This is the premier grassroots lobbying organization representing the entire real estate finance industry, and is crucial for us to impact decision-making in Washington DC and Sacramento. MAA enables you to speak directly with your members of Congress, state legislators and federal regulators about the impact of proposed legislation or regulations on your business. I cannot emphasize how important this is – this is not only the industry in which you and I make our living and feed our families, but it also provides liquidity and opportunity for consumers all over the country.

What could be more important to your family and your colleagues? If we don’t get actively involved, policies will be determined by small special interest groups with access to those in power, or by ill-informed politicians trying to decipher a multitude of competing ideas, complex legislative language, and unfamiliar industry jargon. If we do get involved, then the folks making decisions in Sacramento, Washington DC or anywhere in the United States will always know where we as the mortgage industry experts stand on the issues of the day. This is critical to making sure unintended...
Looking Forward To 2017

by SUSAN MILAZZO, Executive Director, California MBA

It seems like the millennial celebration wasn’t that long ago; it’s hard to believe we’re entering the year 2017! While we’ve come a long way since our founding board organized the California MBA in 1955, we are still committed to our three main pillars which are advocacy, education and connection! As you can see from our legislative update in this edition, 2016 was very busy and we don’t see any reprieve in the coming session. Education and connection come through in a few ways including our major conferences each year, webinars on various topics and our free regional networking events which continue to enjoy a very robust following! In 2017, we are looking to expand what we offer in the way of education and connection.

We are forming two new groups for our membership! The first is the CFO Working Group which we are presenting in partnership with Alight. Designed to provide both timely content and networking opportunities for the CFO’s and those working in the financial accounting segment of our member companies, the CFO Working Group had a couple of soft launch events this year. Before the end of 2016, we will have executed our first webinar which will likely cover hedge accounting and key points regarding selling or retaining servicing rights.

The next new group in 2017 will be the CMO (Chief Marketing Officer) Working Group for those in the marketing departments or those who have the responsibility handling marketing issues for their shops. With low interest rates, new products and a very healthy market, companies are looking for ways to improve their promotions and stay razor sharp on hot new marketing concepts.

The California MBA is very proud to be adding these to our menu of services for our membership. If your CFO or CMO would like to be a part of either of these groups, please contact me at susan@cmba.com.

As we get closer to the start of the holidays and especially Thanksgiving, I am reminded that you can never say thank you enough! I want to take this opportunity thank some of our major supporters this year. First of all, we give a special thank you to all our member companies. Your support through membership allows us to continue to grow and expand our services to the real estate finance industry. Without you, there would be no California MBA! We have focused on strengthening our political position in California and one of the key methods to accomplish that is to have a well-funded political action committee. CAMPAC had a successful year and that was due in large part to the following that made substantial contributions this year:

Jeff Burns
Carrington Mortgage Services
Chris George
Flagstar Bank
Susanne Livingston
Bill Lowman
New American Funding

...Executive Director’s Letter continued on page 35
The gavel fell on the California Legislature’s two-year session midnight Wednesday, August 31st. It marked an end to a session that was initiated when California’s 120 legislators took the oath of office in December of 2014. There were over 5000 proposed laws, resolutions and constitutional amendments introduced during that two-year period, and the legislature made headlines by enacting several landmark laws on high-profiles issues. They include strengthening a commitment to fight climate change, boosting the state minimum wage to $15 an hour and tightening rules for gun ownership. Democrats, who have strong majorities in both the Assembly and the Senate, celebrated these victories and pointed to the new laws as models for other states to follow.

Notably, however, the Legislature did fall short on efforts to address two major issues impacting Californians’ daily lives, the shortage of housing that is affordable and the state’s crumbling roads. The governor and legislative leaders agreed to spend $400 million to build subsidized housing, but only if the Legislature also approved a proposal by the governor to expedite construction of housing projects with subsidized units sold at free market prices. Left leaning lawmakers refused to eliminate opportunities to delay or block new construction, thereby dooming the housing compromise. And for the second year, no consensus could be reached on funding a long list of needed road and bridge repairs, relegating California motorists to miserable traffic conditions. Democrats wanted to raise taxes to pay for the $57 billion in road repairs but Republicans refused to raise taxes, asking instead for spending cuts in other areas of government to fund the repairs.

The Legislature sent at total of 1,059 bills to the governor in 2016, and he vetoed 159 of those bills. That amounts to a 15% veto rate, which is higher than the nearly 13% average in the previous five years. And his veto ratio increased even further for the 789 bills that were sent to him in the last few days of the legislative session. He vetoed roughly 18% of those bills. One consistent theme in his veto messages is the need for fiscal responsibility. In at least two instances he vetoed packages of bills, referencing either tax breaks or boosted spending that should have been considered during budget deliberations as the reason for the vetoes. The governor has consistently emphasized the need for a balanced budget because of his belief that an economic downturn is near, for which the state is not well-prepared. Unfortunately, one of those bills vetoed was a mortgage debt forgiveness bill providing state tax relief for borrowers supported by the California MBA, which will be discussed below.

Listed below are updates on several

...Legislative Report continued on page 39
GUILD MORTGAGE HAILED FOR SUCCESSFULLY NAVIGATING COMPLEX TRID TRANSITION

When the Consumer Finance Protection Bureau (CFPB) finalized the “Integrated Disclosure Rule,” part of new mortgage requirements under The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), experts said that this mandated the most significant regulatory changes since the Great Depression.

The change became known as TRID, an acronym from combining the Truth in Lending Act (TLA) and the Real Estate Settlement Procedures Act (RESPA) into the CFPB’s Integrated Disclosure rule. The complexity of the rule was beyond anything seen before in the mortgage industry.

“It is without question the single largest implementation challenge that the broad industry has faced since Dodd-Frank,” said David Stevens, president of the Mortgage Bankers Association (MBA), when the 1,888-page rule was signed in November 2013. “It’s massive. It involves every real-estate agent, settlement-service provider, every consumer, mortgage originator, everyone.”

The scheduled launch date was August 1, 2015. Based in part on concerns from throughout the mortgage and real estate industries about potential harm and delays to the home loan process, the CFPB moved the date to October 3. It recognized that how well lenders manage to process loans under the new regulation could mean the difference between continuing as a successful company or having to pursue other options, such as sale, merger or, for banks, abandoning mortgage lending.

For Guild, the ability to navigate TRID has become a differentiator in its success. As the industry faces the Home Mortgage Disclosure Act (HMDA) next, as well as more modifications to TRID, Guild brings not only best practices, but unique cultural differences in how it collaboratively navigates new challenges.

Guild has been recognized throughout the industry for being among the best prepared, especially for its technology platform, training programs and how the company worked with real estate agents, title and escrow companies.

What did Guild do differently that prepares it for future regulatory changes?

1. Start early with planning and training.
2. Take a collaborative approach.
3. Evaluate internal and external workflows and identify how they will change.
4. Design the workflow to support the customer experience.
5. Be a learning organization.

READ THE FULL ARTICLE AT SWITCHTOGUILD.COM/TRID

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After reading the political and economic headlines over the past few months, one thing becomes clear to me. A number of individuals and corporations need a lot of help when it comes to managing a public relations crisis. Regardless of whether you voted for him or not, it was fascinating (and perhaps it felt at times like watching a car accident in slow motion) to observe Donald Trump’s response to the varied PR disasters he has faced. For instance, in some ways he seems to be under the impression that the old adage “all press is good press” is literally true. Despite a number of opportunities to re-focus the media’s attention on Hillary Clinton’s weaknesses, Trump seemed incapable of allowing the spotlight to be on someone else. I don’t think it is entirely an issue of ego; I think he genuinely believes keeping the focus on himself is a better strategy. All that said, for him it seemed to work, judging on the results of the November 8th elections. However, it is a high-risk strategy, to put it lightly, and not the approach I’d recommend for today’s mortgage banker.

Communicators from the 1970’s or 1980’s thrust into the scrum of a decentralized and wild media landscape in 2016 would find themselves in an alien world. Beyond just the departure of a media consisting of the three big TV networks and a handful of agenda-setting newspapers, the takeaway is that for businesses looking to shape their image and message, they can no longer rely on individual gatekeepers (prominent beat reporters, editors, or news producers) to get their message out. The explosion of social media and simultaneous decentralization of media power means the game has changed. A bad announcement from the Consumer Financial Protection Bureau (CFPB) doesn’t end with a single negative story in the New York Times and a press release from a member of Congress demanding action. That bad PR can reverberate to the consumer in a matter of minutes through Twitter or Facebook and requires that you have a strategy in place now, not one you develop “on the fly.” While each crisis is different and will likely require nuanced tactics, here are a few things to keep in mind when planning your response:

**Anticipate problems.** When designing systems, particularly those that impact consumers directly, make sure that you consider worst-case scenarios. If the words “that can’t happen to us” escape your lips, you could be headed for trouble.

**Be honest about the problem.** Prior to the existence of Google and the democratization of information, you might have been able to get away with sugar-coating a culture problem, or hidden an aspect of your company. That’s not the case anymore, and further, it there is anything media and the public enjoy more than tearing down fallen heroes (or companies), it is rooting for a comeback. A great example: look at how pizza chain Dominos revived its brand...
In recent announcements, the Consumer Financial Protection Bureau (the “CFPB”) outlined a host of possible rules that would govern mortgage loan servicing. Simultaneously, the CFPB indicated that it would soon be implementing the new limitations on broker compensation included in the Dodd-Frank Act. However, those announcements included statements by the CFPB that, prior to issuing proposed regulations, it intended to comply with the Regulatory Flexibility Act in general, and specifically with the Small Business Regulatory Enforcement Fairness Act of 1996 or “SBREFA.”

The acknowledgement by the CFPB of the applicability of the SBREFA has been met by the industry as presenting an opportunity to reign-in (or, at least, to moderate) anticipated regulatory actions by the CFPB that may severely impact the mortgage industry participants. Accordingly, this article summarizes (in as non-legal a manner as is possible) what SBREFA is, how it operates in the federal rule-making process and how it and related issues may assist mortgage lenders, servicers, originators and related parties.

THE ADMINISTRATIVE PROCEDURES ACT, THE SBREFA AND FEDERAL REGULATION

In the arcane world of federal administrative law, the Administrative Procedures Act (the ”APA”) is the primary federal statute that generally establishes how federal agencies perform their designated functions. Among other things, the APA creates a structural process that must be followed by an agency in order to issue new regulations or amendments to existing regulations. In order to comply with the APA, an agency that intends to issue new or amended regulations must take the following steps:

- Publish in the Federal Register a notice of the proposed regulations to be considered;
- Provide the public the opportunity to submit comments;
Consider the comments received from interested parties prior to finalizing any rules;

- Publish the final version of the rules; and

- Provide a reasonable time frame for affected persons and entities to comply.

As years passed, many businesses regularly complained that the degree to which federal agencies actually considered comments received from both large and small businesses regarding the ever-increasing numbers and complexities of regulation was woefully inadequate. Reacting to this criticism, Congress amended the APA by adopting the Regulatory Flexibility Act (the "RFA"), which imposed a duty on agencies to consider the economic impact of proposed regulations.

However, in the view of the business community federal agencies all too often paid mere lip service to the requirements of the RFA that the economic impact of a regulation be considered. Reacting to this criticism by a coalition of small businesses, Congress amended the APA in 1996 by passing the SBREFA, which imposed significant new procedural requirements on rulemaking actions impacting small businesses subject to OSHA and the EPA.

In a stroke of genius, critics of the extraordinary regulatory powers being given to the CFPB in the DODD-Frank Act specifically made the SBREFA applicable to regulatory actions taken by the CFPB.

HOW SBREFA OPERATES

The SBREFA might be viewed as an overlay to the federal rule-making process governed by the APA by mandating that a covered agency (e.g., in this case, the CFPB) cannot propose new regulations or amendments to existing regulations when the proposal would have a "significant impact on a substantial number of small entities" (a "SISNOSE"). For example, in the case of the promulgation of a rule implementing the broker compensation limits contained in the Dodd-Frank Act, the very nature of the loan broker segment of the mortgage industry qualifies as a SISNOSE.

If a SISNOSE is identified, prior to issuing a proposed regulation the CFPB must convene a tripartite panel (a "Panel") comprised of staff members of the CFPB, the Small Business Administration’s Office of Advocacy, and the Office Management and Budget’s Office of Information and Regulatory Affairs. The Panel must meet with an advisory panel consisting of "Small Entity Representatives" ("SERs") that are identified representative of small businesses, and provide the SERs panel an opportunity to provide advice regarding the proposed regulatory action. (It should be noted that a SERs panel can include trade associations representing the interests of small businesses, and can also be supported by larger business entities.)

Although the Panel’s deliberations are private, the Panel’s views must be taken into consideration by the CFPB prior to making a formal proposal and as part of the regulatory flexibility analysis when a rule is finally adopted. (Of particular importance is the fact that a member of a SBREFA Panel, the SBA’s Office of Advocacy, is charged with the task of being a watchdog to ensure that the concerns expressed by SERs are not ignored by the regulatory agency.)

THE POSSIBLE EFFECTS OF THE SBREFA AND RELATED APA PROCEDURAL OBLIGATIONS ON THE CFPB AND THE MORTGAGE INDUSTRY

While the salutary provisions of the SBREFA are numerous, it remains an imperfect statute to curb excess agency regulation. For example,
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**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 residential compliance experts to give us their thoughts on the state of the industry and a look ahead at future challenges. **Ron Morrison** is EVP, General Counsel at Impac Mortgage Holdings, Inc. in Irvine; **Marty Allred**, is Vice President, Compliance, with American Pacific Mortgage in Roseville; and **Theresa Ballard** is Compliance Management Consultant for Strategic Compliance Partners, located in Maple Lawn, MD.

The views and opinions expressed are solely those of the authors.

**CALIFORNIA MBA:** WE’RE ROUGHLY ONE YEAR PAST TRID’S EFFECTIVE DATE. WHAT IS THE STATE OF COMPLIANCE AND WHAT CHALLENGES REMAIN?

**Morrison:** Similar to the implementation of other Regulatory requirements, the industry’s memories of the early days of the Good Faith Estimate, HUD, and Truth-in-Lending disclosures are fading, which is leading the way to a general acquiescence that the Know Before You Owe rule (aka “TRID”) is simply the way that disclosing lending transactions is done today.

However, this process has not yet been truly vetted until investors and the Agencies undertake a full scale testing for compliance with requirements of TRID. For those of us lucky enough to have gone through securitization type reviews, we have received a full understanding of the specificity and technical nature of what TRID compliance requires. Part of this early learning process dealt with what specific TRID requirements will be reviewed and what would be the extent of the review. With the hard work of many outside attorneys, rating agencies, lenders, due diligence firms and investors who contributed to an understanding and recognition of the true risk posed by the TRID errors and a uniform approach in assessing such risk we believe that although there are still substantial challenges to be met, there is at least a uniform approach for the industry to undertake.

**Allred:** There are certainly challenges with Know Before You Owe (KBYO), even one year later. While lenders have streamlined their procedures for the most part and are closing loans close to the timelines pre-KBYO, some of the challenges that remain relate to data integrity, the lenders/owners title disclosures, the CD black hole and examination procedures. State and federal exam teams are moving toward data-driven exams to streamline their procedures and be able to review loans faster, and to identify higher-risk loans for targeted reviews. This means that our LOS must have all of the data elements that examiners are looking for, and have high integrity of that data. Not only do the physical...
LRES, a national residential and commercial real estate services company providing valuations, REO asset management, HOA and technology solutions for the mortgage and real estate industry, announced Audrey Clearwater has been promoted to vice president of operations.

In this role, Clearwater is responsible for managing staffing, supervision, development, evaluation and performance for five departments of the operations division focusing on delivering quality services to financial customers. She is responsible for assessing workflows and procedures, identifying and pursuing needs for process improvements, and implementing any appropriate changes to increase effectiveness and efficiency to best meet client requirements.

Before assuming her role as vice president of operations, Clearwater served as vice president of operations for commercial and residential divisions at InsideValuation Partners, LLC. After the firm was acquired by LRES in March of 2016, Clearwater continued her role managing and supervising daily operations, business practices and client relationship management located at LRES’ Reno office, formally known as InsideValuation, A Division of LRES.

AXIS Appraisal Management Solutions has announced the appointment of Rob Chrisman, publisher of the widely-read Daily Mortgage News and Commentary, to its board of directors.

Chrisman, a residential lending professional with more than three decades of experience, was the former president of OnCall Mortgage, which was acquired by Wells Fargo Bank; director of secondary marketing for CMG Mortgage; and director of capital markets for RPM Mortgage; among other executive positions. A sought-after speaker at industry conferences, Rob serves on the boards of Peoples Bank, Inheritance Funding Corporation, International City Mortgage, California Mortgage Bankers Association, and now, AXIS.

"Rob is an esteemed voice in the mortgage banking industry and we are excited to welcome him to the AXIS Board of Directors," said Michael Simmons, AXIS co-founder and co-president. "His hands-on experience building national brands in the lending space, coupled with his deep relationships in—and understanding of—all facets of the real estate industry, make Rob invaluable to AXIS as we evolve and grow."

EarnUp is excited to have Vinod Kamath join our team in the Marketing Manager role. Vinod brings significant experience in both marketing and business development both in the United States and Internationally. He has focused his career across both early-stage ventures as well as Fortune 500 companies. He will be leading our partnership efforts as we continue to rapidly grow our customer base on the EarnUp platform.

EarnUp is a consumer-first platform that intelligently automates loan payments and identifies earning opportunities for the 200 million indebted Americans. EarnUp puts a few dollars aside for loans when consumers can afford it -- then makes payments for the consumer, allocating funds the way that gets consumers out of debt faster. The result is happier borrowers, 100% automated payments, and fewer delinquencies. Based in San Francisco, EarnUp is backed by prominent VC firms Blumberg Capital, Kapor Capital, Camp One Ventures, and Fenway Summer Ventures plus other leading angels and entrepreneurs. EarnUp is a member of the prestigious Financial Solutions Lab in partnership with JPMorgan Chase & Co. (JPM) and the Center for Financial Services Innovation.
Tony Scoma
National MI has hired Tony Scoma as an Account Manager, adding to its sales bench strength in Northern California. Prior to a stint at United Guaranty, Tony built a career in mortgage banking retail production and secondary marketing, developing a strong understanding of the mortgage process. Born and raised in the SF Bay Area and an alum of St. Mary’s College in Moraga, Tony is looking forward to working with lender accounts in his local community. As Account Manager for the metro San Francisco Bay Area, his territory includes the San Francisco, Peninsula, Marin, East Bay, and San Jose markets.

Serena Yang
Serena Yang, vice president of marketing for Civic Financial Services, was recently named one of HousingWire’s Women of Influence for 2016. Civic Financial Services is a nationwide private money lender offering financing for commercial rental property investors. Civic Financial Services is a subsidiary of Wedgewood, one of the top distressed asset buyers in the nation.

Previously, Yang served as the director of marketing for Colony American Finance, a subsidiary company of Colony Capital and Colony American Homes. Yang was in charge of all the marketing initiatives at Colony American Finance, supporting the sales team in reaching the pinnacle of funding $1 billion in loans within 18 months.

At CAF, Yang developed and implemented marketing initiatives and strategies which included brand development, digital marketing, lead generation, social media, CRM/email campaigns, event sponsorships, conference management, website development, direct mail, public relations, paid search marketing and business development with industry partners.

If you would like to submit an employee to be recognized in an upcoming issue, email dustin@cmba.com for more information.
Opportunities of All Sizes for California

by JIM LABBÉ, Sales Manager—Pacific Region, MGIC

I s the glass half full or half empty? We are all familiar with that “scientific” question that defines whether you are an optimist or pessimist.

To be honest, I never understood the point of it. To me, it’s not the right question. The real question is: Are you thirsty? Because if you are, half full or half empty, that’s how much water is available, so start drinking.

As 2016 comes to a close and we look forward to what 2017 holds for our industry, we can find economic developments that cause us to wring our hands and others that we applaud.

Half full or half empty — does it really matter? In the end, it comes back to How thirsty are you for the business? Because the market is what the market is. And every market has opportunities.

Consider the uniqueness that is California. The LA Times recently examined the idea that, if California was its own country, it would be the 6th largest economy in the world. But that’s before taking the cost of living into account. When we factor that into the equation, California falls to 11th place. Still impressive. Still highest among the United States. But as wonderful as it is to live here, it is not inexpensive.

So what is happening in our state’s housing market today, what opportunities does it hold for loan originators and how has our industry adapted to help you go after it?

Well, opportunities come in all different shapes and sizes, and there are two here in California I would point to in particular, ranging in size from small, as in minimum down payment, to very large, as in GSE conforming jumbo loans.

THE MINIMUM DOWN PAYMENT OPPORTUNITY

Study after study and survey after survey continue to point to the down payment as the biggest hurdle for most homebuyers. This becomes especially true among our younger first-time homebuyers, and certainly true if you live in a state with homes typically priced above the national median.

Yet adding to that challenge is simply the lack of knowledge many consumers have about the home-buying process. In a recent Fannie Mae survey, 40% of younger renters admitted they did not know how much lenders require for a down payment. Another 40% believed the minimum requirement was 10% or more.

While FHA loans require as little as 3.5% down, we can’t overlook the fact that a conventional loan with private mortgage insurance (MI) from a provider such as MGIC actually allows for less down.

...Featured Residential continued on page 45
Despite some twists and turns, lending activity over the last few years has been growing, and recent loan volumes have been robust. An improving economy and real estate climate, low interest rates, and an abundance of capital have contributed to a seemingly ideal lending environment. Fueling this growth in lending activity has been the concurrent run up of maturing loans.

Just under a decade ago, commercial real estate lending had set new records. By 2007, and prior to the onset of the great recession, the CMBS market attained a new high watermark with over $200 billion in issuance. Aggregate issuance over just the prior three years was well over half a trillion dollars. In addition, billions more from banks, insurance companies, and pension funds, many with 10 year terms, led to what is commonly known as the wall of maturities which is scheduled to peak in 2017.

With the crest of loan maturities just ahead, many borrowers may not be fully aware of the potential challenges they could face when they go to market to refinance. Despite an improved market and lenders hungry for business, underwriting has become more disciplined, and property characteristics have changed. As a result, assets that seemed easy to finance 10 years ago at 80% leverage may now struggle to achieve 65%.

Ten years may not feel like such a long time, but with the significant improvement and availability of market data, lenders today have far greater insight into property and market performance. Data sources such as TREPP, RCA, Costar and others provide up to date and near instantaneous information on loans, properties, and markets that was not easily accessible even a few years ago. Lenders can now quickly identify issues, evaluate risks, and compare property performance longitudinally across markets and industry sectors.

Adding to borrowers’ challenges are increasing regulatory pressures which will impact lender behavior and appetite for writing new loans. From Dodd-Frank to Basel III, new risk retention rules for CMBS and lending limits for banks, borrowers and lenders alike will be dealing with new uncertainties. Loan pricing will likely increase, leverage will become more constrained, and lenders will become more selective on which assets and to whom they will lend.

Any number of issues may conspire to complicate the refinance process. The most common of these have to do with changes in the market, tenancy, and competition as well as current underwriting parameters. For example, lenders today are reluctant to rewrite loans in regions that have suffered economically due to deterioration in the oil and gas sector or Sunbelt metros struggling with deindustrialization. Markets that were most severely impacted during the great recession and only recently have begun to approach 10-...
A10 Capital Closes a $13.9 Million Bridge Loan on an Office Property in Torrance, CA

A10 Capital, a full-service nationwide lending business specializing in middle-market commercial real estate loans, recently closed a $13.9 million bridge loan for the recapitalization of the recent purchase of a 2-story office building located in Torrance, California.

The property is centrally located in Torrance, with access to the San Diego Freeway (405) and the Harbor Freeway (110) and the major aerospace, technology, retail and industrial companies headquartered in the area. Originally constructed in 1984, the building was most recently renovated in 2006 which included the lobby and common areas.

The sponsor, a repeat client of A10 Capital, plans to use the proceeds of the loan to address deferred maintenance and “creative” renovation to increase the retention of existing tenants and attract higher value tenants. Upon completion of these renovations, this property will be a more appealing value alternative to the more traditional “Silicon Beach” markets while still offering immediate access to transit, amenities and executive housing.

Dan Pavlinik, EVP and Michael Singh, Principal & EVP structured and closed the bridge loan. The loan was structured on a non-recourse basis with a three-year term and includes future facilities for Cap-Ex and TI/LC funding.

NorthMarq Capital’s San Francisco office arranges acquisition and construction financing of $72 million for Renaissance Square, Phase I & II

Jeffrey Weidell, president, and Nathan Prouty, managing director of NorthMarq Capital’s San Francisco office, arranged acquisition and construction financing of $72 million for Renaissance Square, Phases I & II. The 134-unit multifamily property, located in Concord, California, will be adding 180 units. The transaction was structured with a 15-year term with 3-years interest only followed by a 30-year amortization schedule. NorthMarq arranged financing for the borrower through its correspondent relationship with a life insurance company.

...continued on page 21
PSRS refines $9.2MM Car Dealership in South Bay, CA

Trevor Blood of PSRS (Pacific Southwest Realty Services), a Southern California based commercial mortgage banking firm, closed a $9.2 million, 20 year, 20 Amortization, fixed-rate, non-recourse loan for a 135,907 Square Foot CarMax in Torrance, California. According to Mr. Blood "Car dealerships are a difficult property type to finance. “It’s very specialized... the single tenant nature and replacement cost can make financing too risky for some lenders. Adding to the complexity of the request was the borrower’s need for a 20 year term and 20 year amortization. We look at difficult property types, couple with unique financing scenarios as opportunities for our life companies to win business where other lenders may shy away or simply not have the capacity to compete.”

Mr. Blood continued, “Thankfully, we were able to execute with one such life company. We won, mainly due to their ability to execute on a long term, fixed rate, and fully amortizing basis. Where most lenders can’t go much beyond 10 years, the life company’s we work with not only can wrap their heads around often difficult product types, but they put borrower’s minds at ease by locking rate at application and having the debt fully pay off throughout the life of the loan.” Mr. Blood credits PSRS’ relationships with life companies, shared information within the firm, and their membership in the SAM (Strategic Alliance Mortgage, LLC) network, in ensuring that borrowers receive the best financing available, based on current quality market feedback.

CBRE Captial Markets Secures Nearly $20 Million in Financing For Two Senior Housing Properties in Northern California

CBRE Capital Markets’ Debt & Structured Finance team has secured $19,894,000 in non-recourse financing for two Northern California senior housing properties; Hilltop Commons in Grass Valley and River Oaks Retirement in Redding, California. Kevin Randles, Senior Vice President of CBRE’s Sacramento office and Aron Will, Vice Chairman of CBRE’s Houston office arranged the financing on behalf of the owner/manager, Ray Stone, Inc. CBRE secured long term, fixed-rate financing through its relationship with Fannie Mae DUS. The financing secured was for two separate loans with long terms and amortization schedules and included some initial...
term Interest Only and carried very low fixed interest rates.

Managed by Ray Stone Inc., each property has maintained strong occupancy histories. Hilltop Commons is an 84-unit independent living community built in 1984 on 6.6 acres. The 70,000-square-foot property is located at 131 Eureka Street in Grass Valley. River Oaks Retirement is a 102-unit community built in 1986 on a 5.9-acre site. The 93,500-square-foot property is located at 301 Hartnell Avenue and offers studio, one-bedroom and two-bedroom units.

"The senior housing sector is a large focus and long term play for Ray Stone, Inc., who focuses primarily with independent living communities. They are a leader in this space. The properties were very well maintained and their strong prior occupancy histories made the loans attractive to the lender," said Randles. "The financing for Hilltop was a refinance, while the loan for River Oaks Retirement was to facilitate an acquisition. Ultimately we were successful in executing historic low rate conventional mortgage capital for tertiary market properties," said Randles.

Sequoia Closes Deal on Office Building in Inglewood

Sequoia Commercial Lending, Inc. is pleased to announce the closing of a SBA 504 loan for the acquisition financing of a 14,600 SF office building in Inglewood, CA. Our client, a Wireless Consulting firm, searched for over three years to find the right building for their new headquarters. During that time Sequoia provided several pre-approval letters and annual reviews of the client’s financial data so that the client would be prepared for a quick loan closing.

Sequoia Commercial secured a 90% Loan-to-Value, 10 year fixed, 10 year term, 30 year amortization 1st TD and 20 year fixed, 20 year term, 20 year amortization 2nd TD SBA 504 loan placement for the purchase. The 10% down loan option is a fit for the business owners as they plan on using the additional equity for some minor capital improvements to the subject property. The available...continued on page 23
property square footage is perfect for the company’s office needs and also provides significant income from third party tenants occupying approximately 45% of the subject.

Redwood Mortgage Solves Problem, Closes $3.7M Loan

Challenge/Opportunity: Borrowers needed to close quickly and provide a strong offer to enable the purchase of an 8 unit apartment located mid-peninsula in the Bay Area.

Solution Provided: Redwood Mortgage was able to make a $3.7M loan and support an on time close. Borrowers showed strong financials as well as acquiring a property with well documented income history. The LTV was 65%.
RESIDENTIAL

Why Might High Deductible Health Plans be Advantageous to CMBA Member Companies?

by BRUCE SCHLESINGER, EVP, JMB Insurance

You can’t miss the almost daily headlines about rising health care costs where employers and employees alike are struggling with the combination of providing affordable health insurance benefits and maintaining access to quality doctors and hospitals. Coupled with increased compliance and regulatory hurdles the mortgage finance industry faces, this represents a painful combination.

Health and welfare benefits, especially health insurance, are core compensation components relative to the recruitment and retention of talent for CMBA members. Without strong benefits, we contend that talent retention will be increasingly challenging as some number of talented professionals are likely to leaving the industry to pursue careers where scrutiny of federal regulators is less intense and income trajectories might be more predictable.

With this in mind, we believe that CMBA members should strongly consider the benefit of implementing high deductible health plans (HDHPs) coupled with an income tax-advantaged health savings account (HSA).

There are three (3) main reasons why employers should strongly consider making the shift to a HDHP with an HSA:

1. **Lower Cost**—Generally, high deductible health plans cost less than as compared to traditional structured PPO or HMO plans.

2. **Improved Utilization**—HDHPs tend to drive employees to become engaged as better consumers of health care services and make more informed decisions (e.g. choosing to go to an urgent care center vs. the emergency room).

3. **Tax-Advantaged Savings**—Provides employers and/or employees with ability to contribute to an income tax advantaged account with the potential to accumulated savings.

For these basic reasons, high deductible health plans coupled with Health Savings Accounts are among the fastest growing health insurance benefit arrangements being offered by employers. Initially, high deductible health plans were offered only to employees as a choice among other plans at enrollment. More recently, an increasing number of employers are shifting to exclusively offering only one or more HDHP offerings. Sometimes this is referred to as “full replacement”.

It is important to note that the path to HDHPs gaining acceptance and traction is the most complex in regions – like in some regions...

...Health Plans continued on page 48
Mortgage Technology 2017—Three Trends Transforming The Industry

Big changes underway will reshape the industry

by

MATTHEW COOPER,
Co-Founder & CEO,
EarnUp

Self-driving cars are a great example of how technology is rapidly transforming (even disrupting) an entire industry. All aspects of our personal and professional lives are impacted by technological change - for better or worse. The mortgage industry is no exception, and big changes are going to dominate the industry in 2017. Let’s take a look at the key trends transforming the industry this coming year.

1. AUTOMATION

"Automate Everything" is the the name of the game in 2017. The mortgage industry is traditionally a paper-intensive business. Watch for technology improvements in loan origination, servicing, and mortgage loan compliance that will benefit both consumers and service providers.

The challenge—and the opportunity—facing the mortgage industry is that the consumer-facing aspects of the industry are upgraded first, while loan administration systems and backend processes are upgraded later. Some mortgage companies are waiting on a number of legacy systems to make the updates necessary to be fully compatible with new technology. There are three parts of the loan system that will be impacted the most by automation in 2017: origination, compliance, and servicing.

Origination Automation: A fully digital mortgage experience is quickly becoming a reality for many borrowers. One sign of progress is loan origination improvements, which were the top technology investment priority identified by lenders in Fannie Mae's 2016 Mortgage Technology Innovation report. Applying for a mortgage can be time consuming, and the process requires a great deal of documentation. Industry regulatory regimes require mortgage firms to track documents that must be signed and filed by specific deadlines. Fortunately, technology is speeding up and simplifying the entire mortgage loan process. Third-party fintech platforms, like Blend, as well as in-house solutions like those at SoFi and Quicken Loans, can digitize, standardize, and automate each step. "Americans want a seamless, transparent mortgage experience," said Michael Tannenbaum, SVP, Mortgage at SoFi. “2017 will see the launch of bold new features through online and mobile platforms that provide both consumers and lenders an improved origination experience”.

Compliance Automation: Every mortgage firm will wrestle with compliance changes and shifting regulatory requirements in 2017. Borrowers and regulators are demanding...
The California Homeowner Bill of Rights which took effect on January 1, 2013, contains two sections authorizing a preforeclosure action for injunctive relief. If a sale is enjoined under HBOR’s "injunction provision," a court may award attorney’s fees for obtaining the relief. In August and September 2016, two appellate opinions elucidated HBOR’s injunction provision. First, Sese v. Wells Fargo Bank N.A., upheld a trial court’s denial of attorney fee request following a preliminary injunction, holding that the attorney fee order is interlocutory and nonappealable. Next, Lucioni v. Bank of America, N.A., held the injunction provision does not authorize an action to enjoin a sale for the lack of authority to foreclose. Lucioni further construed that Yvanova does not authorize such preforeclosure action either.

AN ATTORNEY FEE ORDER FOLLOWING A PRELIMINARY INJUNCTION IS NONAPPEALABLE

While the injunction provision of HBOR provides for a potential award of attorney’s fees if injunctive relief is granted, the text of the statute does not specify whether a preliminary injunction is sufficient or the injunctive relief needs to be permanent. In Sese v. Wells Fargo Bank, N.A., the plaintiff obtained a preliminary injunction to enjoin a trustee sale. With the preliminary injunction in place, the plaintiff moved for attorney’s fees under the injunction provision. The trial court denied the attorney fee request on the ground that the injunction provision does not provide for interim attorney fees, and reasoning that a trial on merit might prove that the preliminary injunction was improvidently granted. The plaintiff appealed the order denying attorney’s fees.

The Sese appellate court started its analysis with a discussion of the "one final judgment" rule. The California Supreme Court has held that a judgment failing to dispose of all the causes of action pending between the parties is nonappealable. The Code of Civil Procedure §904.1 however, provides limited exceptions when an order is appealable. When there is no final judgment, an order must fit within one of the exceptions listed in the statute to be appealable.

The Sese plaintiff contended that the attorney fee order fits within four of the exceptions listed in the Code of Civil Procedure §904.1. The appellate court analyzed each of the exceptions raised, and concluded that an order denying interim attorney fees under HBOR’s injunction provision is not included among the appealable orders listed in the statute. Optimistically, the Sese discussion may diminish litigation over the ambiguity of the injunction provision, which fails to necessitate

HBOR’s “Injunction Provision” Elucidated
A Win For The Lender, But What About Its Fees?

by IAN A. RAMBARRAN, Shareholder, Klinedinst PC

The issue of how to handle a lender’s litigation attorney’s fees can be a minefield if the issue is not properly addressed. The problem is directly related to the lack of published case law following a lender/borrower dispute. There are essentially three scenarios where attorney’s fees come up: (1) losing a claim, (2) defeating a claim, or (3) compromising a claim. Each scenario triggers its own responsibilities and it is often worth a second look before closing down any matter.

The basic driving force behind the attorney’s fee issues are provisions in both the deed of trust and note. Most deeds of trust contain provisions that allow lenders to retain counsel to protect its security interest and most notes have similar provisions with regard to collecting a debt. Santa Clara Sav. & Loan Ass’n v. Pereira (1985) 164 Cal.App.3d 1089, 1097-98. In many instances, it is not clear how the attorney’s fees are to be recovered—can the lender unilaterally add the litigation fees to the loan or should there be an order from the court before collection efforts are initiated? Those provisions can create liability for both parties to the agreement in addition to the underlying issue. This is because attorney’s fees provisions in California are reciprocal, even if the language appears to be drafted solely in favor of the lender. Civil Code §1717(a).

HOW SHOULD FEES BE TREATED WHEN THE LENDER IS AT FAULT?

This scenario should be straightforward. If the lender is at fault during the litigation, the lender’s litigation fees and costs should not be charged as a recoverable advance. So, if the lender charges any of the litigation fees and costs after a loss, the lender could face additional liability for improperly or accidently attempting to collect those fees. Therefore, clear instructions on whether the fees are recoverable should be passed along to all those within the billing unit, and ideally, approved by counsel or the like before the first bill is mailed.

HOW SHOULD FEES BE TREATED WHEN THE LENDER WINS?

If the lender wins, it is not that straightforward. This is because a lender’s right depends on the precise language of the relevant deed of trust, note and modification agreement, if any. It would also depend on whether the lender is in the foreclosure process and whether the lender has an order from the court.

Anti-Deficiency Issues

If a lender defeats a borrower’s claim, and then goes to sale before obtaining a court...
Commercial Property owners and buyers know well that their market is both volatile yet full of opportunity. It’s easy to say "well, you just have to buy right", or "you simply have to have good timing". But, the smart entrepreneur also knows he or she needs to fully understand exactly what is to be bought - its condition now and down the road. Many variables come into play as we shall see.

BUYING EXISTING AND OPERATING PROPERTIES

In this scenario a buyer will most likely take the standard first steps of due diligence, namely: order a Property Condition Assessment ("PCA") – also referred to as the "engineering report"/ "structural report"; a Phase 1 Environmental Site Assessment ("ESA") and – if in a Seismically active area a Seismic Damageability Report – known in the industry as the "PML" report. Indeed, all of or some these reports will likely be required by a lending institution. But, there can be wide differences in how an Engineering and Consulting firm approaches an acquisition scenario vs. a simple refinance of an already owned asset.

It is critically important for the buyer to specify to a selected 3rd party due diligence firm that the asset(s) are being acquired - and that, accordingly, the consultant needs to do in-depth acquisition reports.

Many times these reports are used in a negotiation with the seller of the property – wherein the consultant has pointed out glaring deficiencies in the building, major repairs not easily visible to the untrained buyer etc. It is in this scenario where a Licensed Architect – with several years of field experience or a similarly experienced Licensed Structural or Mechanical Engineer with a Professional Engineering ("PE") designation can make a difference. A big difference. Too, it should be noted that the specific targeted acquisition may be more suited to a Licensed Architect one day but it can be just as important that a Mechanical or Structural engineer do the work in another scenario.

Yet, the purchaser needs to consider many other moving parts. For instance, a skilled buyer knows they need to understand the current operating model of the seller. Did seller personally manage the building(s) or was that handled by a property management company? In either case – the buyer will want to fully understand the nature of the existing...
For many investors, getting the most out of an investment opportunity begins with having an established relationship with their private lender of choice. Furthermore, like any other healthy relationship, the one between a private lender and investor is built on trust, honesty, mutual respect, and understanding. Once in place, these strategic connections will help investors maximize the profitability of every single transaction. However, in order to foster a lasting and advantageous relationship with a private lender, there are a variety of actions that a buyer must undertake in order to elicit the trust, respect, and understanding that will enable them to fully leverage the power that comes from having a reliable lending partner.

Approaching a private lender for the first time is not unlike going on a first date. There will be certain things that a lender will want to see that will have a lasting impression on their opinion of you as an investor, and which might influence their desire to offer up capital. Thus, in these initial encounters, it’s important to have a plan in place for the property that you are seeking to finance. Spell out your strategy for the present property and for future investments. Provide concrete timelines for how long it might take to fully realize the returns on your investment. Communicate your exit strategy for the property so that the lender can establish concrete expectations for repayment of their loan.

Also, because there is no greater predictor of the future than that of past performance, present the lender with examples of previous projects and any accompanying documentation to establish your success as an investor. Nothing is more attractive to a lender than a borrower with an established track record of profitable ventures. Provide transactional analyses and photos of properties that have been rehabbed, flipped, or are part of your positive cash flowing portfolio. The saying that “familiarity breeds contempt” does not apply in the mortgage industry. From a lender’s perspective, familiarity will breed confidence and comfort in their borrower. Hopefully, familiarity with an investor’s profile will demonstrate that they are who they say they are and can execute the strategy that they have put in place. Ideally, this will also establish a level of trust between the two parties that will serve as the foundation for a mutually beneficial and long-lasting partnership.

However, like the eye-catching photos of
What to Consider when Hedging Interest Rate Risk

by
REBECCA O’BRIEN,
Managing Director,
Derivative Logic
REX EVANS,
Managing Director,
Founder, Derivative Logic

INSIGHT #1: PLANS FOR THE ASSET, NOT THE LOAN TERM, ARE PARAMOUNT WHEN HEDGING—HEDGING A NEW FLOATING RATE LOAN

A real estate investor seeks a bank loan maturing in 10 years, amortizing over 25 years, but plans to sell the asset after just 5 years. The lending bank recommends a 10 year swap for 100% of the debt. Is this a good method to mitigate interest rate risk? Probably not, because the investor has market risk if the asset is sold in 5 years and the swap has a negative market value at that time.

Negative termination can be based on changes in term interest rates as well as the bank swap fee. The bank realizes a profit on day one when it sells a swap; therefore, the swap value is negative to the borrower at inception. While swaps are a useful way to hedge interest rate risk, it’s no fun writing a check to exit one. Therefore, it’s important to match swap term to the expected life of the asset, not that of the loan.

There are myriad solutions to meet this borrower’s particular hedging goals, each with risks and benefits. An interest rate cap, swaption or combination thereof would allow the borrower to obtain interest rate insurance without the downside of a potentially costly swap unwind at the 5 year mark when the asset is sold (remember, swap termination rate is based on the remaining term). With both, there is the up-front premium cost to consider, weighed against the potential costs of floating at rates higher than the strike price.

On occasion, real estate borrowers contact us for advice on hedging a variable rate loan and focus on negotiating a lower swap fee. However, a swap is not always the optimal hedging vehicle, and most banks only show borrowers a fraction of the hedging options available to them. While there are ways to lower costs by working with the bank on structure to ensure fees on a particular hedge are fair for both parties, we believe that finding the right hedge for the borrower’s unique preferences is paramount.

Obtaining independent hedging advice at deal inception helps avoid pitfalls from hedges that are not well matched to the actual planned usage of the asset.

INSIGHT #2: THE LOAN AND THE HEDGE ARE NOT NECESSARILY ATTACHED AT THE HIP - REFINANCING A FLOATING RATE LOAN HEDGED WITH AN INTEREST RATE SWAP

Let’s take a borrower with a floating rate loan maturing in 2 years who is worried term interest rates will be much higher when the bank loan matures. There is a pay fixed swap in place with a negative value. The borrower

...Interest Rate continued on page 59
Homes Lacking Earthquake Insurance Pose Threat to Lending Industry

By GLENN POMEROY, CEO, California Earthquake Authority

Seismic experts are in complete agreement that the next major earthquake is coming to California. It isn’t a matter of if—it’s simply a matter of when.

But here’s a fact that should keep everyone involved in home lending up at night: Over 90 percent of California homes have no earthquake insurance.

The California Earthquake Authority is working to change that. We seek to work more closely with the lending industry to make home buyers aware both of their earthquake risk and of flexible new options available in earthquake insurance.

This widespread lack of earthquake insurance leaves mortgage lenders exposed. The 1994 Northridge earthquake cost the mortgage industry up to $400 million in foreclosure expenses, property-repair costs, lost interest income, write-downs of existing loan balances and administrative costs, according to Aon Benfield.

Why do so few Californians have earthquake insurance? CEA has extensively researched the question. Most of the reasons we’ve found seem rooted in myths or misunderstanding:

Many believe the government will bail them out. This is a false hope: Government assistance, if available, is extremely limited. The maximum FEMA grant is $33,300—the average FEMA grant awarded after the 2014 Napa quake was just $2,670.

Others think their homeowners policy will cover their earthquake damage. But acting under state law, insurers have excluded shake damage from homeowners policies for over 30 years.

Still other home buyers believe earthquake insurance costs too much or that the deductible is too high. But these buyers are likely unaware of significant changes the CEA has introduced in recent years—particularly in 2016.

NOW CALIFORNIANS CAN CHOOSE THE POLICY THAT MEETS THEIR NEEDS AND BUDGET

While the cost to rebuild a home in California has soared by more than 175 percent since 1996, CEA has lowered rates several times over that period. CEA policies today cost half of what they would have cost without these rate cuts.

The CEA in 2016 introduced many new options for deductibles and additional coverages. Homebuyers can now choose deductibles ranging from 25 percent down to 5 percent. They can also now select up to $200,000 in personal property coverage and up to $100,000 to cover extra post-quake living expenses.

Finally, CEA offers a great incentive for buyers of older homes to finance seismic retrofits at the time of purchase. An average retrofit costs between $3,000 and $6,000, but that basic fix can dramatically lower the risk of the home’s toppling off its foundation in a quake. The CEA now offers premium discounts of up to 20 percent on homes with verified, code-compliant retrofits.

California’s next big earthquake is coming: The CEA wants to close the preparedness gap, and California Mortgage Bankers Association members want to avoid costly foreclosures. These are truly shared goals, so let’s start working together today.
Did You Know?
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2016–2017 Calendar & Events

Save the Date for our 2016–2017 Conference and Events!

DECEMBER 5–6, 2016
California MBA Legal Issues & Regulatory Compliance Conference
Avenue of the Arts Hotel, Costa Mesa, CA
Registration info coming soon!

DECEMBER 8, 2016
California MBA HQ After Hours
NEW Offices of California MBA, Sacramento, CA
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SAVE THE DATE FOR 2017!

45th Annual Western Secondary Market Conference
JULY 19–21, 2017
Westin St. Francis Hotel, San Francisco, CA
Registration/Sponsor Info Coming Soon!

22nd Annual Western States Loan Servicing & Technology Conference
AUGUST 6–8, 2017
Westin San Diego Gaslamp Quarter, San Diego, CA
Registration/Sponsor Info Coming Soon!

20th Annual Western States CREF Conference
SEPTEMBER 6–8, 2017
Wynn Las Vegas, Las Vegas, NV
Registration/Sponsor Info Coming Soon!

APRIL 3, 2017
California MBA Legislative Day
Sheraton Grand Hotel, Sacramento, CA
Register now at www.CMBA.com!

GARY L. KINCANON (1950–2016)
The California MBA expresses its sincere condolences to the family of Gary L. Kincannon, who passed away on Friday, September 30, 2016. Gary touched many lives, both personally and professionally and he will be deeply missed, but fondly remembered by everyone who knew him. Gary and the law firm of Barry, Gardner & Kincannon have been members of the California MBA for many years.
Welcome to the California MBA family!

NEW MEMBERS

BROADVIEW MORTGAGE
Residential Mortgage Banker
Orange, CA

CC PACE
Industry Professional Advisors
Fairfax, VA

CYBERSECURITY, LLC
Industry Professional Advisors
Littleton, CO

EVERBANK
Commercial/Multi-family Mortgage Banker
Jacksonville, FL

MICROBILT CORP.
Industry Technology Provider
Kennesaw, GA

PACIFIC FUNDING MORTGAGE DIVISION
Residential Mortgage Banker
Valencia, CA

SMITH KNOWLES PC
Industry Professional Advisors
Ogden, UT

Chairman’s Corner continued from page 6...

...consequences are avoided and that all sides of any ideas/arguments are given equal attention prior to creating policies that affect every single homeowner in the United States.

I know we all lead busy lives, but MAA is well-organized and easy to participate in. When issues bubble up to the surface, you’ll receive a notice via email and an invitation to weigh in. One click later and you’ve got a ready-made letter to your own personal congressional or state representative that you can quickly edit and submit. When we speak together as a unified industry in this way, we assert and project power in numbers. I’ve encouraged everyone at Parkside Lending to participate, and I’ve made it one of my priorities as California MBA Chairman to increase our state’s involvement with MAA. My message: you are a voter, an employer and a constituent. Your voice matters. But you need to use it.

Here at the California MBA, I’ve also made it a goal of our organization to improve our efforts to raise funds for our political action committee, CAMPAC, which exists to support candidates for state legislative office that will help our economy grow and prosper. For years, CAMPAC has raised far less than some of the other business PACs in our state, such as those organized by the California Association of Realtors (CAR) or the California Building Industry Association (CBIA).

I submit that it is high time to change that.

It is critical that the mortgage industry strengthen our political presence by having a strong and resourceful PAC. We use these funds to support candidates that understand the cornerstone position the real estate finance industry plays in our state’s economy. Please join me in pledging funds to CAMPAC so it can continue to support our legislative goals in this great state. No amount is too small, and I’d like to see both a broader (more donors) and deeper (larger donations) network of support from our industry. Keep your eyes open this year as we’ll be hosting a few events to raise money for CAMPAC, including our golf tournament held in conjunction with the 22nd Annual Western States Loan Servicing & Technology Conference on August 6th in San Diego. Contact Susan Milazzo (susan@cmba.com) if you’d like to help organize or participate in the event.

Through both MAA and CAMPAC, we can reach our goal and play a larger role in the legislative and electoral process in California and Washington, D.C. Together we can ensure our great economy will continue to stay vibrant and strong.
To all of you who enrolled in the Mortgage Action Alliance (MAA)
THANK YOU! That free non-partisan grassroots advocacy tool plays a key role that allows you as individuals to be a part of policy development at the federal and state level. **If we don’t take action on behalf of the mortgage industry, no one will.**

Thank you to the dedicated men and women that serve on our Board of Directors. I am fortunate to work with an amazing group of industry leaders that want to not only preserve our history as an association but always strive to find ways to make us stronger going forward. We never accept status quo and always push for more!

Lastly, and certainly not least – thank you to the most incredible staff anyone could ask for! We have such a strong team of highly dedicated professionals who are always challenging me and finding new ways to make our association valuable and an integral part of the mortgage industry in California. You are greatly appreciated by me and our members!

If you are a member of the California MBA, be sure to let us know how you’d like to be a part of our activities in 2017. If you’re not yet a member, join today and support the association that supports you and your industry.
Meet California MBA

FUTURE LEADERS CLASS OF 2016

Our first look at some of the California MBA Future Leaders Class of 2016. Stay tuned for more profiles in our next issue!

JONATHAN ALBERTS
Configuration Analyst

Alberts’ journey started in 2005 at a loan servicing shop in Sacramento: HomEq Servicing. The main function of his job was to index loan documents so they could be easily accessible for every department within the company (customer service, loss mitigation, escrow, etc.). He also had to open mail, print barcodes, scan documents and move boxes. As he progressed within the department, Alberts became a team lead and focused on employee development and quality control.

After his time at HomeEq, he took time off to focus on his education at Sacramento State University, where he obtained a Bachelor’s degree in both Management and Entrepreneurship. After graduation, and a stint at Bank of America, Alberts joined the Loan Servicing Department at American Pacific Mortgage. From Loan Servicing, he ventured into the Capital Markets world, and was in charge of the relationship with the company’s subservicer. Today, Alberts works as an analyst and developer for the Application Management team, whose focus is creating business rules and forms to enhance the E360 Encompass experience for every user.

WASSIM CHAKER
Vice President

Wassim Chaker is the Vice President of AAA Appraisal Management Company (AAA-AMC). His educational background lies in Pre-Pharmacy and Biology. However, shortly after moving to California in 2007, Wassim immediately took interest in the Real Estate Market. He began his career as an Appraiser Assistant in 2007 until 2011. Due to his vast knowledge on the entire appraisal operation and his ability to effectively communicate with others, Chaker was hired on to AAA-AMC which was founded in 2008. His outstanding performance at AAA-AMC shortly landed him the title of Vice President of the company. Chaker has been married to his wife Tamara for 6 years and together, they have two children, Jolie 3.5 years old and George, 2 years old. On his spare time, Chaker enjoys spending time with his family and playing basketball.

GABE FARR
Mortgage Loan Originator

Gabe Farr, a native to the Sacramento Metropolitan area, has dedicated the last 14 years to bringing premier customer service and a versatile product portfolio to his clients. A Sr. Mortgage Loan Originator with Catalyst Mortgage Inc. since 2010, Gabe prides himself in building iron clad relationships with his clients and vendors by offering them honest, first-rate and real-time knowledge of the mortgage industry. One of Gabe’s favorite ‘perks of the job’ is helping first time homebuyers realize their dream of homeownership.

Between wrapping up his Bachelor’s Degree in Business at Cal-State East Bay and spending quality time with his wife and precocious 6 year old daughter, Gabe enjoys playing indoor soccer and his cherished Tama drum set with friends. Gabe works hard to play hard – acknowledging that a healthy work life balance is paramount to being a success in the finance industry and in life.
Meet California MBA

FUTURE LEADERS CLASS OF 2016

Our first look at some of the California MBA Future Leaders Class of 2016. Stay tuned for more profiles in our next issue!

Thanks to our CAMPAC Donors!

AAA Appraisal Management Co. LLC
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Bill Doolittle
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Michael Ehrlich
Michael Heagerty
Michael Huilfire
Michael Randall
Mike Wileman
Mitchel Zemmont
Mortgage Industry Advisory Corp (MIAC)
Mortgage Quality Management & Research
New American Funding
Nolan Turner
Paramount Residential Mortgage Group
PennyMac
Peter Walsh
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Randy Ruegger
Scott Brinckley
Scott Sherburn
Seneca Mortgage Servicing LLC
Stephen Mitchell
Sterling Bank & Trust FSB
Susan Malazzo
Susanne Livingston
Sue Trembly
Terry Ball
TRAC - The Registered Agent Company
Troy Trigges
Tup Fisher
Union Home Mortgage Corporation
Wendy Barnett
Will Fisher
William Lowman
William Monheit

MATTHEW SIMMONS
Pipeline Operations Manager

Mr. Simmons has over 18 years of mortgage banking experience working in operations and production. Beginning in 1998 for a national mortgage bank he leaned many aspects as he was promoted through departments. In 2003, he was on the ground floor of helping build and train staff at a mortgage bank, which by month 9 has reached nearly $1 billion in funding. As a key first hire of AXIS, he has helped shape the operational and sales infrastructure as the company has prospered and developed over the years. As pipeline operations manager he guides staff.

At AXIS to ensure service levels are the highest possible.

JULIE YARBROUGH
Area Manager

With the proficiency and elegance of a maestro, Julie Yarbrough orchestrates productivity and personnel excellence across multiple state lines. With a God-given silver tongue, her charm and wit take a back seat only, to her leadership: a trait she cultivates with first empathy, then pride.

Professionally birthed to an industry unforgiving and ruthless, Julie looks back at 23 years with the smile of a professional humbled by success and life-long relationships. Julie started her storied career spending several years as a loan processor, escrow assistant and escrow officer then many years as a producing branch manager at Pulte Homes. In 2005 she joined Gateway Capital as their President, managing their entire residential loan division. Julie stayed with Gateway for over 6 years, until joining Five Star Bank, first as a VP, and then five months later as their President of Residential Lending. Then in late 2013, Julie took a brief step away from management, taking up an origination role with BBVA Compass where she spent time mastering the jumbo world with top producing realtor partners. Finally, in 2015, Land Home Financial Services called and she accepted a role as their Pacific Northwest Regional Area Manager.
Market knowledge, experience and financial strength.

Owners, developers, investment funds and real estate companies rely on the expertise of our Real Estate Finance Group for a full suite of commercial loan and financing programs.

$22,000,000  
Interim  
Retail  
The Fred Segal Building  
Los Angeles, CA

$75,000,000  
Interim  
Office  
Orange County Office Portfolio  
Orange County, CA

$41,500,000  
Construction  
Multifamily  
ONNI South Hill  
Los Angeles, CA

$6,500,000  
CMBS  
Retail  
Fairmount Seattle  
Seattle, WA

$55,100,000  
Interim  
Hotel  
Ritz Carlton Denver  
Denver, CO

$75,000,000  
Interim  
Retail  
The Shoppes at Gateway  
Springfield, OR

$70,000,000  
Interim  
Retail  
Jantzen Beach Center  
Portland, OR

$37,200,000  
CMBS  
Hotel  
Marriott Albuquerque  
Albuquerque, NM

$47,667,000  
Interim  
Office  
Centerpoint  
Denver, CO

$7,000,000  
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measures that would directly impact the membership of the California MBA.

**SB 1150—DECEASED BORROWER & SUCCESSOR IN INTEREST - HBOR**

Passed Legislature and Signed Into Law, Chapter 838, Statutes of 2016.

The California MBA opposed SB 1150 even though it was extensively amended to address issues that we raised. Unfortunately, as signed into law the legislation includes a private right of action and significant penalties. It is also unnecessary given the final regulations at the federal level recently promulgated by the Consumer Financial Protection Bureau (CFPB). Those final regulations address the same underlying successor in interest issue advanced by SB 1150.

As introduced, SB 1150 applied to all mortgage servicers. The final version of the bill exempts mortgage servicers with 175 or fewer foreclosures of residential 1-4 property located in California within a year, so the applicability of the bill has been significantly narrowed. Previous versions of SB 1150 applied to any natural person that could document the death of the obligor and demonstrate an interest in the property but failed to require that the person occupy the property as a principal residence. The bill was amended to limit its scope to specific relatives of the obligor or a joint tenant who has occupied the property as their principal residence within the last six continuous months prior to the obligor’s death and who currently resides in the property. The bill was further narrowed so as not to apply to a successor in interest that has engaged in a legal dispute over the property.

Earlier versions of SB 1150 mandated that a mortgage servicer allow a successor in interest to assume the loan or be granted a loan modification without permitting the mortgage servicer to perform a credit evaluation. As amended, the measure affirms the mortgage servicer’s ability to evaluate the creditworthiness of the successor in interest subject to applicable investor requirements and guidelines. This change addresses one of our main concerns with the bill.

After the release of the final CFPB successor in interest regulations, the bill was amended to clarify that a successor claimant must demonstrate an ownership interest in the property in question. This new language better matches the language in the final CFPB regulations. Second, amendments were added to provide the ability of the servicer to require, where there are multiple successors, for successors who do not desire to apply for mortgage assumption to sign a written consent regarding an application for another successor.

Early versions of the measure originally lacked a safe harbor for compliance with the final federal CFPB regulations, but the bill was amended to include a safe harbor wherein a mortgage servicer’s compliance with the federal regulations is deemed compliance with SB 1150, further addressing California MBA concerns. The combination of the 175 or greater foreclosure threshold and the safe harbor should significantly reduce the impact of the bill. Finally, the bill was amended to have a 3-year sunset, so it will only be in effect until Jan 1, 2020 unless it is renewed with future legislation.

**AB 2693—CONSUMER PROTECTIONS FOR PROPERTY ASSESSED CLEAN ENERGY (PACE) LOANS**

Passed Legislature and Signed Into Law, Chapter 618, Statutes of 2016.

The California MBA is a co-sponsor of and supported AB 2693. It was originally intended to reduce the existing super-priority lien for PACE loans to a normal lien status subordinate to a purchase money obligation lien and to require that borrowers receive the necessary disclosures to inform borrowers about the financial terms and conditions associated with a PACE loan. We believe that changes to PACE programs are necessary because FHFA policy is to not allow Fannie Mae and Freddie Mac to purchase mortgages that have PACE financing, forcing a borrower needing to refinance or sell a property to pay the entirety of the PACE loan balance. Also, there are no existing statewide regulatory or disclosure requirements for PACE Financing.

When AB 2693 was heard in the Assembly Local Government Committee it faced heavy opposition from the CA League of Cities, several local government entities and PACE service providers. The Chair of the committee forced the bill author to accept an amendment to remove the...
PACE lien subordination to purchase money transactions in order for the bill to pass out of committee. The author reluctantly accepted the amendment but said he would strengthen the PACE financing consumer disclosures in the bill and include a 3-day-right of rescission.

The final version of the bill makes three main changes to PACE programs: 1) It grants a property owner the right to cancel a contractual assessment prior to midnight on the third business day after executing the contract without penalty or obligation; 2) It requires a financing estimate disclosure document to be completed and delivered to a property owner; and 3) It restricts the ability of public agencies and other parties to make representations to a property owner regarding the effect the financed improvements will have on the market value of the property.

Cities and counties are currently allowed to provide financing for energy efficiency, water efficiency and seismic strengthening improvements and are given super-priority lien status, jumping ahead of existing mortgage liens. Repayment of PACE financing is accomplished through a tax assessment itemized within the borrower’s local property tax bill. FHFA has issued several memorandums making it clear that Fannie Mae and Freddie Mac’s policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it. As a result, a homeowner with a PACE loan cannot refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage and anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. A borrower needing to refinance or sell their property is forced to pay the entirety of the PACE loan balance.

SB 907—MORTGAGE DEBT RELIEF ACT
Passed Legislature but Vetoed by the Governor.

The California MBA supported SB 907 because it would have extended state tax relief on forgiveness of mortgage debt for tax years 2014, 2015, and 2016 by conforming California law to the Federal tax law. Unfortunately the bill was vetoed by the Governor. It was in a package of bills vetoed by the Governor. In his veto statement he said the bills would have created new tax breaks or expanded existing tax breaks worth hundreds of millions of dollars and therefore needed to be deliberated during state budget negotiations.

California law does not automatically conform to changes to federal tax law so the Legislature must affirmatively conform to federal changes. After a loan modification or short sale of a home, a lender can cancel or forgive thousands of dollars of an individual’s mortgage debt and Federal and State income tax laws generally define cancelled debt as a form of income. Without this legislation to exclude cancelled debt, impacted Californians will be punished for seeking foreclosure alternatives by being assessed state taxes on “phantom” income they never received. California last passed conforming legislation in 2013(AB 1393, Perea, Chapter 152), but remains out of conformity for discharges that occurred in the 2014 tax year or later.

SB 657—CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT LICENSING
Passed Legislature and Signed Into Law, Chapter 797, Statutes of 2016.

The California MBA supported SB 657. The bill was needed because of overlapping requirements of federal law and state law under the California Residential Mortgage Lending Act (CRMLA). Business Process Outsource Providers (“BPOs”) provide loan processing and underwriting services to their clients, including small and large financial institutions, and are required to be licensed as a mortgage lender by the Department of Business Oversight. Part of the CRMLA lender definition includes a reference to a federal approval (i.e., Federal Housing Administration (FHA) approved lender), but the FHA made some policy changes so that it no longer grants approval to third party processors and underwriters who are not lending. SB 657 simply makes it clear that these companies who solely process and underwrite mortgage loans can still be licensed under the CRMLA and remain subject to Department of Business Oversight regulation.
after publicly admitting their quality was poor, and promising to do better.

Get on the same page (message uniformity): Nothing stops a successful PR response to a problem faster than having a messenger go rogue. This is a matter of making sure that your messengers have more than a script – they need to be prepared with as much information as possible. It is also critical to be realistic with yourself about who is qualified to be a spokesperson for the company. Not everyone is suited for the job, and responding to hostile questioners on the record is far different than speaking on a panel at an industry conference in front of friendly faces.

Do you have a trained spokesperson? It is critical that if you’re going to have a public face, that you have at least a few people trained to interact with reporters. Unless you are Donald Trump, attempting to “wing it” is more likely to lead to disaster than victory. Spend the money and effort to properly train a spokesperson or two.

Be careful with the use of the phrase “No comment”. While it may be necessary to avoid commenting on issues involving pending legal action or a personnel matter, use the phrase sparingly. Consider how it sounds to the average consumer hearing it – if you’re responding to a simple question, don’t invite more skepticism and suspicion by unnecessarily responding with a seemingly evasive response.

Monitor the response. This is extremely important. During a PR crisis, you need to do everything you can to monitor the effectiveness of your response. You’ll be blindly throwing darts if you’re doing nothing more than relying on a Google alert for the company name or a similar shotgun approach that just tracks the response of reporters. You need to be monitoring social media as well to see how consumers are reacting to your messaging.

Don’t ignore the consumer—engage them. One of the great features of social media is the ability to cut through filters to speak directly with consumers and customers. Particularly in a crisis, don’t see social media as a threat to be avoided; aggressively use it to speak directly to people’s concerns. Transparency (to the extent you can be), authenticity, and empathy are critical brand-builders and positive conversations can echo across social media and have a far bigger impact than a print article in a local business journal.

Do a post-mortem. Finally, once the smoke has cleared and the dust has settled, take a moment before “moving on” to critically review your response to a PR crisis, and make honest assessments about what went right and wrong. Then follow through with any necessary changes to refine your responsive capabilities.

Bottom line: a PR crisis only becomes a true “crisis” when you fail to prepare for one. Acknowledge now that you have imperfect systems run by imperfect humans, and that no company can avoid a PR challenge indefinitely. You’ll face one someday, so make sure you and your team are ready.
The consensus of practitioners in this area is that while the SBREFA imposes procedural burdens on an agency such as the CFPB, the CFPB may choose to ignore a SBREFA Panel’s recommendation provided that it justifies its decisions. Similarly, complying with SBREFA’s requirements may delay agency action, but in the case of the CFPB it has indicated that it intends to accelerate the Panel process as much as possible.

Although the SBREFA could be viewed as merely a delaying tactic that might slow-down the CFPB’s announced regulatory agenda, its applicability to the CFPB has created a dialogue among industry members that legal challenges to the CFPB’s regulatory actions might be possible and supportable through SBREFA and other APA-related challenges. For example, recent court decisions have taken a more critical view of the requirements of the RFA—including court decisions that administrative agencies cannot elect to ignore the economic effects of their rules when promulgating the same.

Of course, mounting legal challenges to regulations to be issued by the CFPB is not for the faint of heart—and lawsuits brought by individual companies may not be politically practical. However, it should be noted that legal challenges by the mortgage trade associations are being considered—and one of the primary legal bases may rest on the degree to which the CFPB responds to its obligations to consider the economic issues embedded in the SBREFA.

Disclosures have to be correct, the data associated with every field must be accurate as well, for successful examinations in the future.

The lenders/owners title disclosure requirements remain a challenge as settlement agents continue to quote fees a variety of ways, making it a challenge to consistently meet the specific KBYO guidelines. Consistency and accountability from settlement agents is critical and lenders must partner with the right closing agents to ensure compliance. Finally, the infamous CD black hole continues to be an ongoing challenge because of the severe limitations it imposes on lenders when changes are made after the Initial CD and outside of the lender’s control, such as a borrower-requested change or a seller-specific demand. The proposed changes to KBYO may improve compliance somewhat, but nonetheless challenges will certainly remain for the foreseeable future. Our company focuses on the transparency to the consumer, training for our Loan Originators, maintaining great vendor partners in the loan manufacturing process, and the expectations of future examinations to guide our policies and procedures effectively.

Ballard: Most lenders have grasped the basics of TRID and understand most of the disclosure issues. However, there continues to be questions regarding uncommon loan scenarios, as well as with changes in circumstance and the Black Hole. The confusion is due to unintended consequences created by the regulations and has caused several investors to establish different and, in many cases, more stringent requirements than what the regulations require. Industry is hoping these issues will be cleared up by the CFPB when additional guidance on the Know Before You Owe/TRID Rules is issued.

**CALIFORNIA MBA: WHAT IS THE NEXT BIG COMPLIANCE CHALLENGE FOR LENDERS?**

Allred: With our industry, the only thing constant is change. The next big changes are the 2018 HMDA rule and the new URLA/1003. The new 1003 does not have a mandatory-use date, however it will make the most sense to implement it at the same time as the HMDA rule, which is effective 1/1/2018. This will largely depend on the readiness of the LOS systems and the investors though, so tight coordination with your LOS vendor and all of your major investors is critical. Training for the Loan Originators and operations staff will be critical, and will have to happen early and often during these changes to ensure a successful implementation. And again, data integrity must be high, and planning for future examinations with respect to compliance with the HMDA rules must be thought through very carefully.

Finally, data security is gaining more attention at the state level and we expect to see more states require cybersecurity modules within their examination procedures. Compliance...
teams must work closely with their Information Services (IS) teams to ensure that the company's data security is solid and that all possible privacy controls are in place and monitored effectively. Within our company, consumer protection is part of everyone's job, regardless of specific roles, it's that important.

**Ballard:** The next big challenge for lenders will be the implementation of the new HMDA reporting rules. While 2018 may appear to be a long time away, there are many steps lenders are going to have to take to ensure compliance with the reporting requirements. Under the new reporting requirements, lenders will be required to report a total of 45 data points (up from the 23 existing data points). HMDA reporting is further complicated by the fact that many of the reportable data points are reliant upon other related data points in the system. To ensure compliance with reporting, Lenders will have to develop and implement internal processes and procedures to ensure all information is accurately gathered. Lenders will have to work closely the Loan Origination System providers to ensure that all data points are accurately mapped, calculated and reported. Data entry will become even more important because Regulators will be able to analyze the data for Fair Lending violations prior to auditing a Lender.

**Morrison:** I believe there is a general industry consensus that implementing automated systems and controls to ensure compliance with the amendments to Regulation C ("HMDA") and the updated Uniform Residential Loan Application is the next big compliance challenge. Similar to TRID, lenders are largely dependent on their Loan Origination System vendors to provide updates to implement these new requirements. However, I would urge lenders that it is imperative that they read and fully understand the new burdens these new data collecting and reporting requirements will impose on their organizations. In addition I would suggest we all need to work on automating our controls as efficiencies become key to our industry to allow

*Roundtable Article continued on page 44*
us to continue to operate profitably and in full compliance with the regulatory requirements.

**CALIFORNIA MBA: MORTGAGE LENDERS ARE BEGINNING TO ADOPT AND IMPLEMENT PRODUCTS THAT WILL MOVE THEM CLOSER TO A FULLY “DIGITAL” MORTGAGE. HOW CAN COMPLIANCE PROS SUPPORT THIS EFFORT?**

**Ballard:** Mortgage professionals must be aware and fully understand that preservation, access to and security of borrower information is of the utmost importance. With the advent of the fully digital mortgage, there are increased risks to cybersecurity and access to borrower information. As such, compliance professionals must have a thorough knowledge of the capabilities and limitations of the Lender’s loan origination system and the systems the Lender supports. Periodic audits of these systems to ensure the security of borrower information is a necessity. The compliance professional should also focus on ensuring that the company has disaster recovery procedures in place, i.e. back-up system or server, to ensure the preservation of borrower and loan information and documentation. In addition, compliance professionals must have a working knowledge of federal and state laws and regulations pertaining the E-Sign Act, privacy and BSA/AML requirements.

**Morrison:** In today’s lending landscape, Compliance professionals play a more crucial role than in days past. We are closely reaching a stage when virtually every aspect of lending is dictated by Regulation and managed by the compliance teams. I would venture to say that every mortgage banker today has a compliance team and budget at least triple what it was 10 years ago. We in the compliance field need to understand this and need to ensure that we implement processes that promote efficiencies to help offset this substantial cost increase.

The evolution of the fully “digital” mortgage will require Compliance involvement to ensure that the efficiencies of being digital and automated do not overshadow the requirements imposed by law and regulation. Automated underwriting engines will need to be monitored to ensure compliance with ATR, the application and disclosure processes must be monitored to ensure compliance with TRID, and the entire process must be evaluated for potential Fair Lending Implications. In summary, Compliance professionals have their work cut out for them.

**Allred:** As I stated above, one of the first considerations in a fully digital mortgage is consumer privacy and data security. If a consumer doesn’t trust an organization to keep their information safe, they won’t use your company no matter how slick your platform appears.

Secondly, the right vendors are important so that they take security as seriously as your company, and are willing to embrace the consumer experience as well. Compliance pros will be successful working closely with the Production and IS teams to focus on a great consumer experience that is secure and streamlined, while also obtaining all the compliance requirements in an efficient manner.

As a compliance pro it’s critical to put yourself in the consumer’s seat, and the LO’s seat, and work through the compliance requirements from those vantage points and work to make compliance streamlined, efficient, and even a competitive advantage. Establish focus groups with millennials to understand how they want to do business and to see what they deem is convenient and efficient to them. “Fully digital” is certainly where this industry is headed and it’s best for compliance pros to embrace that vision and be a great partner in their company to make that successful.
Not only are borrowers able to put less down with a conventional loan with private MI, but they often end up borrowing less and have more home equity from the start. That’s because, in addition to a monthly premium, FHA requires an upfront premium of 1.75%. Borrowers often finance the upfront premium into their loan amount — essentially giving back half of what little equity they had from the start.

Here at MGIC, we will insure a loan with as little as 3% down and a credit score as low as 620. And under our MGIC Go! streamlined MI program, we even allow that 3% to come from a gift. MGIC Go! allows you to simply follow your findings to meet the minimum borrower funds requirement. Other MI companies offer similar programs.

Of course, MGIC is not the only one seeking to make it easier for you to help borrowers putting 3% down. Fannie Mae and Freddie Mac both have recently expanded their affordable loan programs to help more borrowers qualify.

For example, in July, Fannie Mae expanded income requirements in areas where previously they required 80% of the area median income (AMI) to 100% of the AMI.

What does that mean here in California? Take a quick look at the map below. Any blue-shaded area saw the maximum income limit increase from 80% to 100%. Orange-shaded areas remain at 100%; green-shaded areas have no income restriction.

**JUMBO OPPORTUNITIES**

Jumbo loans are an especially big opportunity here in California.
Late last year, Fannie Mae expanded its maximum LTV on high-balance loans from 90% LTV to 95%. This meant that many borrowers here in California could buy higher priced homes with mortgage financing ranging from $417,001 up to $625,500 with just 5% down, depending on the county.

Prior to this change, many borrowers who normally would have been better served using conventional lending with MI were forced to rely on a government loan through FHA. Setting aside the exposure for taxpayers, for borrowers who put less than 10% down, this also meant accepting noncancellable life-of-loan MI payments.

As an industry, we have seen more borrowers taking advantage of financing jumbo loans with a conventional mortgage, with California leading the charge. Inside Mortgage Finance recently estimated nearly 65% of the increased conforming-jumbo business came from California. The Golden State accounted for 62% of GSE conforming-jumbo business during the second quarter this year and approximately 23% of total GSE business.

To help mortgage professionals take advantage of this opportunity, MGIC removed the premium adjustment on conventional high-balance loans for 1-unit properties in California. We have seen a significant increase in MI volume for loan amounts greater than $417,000 since Fannie Mae’s change, and to no surprise, California leads the way.

So while there will always be economic challenges to overcome, there are also a lot of reasons to be optimistic about today’s conventional lending opportunities. Still in the end, it comes down to you and your abilities. If you are driven to succeed and thirsty to increase your business, the current market — whether it’s “half full or half empty” — will provide you opportunities to do so.

Featured Residential continued from page 45...
Featured Commercial continued from page 19...

Year historical rental levels do little to instill confidence in lenders regarding their long-term viability.

Changes in tenancy have made the refinance process more difficult, particularly in the retail sector. Major anchor tenants that made an 80% loan-to-value, 10-year, interest-only loan possible 10 years ago may have gone bankrupt or seen competition erode their market leadership. Lending into a 10 or 15 year lease term which was common in pre-recession times, today presents significantly greater risk due to near-term expirations. Consolidation and downsizing of major anchor tenants may have contributed to turning what was once a class-A center to a class-B at best due to inferior replacement tenants or functional obsolescence. A 25,000 square foot drug store occupying inline space will likely not renew preferring a free standing pad with a drive-through window.

Sales performance, company earnings, and membership counts factor heavily for lenders evaluating tenants. The lack of available metrics to judge tenants’ financial health or negative indicators will materially impact credit decisions as lenders strive for properties with the strongest tenants in their respective categories. Especially susceptible to this scrutiny are retail tenants, in particular grocery stores, fitness clubs, movie theaters, and restaurants. Related concerns include lease termination options and co-tenancy provisions.

For borrowers who maximized leverage and availed themselves of generous periods of interest-only payments, refinance proceeds may likely pose an unpleasant surprise except in the strongest markets with the best tenants. In many cases net operating incomes have been flat since the maturing loan was originated or market vacancies have increased and rental growth has not kept pace. In these situations combined with today’s higher debt service coverage requirements, debt yield tests, and lower loan-to-value ratios, underwritten proceeds will come up short, and borrowers will likely have to come up with fresh equity.

Borrowers with assets located in strong markets and healthy trade area will likely be least impacted. Debt capital remains plentiful for high occupancy properties with market level rents and manageable rollover. Refinancing properties that may not meet these standards will require more planning and flexibility. In some cases it may be easiest to sell an asset rather than refinancing, especially if the maturing debt is high relative to value. In other cases it may be beneficial to invest fresh equity to pay down the loan in order to meet current underwriting standards. Regardless of the situation, borrowers should be prepared for less permissive lending criteria and increased selectivity.

Fortunately for borrowers a new breed of specialty finance companies has emerged willing to take on assignments that no longer easily fit the traditional banking, CMBS, and insurance company frameworks. These non-bank lenders, such as my employer, A10 Capital, are less hampered by regulations and reserve requirements. At A10 we are more willing to consider nuanced and structured loan scenarios while working through credit situations that banks and LifeCo’s tend to shy away from. Most importantly, we offer non-recourse debt and provide a variety of programs to best suit a given situation.

So far the lending supply has kept pace, but with record loan maturities projected for 2017 combined with increased lender pushback on all but the best properties, the outlook is far less certain. Borrowers would be best served by preparing early and looking beyond their conventional capital sources.
of California - where localized HMO plans have historically commanded high enrollment. Interestingly, we are aware that a few carriers are exploring combining the high deductible design with their HMO products.

Before we dive deeper into the advantages of HDHPs and HSAs, let’s first review some basics of what these plans are and how they work.

**WHAT IS A HIGH DEDUCTIBLE HEALTH PLAN (HDHP)?**

HDHPs are an alternative to the benefits offered by HMOs and traditionally structured PPOs which generally feature lower deductibles and fixed dollar copayments for certain services without deductible. In order to be a “qualified” High Deductible Health Plan (HDHP), there are certain minimum in-network deductible and maximum out-of-pocket expense limit thresholds that must be met for the combination of medical and prescription drug costs:

**2017 Minimum In-Network Deductible**
- Individual or Self-Only Coverage: $1,300
- Individual plus one or more dependents: $2,600

**2017 Combined In-Network Out-of-Pocket Expense Maximum**
Includes the deductible and all other covered out-of-pocket expenses
- Individual or Self-Only Coverage: $6,550
- Individual plus one or more dependents: $13,100

**Notes:**
- The IRS reserves the right to index these values annually.
- With the exception of preventive services, and in some cases, designated preventive prescription medications, the applicable calendar year deductible applies before any insurance benefits are payable. This is the key design attribute that triggers the tax-advantaged HSA opportunity.
- A properly structured HDHP qualifies insureds to benefit from setting aside tax-advantaged funds in a Health Savings Account or HSA. More about this later in the article.

**WHAT IS THE ADVANTAGE OF A HIGH DEDUCTIBLE HEALTH PLAN?**

As mentioned above, HDHPs generally have lower premiums as compared to traditional PPOs and HMOs. Let’s not hide behind the fact that these plans are explicitly shifting more of the up-front point-of-care costs to the employee through higher deductibles, this is the primary driver behind the lower premiums.

Additional savings are emerging behaviorally. Carriers have started to recognize that participants in high deductible health plans appear to be making more informed decisions when obtaining care. This helps to mitigate cost. A 2016 study conducted by a Blue Cross Blue Shield organization revealed that when members were enrolled in a HDHP, they experienced a reduction in medical costs of over 9.0% averaged over a three-year period.

The “other side of the coin” is the ability for the vast majority of participants enrolled in HDHPs to enjoy the income tax benefits of a Health Savings Account.

**WHAT ARE THE ADVANTAGES OF A HEALTH SAVINGS ACCOUNT?**

The primary benefit of an HSA is the “triple tax advantage”.

1. Employers and individuals can make contributions on an income tax-deductible basis
2. Account balances can grow income tax-free; and
3. Withdrawals that are used for qualified health expenses are income tax-free.

**WHO CAN BENEFIT FROM CONTRIBUTIONS TO AN HSA?**

In general, in order to be eligible to receive employer contributions or personally contribute to an HSA, enrollment or coverage under a properly-qualified HDHP is required. While there are specific benefit provisions and other factors that are required to enable HSA contributions, as mentioned earlier, the underlying HDHP minimum deductible and out-of-pocket requirements are key factors.

An HSA is an individual account, structured similarly to an IRA. Unlike IRA’s that are income taxed uniformly in all states, there are a few states, including California, that do not permit personal state income tax benefits for HSAs. Federal income tax benefits do apply in all states.

Once established, HSAs are...
controlled by the individual account holder regardless of changing employers or health coverage. Contributions to HSAs are additive to annual 401(k) or IRA contribution limits. Once the account holder has reached age 65, HSA funds can be distributed on a taxable basis for non-health related expenses without penalty. There are not Required Minimum Distributions (RMD) as are required for Traditional IRAs. If Social Security and Medicare are deferred, employees may be able to make HSA contributions up to age 70.

**2017 HSA CONTRIBUTION LIMITS AND RULES**

- **Individual or Self-Only Contribution Limit:** $3,400
- **Individual plus one or more dependents:** $6,750
- **Over Age 55 Catch-up Contribution:** $1,000

  - Same amount for an individual or family
  - Open Account and Funding Deadline: April 15, 2018 – no extension
  - Individual must be enrolled in a qualified HDHP at some point in 2017. HSA funds can be used to reimburse expenses incurred in 2017, subsequent to opening the account.
  - Employers, employees or other family members may contribute to the HSA in the same year as long as the aggregate contributions to not exceed the applicable contribution limit.
  - Contributions must be made in cash. Contributions of stock or other property are not allowed.

**What else might be important?**

**BONUSABLE EXECUTIVES AND COMMISSIONED SALES PROFESSIONALS APPRECIATE HEALTH CARE BENEFIT PLANS THAT ENABLE THE USE OF AN HSA?**

Unlike traditionally-structured health insurance plans that can only be coupled together with a “use-it-or-lose it” FSA, high deductible health plans coupled with HSAs are much more flexible. Not only has the IRS restricted FSA contributions to $2,550 [2016], FSA benefit elections must be made in advance and remaining balances cannot be accumulated from year to year. HSA’s, on the other hand, can be established at the beginning or during a calendar year, they can be funded by the employer and/or employee and the timing and amount of contributions are more flexible.

**SUB-S AND LLC BUSINESS OWNERS CAN HAVE HSAS**

Business owners of flow-through entities are automatically precluded from participating in FSA’s, HSA’s are available to most all individuals covered by high deductible health plans.

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David Epstein is proud to be a California MBA member, and is active in the Legal Issues Committee.

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LAW OFFICES OF
DAVID B. EPSTEIN PC

234 E. Colorado Boulevard
Suite 800
Pasadena, CA 91101
626-584-9464
David@DavidEpsteinLaw.com
www.DavidEpsteinLaw.com

CALIFORNIA MORTGAGE FINANCE NEWS
increased transparency and quality, and the industry must rise to the challenge. There is a new wave of "RegTech" applications, such as Exceleras and MetaSource, offering solutions to ease workflow management and compliance monitoring for active loans as well as default properties. "Software tools are vital to letting the mortgage industry achieve compliance and a quality borrower experience while managing costs" said Michael Harris, Exceleras CEO. "The future is bright however, 2017 is going to be a year full of transition to new processes and procedures".

Servicing Automation Legacy systems, rising costs, interest rate dynamics, and regulatory requirements are all affecting the profit margins of loan servicing companies. The Consumer Financial Protection Bureau has chastised the servicing industry for failing to invest in technology infrastructure, at the expense of consumers. The government insists that a lack of automation cannot be an excuse for failing to be compliant or failing to meet borrowers needs. 2017 changes include new Consumer Financial Protection Bureau regulations, as well as new investor reporting requirements from Fannie Mae and Freddie Mac.

Currently the consumer’s borrowing experience is highly manual, which creates frustration among borrowers and higher costs for servicers. For example, processing manual checks can slow the payment process and is more expensive than automated payments. Fiserv’s 2016 Annual Billing Household Survey noted that consumers of all demographics are increasingly using mobile and online payment methods for their bill payments.

New technology allows loan servicers to improve the borrower payment experience, lower costs, and increase profits. EarnUp, for example, offers a mobile automated payment platform that integrates alongside a servicers’ existing payment options to increase autopay usage, decrease delinquencies, and provide predictive insights into borrower payment issues.

The servicing part of the industry has fallen behind on technology, and 2017 will be a big year for playing catch up.

2. PERSONALIZATION
Gone are the days of relying exclusively on a financial professional to provide information about a mortgage loan. Reliable information about interest rates, loan terms, and minimum qualifications are readily available online, often at no cost to the consumer. Leaders and experts in the mortgage industry are eager to contribute to invaluable resources like NerdWallet’s Mortgage & Homebuying Guide, which provides detailed, easy-to-understand advice on how to get the best interest rate, how to decide if you’re a strong candidate to refinance, and other consumer-friendly topics.

Customers can also receive personalized mortgage rates from competing lenders in a matter of seconds. As more mortgage customers discover these free resources, they may start their loan applications with a better understanding of the process. And with regulators and banks tightening their rules for mortgage lending, the mortgage industry needs consumers to be more savvy about the loan origination process.

The best lenders and servicers are developing products that meet the consumer’s desire for a highly personalized experience. Every touch point with a consumer—from the first marketing message to the loan payment notification—can be uniquely modified to help build a personal, meaningful relationship.

Sindeo’s new SindeoOne technology, for example, allows consumers to apply for a loan in just a few minutes from any device by providing a range of highly personalized loan options. “Consumers are demanding a hassle-free loan origination experience that is tailored to their individual situation”, said Sindeo’s co-founder and CEO, Nick Stamos. “Technology has the potential to deliver this experience resulting in a happier, more educated borrower.”

3. EQUAL ACCESS
Minority and lower income communities have long suffered disadvantages in achieving home ownership. The crisis hurt home ownership rates in this demographic even further by restricting access to credit and financial education resources. Fortunately, the digital revolution has helped level the playing...
field; no matter where someone lives, online platforms can connect an individual to a mortgage industry that is willing and eager to work with them and earn their business.

With so many additional free resources available to educate underserved communities about navigating the mortgage loan process, there is promise for helping underserved communities begin to access mortgage services at similar rates to their counterparts in more resource-rich communities. However, there remain large challenges, and opportunities, in building trust and providing appropriate products for these communities.

“Technology enabled solutions for origination and servicing are helping the industry engage traditionally underserved communities in exciting ways.” said Donald Maxwell, partner at M2 Asset Services, which specializes in developing mortgage solutions for underserved markets. “There is a massive opportunity to provide attractive loans that create homeownership for consumers current left out of the system. We see the best success when all players are involved together - for-profits, non-profits, and government.”

Thanks to advances in technology, the mortgage industry can look forward to many opportunities in 2017: Customers are learning about and embracing new technologies at unparalleled rates, mortgage servicers have more digital tools and services than ever at their disposal, and customers are increasingly coming to expect and demand a seamless, fully

integrated, all-digital experience.

The millennial generation, in particular, isn’t even aware of the traditional ways of originating mortgages. When they see mounds of paperwork and clunky workflows, they shake their heads. Similarly, when they see requests to upload personal information to the Internet, they have no qualms—as the first generation to grow up with the Internet, they aren’t fearful of or resistant to technological innovation.

It’s no surprise, then, that we can expect more mortgage technologies to migrate to mobile apps and cloud-based systems and expect more customers to navigate the mortgage application process with increasing information and insights. We also can count on the loan origination process to become more streamlined and simpler, for underserved communities to have more access to mortgage loans, and for customers to take advantage of technology-driven solutions for making their mortgage payments.

The mortgage industry is going to continue to adapt and evolve at unprecedented speeds. Resources that were traditionally devoted to legacy processes and methodologies will be reallocated and reinvested into technology-driven solutions. Mortgage servicers that provide in-person support will rethink their business models and infuse their processes with the technologies that their customers are demanding. It’s going to be an exciting 2017!
a permanent injunction for an award of attorney fees.

THE INJUNCTION PROVISION DOES NOT AUTHORIZE AN ACTION TO ENJOIN A SALE FOR THE LACK OF AUTHORITY TO FORECLOSE

In Lucioni v. Bank of America, N.A., the plaintiff sought to enjoin a trustee sale based on an alleged lack of the authority to foreclose. The HBOR contains a section relevant to the authority to commence a foreclosure.7 The HBOR also contains the injunction provision. The Lucioni plaintiff attempted to extend the applicability of the injunction provision to the authority to foreclose section. To simplify, the injunction provision lists specific sections which can form a basis for enjoining a sale. The section pertaining to the authority to commence a foreclosure is not among the ones listed within the injunction provision. The Lucioni plaintiff attempted to enjoin a sale alleging a lack of the authority to foreclose. The trial court dismissed the plaintiff’s claim and the plaintiff appealed.

The appellate court held that injunctive relief under HBOR is limited to the injunction provisions listed in sections 2924.12 and 2924.19. Neither provision authorizes an injunction for an alleged violation of the “authority to commence a foreclosure” listed in section 2924(a)(6). Thus, no injunctive relief is available for a purported violation of the authority to foreclose.

The Lucioni plaintiff had alleged that the deed of trust was transferred to a securitized trust after the closing date of the trust, and the deed of trust was assigned several times thereafter with breaks in the chain of title. In short, the plaintiff alleged lack of standing to foreclose under HBOR’s §2924(a)(6), and sought to enjoin the sale based thereon.

The appellate court reasoned that in HBOR the Legislature has authorized a private right of action to enjoin a sale for a material violation of nine specific sections of HBOR.8 The Legislature however did not provide for injunctive relief for an alleged material violation of section 2924(a)(6). The Legislature could have chosen to authorize injunctive relief for a violation of §2924(a)(6), but it did not do so. The appellate court therefore, construed HBOR’s injunction provision to be a “narrow and targeted enforcement mechanism.” The appellate court then discussed that the Supreme Court ruling in Yvanova does not authorize a preemptive action to enjoin a sale for lack of standing either.

LUCIONI’S INTERPRETATION OF YVANOVA

The California Supreme Court in Yvanova v. New Century Mortgage Corp. (2016) 62 Cal.4th 919, recognized a cause of action for wrongful foreclosure based on an allegation of a void assignment of a deed of trust. The Yvanova foreclosure had completed prior to the effective date of HBOR. The Lucioni appellate court held that Yvanova does not control, reasoning that Yvanova is limited to a post-foreclosure scenario and further Yvanova did not address the effect of HBOR provisions. The appellate opinions in Sese and Lucioni elucidate HBOR’s injunction provision.

1. California Civil Code §2924.12(a) and its counterpart §2924.19(a) provide for injunctive relief before a trustee’s deed upon sale is recorded.
2. 2 Cal.App. 5th 710.
3. 3 Cal.App. 5th 150.
6. The plaintiff contended that the attorney fee order fits within the exceptions listed in subsections (6),(8), (11), and (12).
7. See Civil Code §2924a(a)(6).
8. Section 2924.12 lists seven sections which can form a basis for an injunction and section 2924.19 lists two sections that can form a basis for an injunction for a total of nine HBOR sections.
order ruling that the lender is the prevailing party, there could be an issue. After the foreclosure occurs, some borrowers argue that the lender should be precluded from collecting any of its fees in court because, in many instances, the deed of trust states that any fees will become the additional debt. Yet, other borrowers argue that nothing allows a lender to unilaterally add litigation fees to the debt without a court order. Borrowers also try to limit any judicial intervention, by pointing to the interplay between the security first and anti-deficiency statutes, both of which limit a lender’s ability to collect any part of the debt, including attorney’s fees, after a foreclosure occurs. See Aozora Bank, Ltd. v. 1333 North California Boulevard (2004) 119 Cal.App.4th 1291, 1297. Those positions create an uncertain scenario and potential risk for making improper charges against the loan. Thus, a court order on the attorney’s fees issue becomes very important in hotly contested disputes.

Prevailing on the Contract
The most direct argument for recovering the lender’s fees is to argue that the borrower’s suit is a challenge on the deed of trust or note, which is a challenge that triggers the attorney’s fees provisions. Kachlon v. Markowitz (2008) 168 Cal.App.4th 316, 347; Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc. (2012) 211 Cal.App.4th 230, 241-42; Kachlon v. Markowitz (2008) 168 Cal.App.4th 316, 346-47; Huckell v. Matranga (1979) 99 Cal.App.3d 471, 482; see also Hsu v. Abbara (1995) 9 Cal.4th 863, 871, 875-76 (comparing parties’ demands and their litigation objectives, finding a defendant is the party prevailing on the contract where it defeats recovery by the plaintiff on the contract claims in the action). Even if a lender files a motion for fees with the court, obtaining a favorable order is not guaranteed. However, one recent unpublished case, Tyler v. Wells Fargo, N.A. (July 8, 2016, E063985 [nonpub. opn.]), sided with the borrower and rejected a lender’s claim for fees after it prevailed in litigation. In Tyler, the court held that the language in the deed of trust stated the attorney’s fees would become additional debt, and the lender had no right to be granted a prevailing party status. That case also suggested that when the loan is satisfied, there is no operative deed of trust under which to collect lender’s fees. However, that position may be untenable in other courts because borrowers would undoubtedly argue that they would be entitled to fees, if they won. Therefore, to make it a reciprocal provision, a lender must be entitled to its fees, if it wins.

Defending against Borrower’s Arguments
To counter the lender’s position, borrowers often maintain their claims do not necessarily implicate the contractual loan documents. This means that if the borrower filed only tort based causes of action such as negligence, quiet title and unfair competition violations, the reciprocity provisions of Civil Code section 1717 cannot be implicated because the claim is not based on contract. However, these tort claims are intermingled with the rights arising under the contract, and as such, the borrower’s claim essentially sounds in contract. Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc. (2012) 211 Cal.App.4th 230, 241-42; Kachlon v. Markowitz (2008) 168 Cal.App.4th 316, 346-47; Huckell v. Matranga (1979) 99 Cal.App.3d 471, 482; see also Hsu v. Abbara (1995) 9 Cal.4th 863, 871, 875-76 (comparing parties’ demands and their litigation objectives, finding a defendant is the party prevailing on the contract where it defeats recovery by the plaintiff on the contract claims in the action).

The Effect of a Voluntary Dismissal
Borrowers may also voluntarily dismiss the suit to preclude an imminent adverse judgment. The borrower’s position is rooted in the argument that if the contract claim is extinguished, so is any right to collect attorney’s fees. Civil Code §1717(b)(2). While this may be true for the dismissal of only contract claims, it does not necessarily apply when the contract claims are intertwined with tort claims. Gogri v. Jack in the Box, Inc. (2008) 166 Cal.App.4th 255; accord, Santisas v. Goodin (1998) 17 Cal.4th 599, 617. Therefore, tying tort claims such negligence and implied covenant of good faith and fair dealing claims to the contract should allow the lender to credibly argue that the limitations applicable to only contract claims do not apply.

Recovering Servicer Related Litigation Expenses
An additional attorney fees recovery issue surfaces when it is the loan servicer that attempts to recover...
its fees. Borrowers frequently argue that the servicer is not party to any of the loan documents, and that there is no authorizing language that would permit a third-party servicer to collect its litigation fees and costs. This argument can be thwarted by having the lender provide by declaration that it retained the servicer to stand in the shoes of the lender, and that all fees and costs will ultimately be charged to the loan. See generally Apex LL v. Korusfood (2013) 222 Cal.App.4th 1010, 1017-1018.

HOW DOES A SETTLEMENT RESOLVE THE FEE ISSUE?

Given the uncertainty of how a court may handle the fee issue, it is often better to resolve the issue before a ruling is made and before a foreclosure occurs.

Borrowers want to avoid the risk of an attorney’s fee award because the fee award could be immediately collectable. This means that a lender may be able to levy accounts, employ wage garnishments and the like. For insolvent borrowers, this could make their financial situation worse, so if the lender and borrower stipulate to adding the litigation expenses to the loan that may be most practical. And, should a foreclosure occur, this would allow the lender to head-off any claims of improperly trying to collect a debt or any surplus funds claims. Moreover, the lender may also be able to use the fees as leverage to have the borrower’s counsel agree to waive any rights of appeal. Again, settlement creates certainty.

Resolving a lender’s fee claim does not fall within the one size fits all category. It often means that the lender must make sure that its settlement agreements are harmonized with the loan terms and modifications thereto. Frequently used settlement or modification clauses like "both sides will bear their fees and costs" could be misconstrued in light of a stipulation. Drafting simple clauses relating to the dominance of the stipulation, but making clear that neither party will seek prevailing party status should assist with priority issues.

In any case, a lender’s claim to litigation fees should be carefully considered in light of many factors, including the precedential value of an unfavorable published opinion. This uncertainty can be eliminated by addressing the issue through the informal meet and confer process with opposing counsel.

1  (An unpublished case cannot be cited as precedential value)
tenants and their lease specifics. To wit: some recent examples from the field...

- In a Southern CA industrial park there had been a former auto repair facility. Those operations had ceased many years back. Yet, despite a previous Phase 1 showing no CURRENT issues – our firm was engaged to do a new Phase 1 (along with a PCA and PML). In the course of the new Phase 1 a potential environmental condition presented itself. At issue: if a buyer had engaged a consultant who failed to uncover this existing environmental issue – that purchase just might be a WRECK –or, a REC. Technically defined as a “Recognized Environmental Condition”. To put it lightly: a buyer does not want that. At all.

- Has the seller taken a proactive management stance, conducting periodic property walk-throughs? Looking in on tenant activities and housekeeping. What type of records does seller have demonstrating their stewardship of the property? Have tenant moves damaged the property and not been repaired? Obvious stuff? Sure. But, it needs to be understood.

- If the due diligence consultant reported structural, mechanical or systems deficiencies in the property and quantified them, then buyer and consultant need to speak at length. This is where the consultant’s experience can pay off in a major way. The Buyer needs to understand the methodology the consultant has used to quantify their repair/upgrade costs. What database, industry standards and general market knowledge is the consultant bringing to the table? Are the repair and replacement numbers realistic?

- Has the consultant recommended possible other specialized consultants be engaged to truly take a “deep dive” – so as to get a handle on repairs? A roofing consultant – who can (seller willing of course) conduct destructive testing, core samples, roof membrane analysis. What about a specialized HVAC consultant who will physically check circuitry, fuses, wiring, in-depth HVAC repair history. Perhaps an Elevator consultant – for thorough operations analysis.

  Does this cost more money? You bet...but it might be the difference between a great and not so great an acquisition.

  Simply put, a property buyer needs to remember that even though their due diligence consultant is doing an “acquisition PCA report” - their efforts are largely visual in nature. The due diligence firm should have highly regarded industry referrals for these additional reports if deemed appropriate by the parties.

  The foregoing is the briefest of illustrations focusing on the dynamics of the buyer/due diligence consulting firm relationship and their joint approach to the commercial property marketplace. It really just begins to scratch the surface.

  Let’s look at another acquisition scenario.

**THE PARTIALLY CONSTRUCTED OR DISTRESSED PROPERTY**

A buying entity of a partially built development, or a property halted mid-stream due to financing or legal issues presents a new set of challenges and certainly opportunities.

Here, the skill set of a Licensed and highly experienced Architect is called for, on all fronts. The issues which usually crop up in these settings are, but not limited to:

- Physical damage and material impairment
- Unpaid sub-contractors.
- Mechanic liens, access to property due to existing litigation
- Lapsed permits and municipal violations
- Labor shortages of specific trades for project completion
- Weather events and seasonality issues.
- Existing construction lender and potential new lenders at odds with one another; differing architectural and other professional opinions to stabilize the property and many more...

But, let’s take a look at some typical scenarios a distressed property buyer just might encounter.

The first step is for buyer’ Architect to thoroughly establish the current on-site job conditions and specific trade completion to date.

...Pitfalls & Profits continued on page 56
Simply put – what’s been done and what needs to BE done to complete this project. Being aware of work that appears to have been properly completed but really isn’t. Oh yeah, and what will THAT cost??

Review and analyze construction and loan related documents and reports and project the needed workflow guidance and project stabilization strategy.

It is not unusual for a project halted during its’ construction and then idled to have potentially serious existing physical deterioration. We’ve seen projects where the new construction was stopped and work crews quickly moved on to other jobs. Newly built walls, wallboard and other siding areas were not tarped or covered. They had sat exposed to the elements. Heavy damage ensued. Mold issues were discovered, walls had to be completely torn off, torn down and rebuilt, wiring had to be rerun, plumbing replaced. In this scenario a contractor who has remained available to do the work and perform per his contract has been known to seek damages for work delays not of his causing.

Buyer and Architectural team need to get a firm understanding of all municipal permits and their status along with a municipal, state and agency inspection histories and their current status.

Knowledge of the availability of local building trades – from Electrical to Ironworkers as well as general labor are pretty obvious needs. They build the building, they’re going to stabilize the property - this step is sometimes overlooked. It had better not be.

If a buyer finds a distressed property with great upside – then that buyer should be cognizant of approaching weather and seasonality issues. That buyer will need to work with an architect experienced in prompt weather stabilization of commercial properties.

The experienced Architect will need to be able to provide complete review of all work done to date and promptly assemble bid packages for project completion.

As stated earlier, a determination of all mechanics liens and their prompt resolution is needed. The property worksite needs to be made safe for work crews to begin the stabilization effort.

Finally, one wants a skilled and experienced construction lender with patience and understanding into this dynamic scenario.

The above serves merely as an insight – a point of departure for those entities considering this type of acquisition. Indeed, it should spark a question or two for those buyers.

Good Hunting!!
past projects, or the detailed plans for future investments, a lender can also be influenced and impressed by more traditional means, such as with assets and credit. Oftentimes, for the sake of expediency, borrowers will provide the absolute minimum by way of assets in order to get a transaction closed. But, in order to establish themselves as a serious client who commands the full respect and privileges that a private lender has to offer, I suggest pursuing the opposite strategy, at least in the initial phase of the lending relationship. Show all of your assets, so long as providing the documentation isn’t a major inconvenience. Lenders are not the IRS, and are not here to audit anyone, but rather would like to establish long lasting partnerships with individuals who can demonstrate the ability to repay and who have a track record of successful investments. So, if possible, show your lender everything that you’ve got! Try to impress them. I can’t tell you the number of times I’ve heard management refer to one of my borrowers by the amount of money in their account (the guy with $800K), rather than by their name or the address of their investment property. Private money shops are much smaller than big banks, so the ability to impress a single individual with your investor profile is far more important than in other situations where guidelines dominate the entire crux of the decision-making process.

Once trust has been established with a chosen private money firm, then the investor will be strongly positioned to realize one of the major advantages that a trusted lending partner has to offer, and that is shortened turntimes. In the mortgage world, time is quite literally money. And one of the biggest advantages that private money has over the big banks is the ability to transact business in a fraction of the time that it takes conventional lenders. At my office, we can have a deal completely funded in less time than it would take a traditional lender to get a file into their underwriting department. This speed advantage is amplified even further when working with an investor that has already been vetted by our underwriting and management team. This is the point where the trust and honesty exhibited by an investor up front begins to pay dividends through quicker transaction times and access to larger amounts of capital. In fact, private lenders have established products, such as credit lines, in order to encourage transactions with “preferred” investors who are looking more to establish a long-term relationship than just finding someone who can get a single deal closed. Once these customers establish themselves at a lender, their profile no longer needs to be reviewed. Instead, the property being offered up as collateral becomes the sole determinant of whether to consummate a transaction. At this point, in order to achieve maximum profitability, all an investor must do is to have a plan in place for each property and be ready to execute that plan as soon as his deal is funded.

To further maximize the speed, and thus profitability, of every transaction, investors would also be wise to thoroughly research private lenders in the same way that they were scrutinized when submitting their first deals. In private lending, opposites do NOT attract. Find a lender that specializes in the type of investing with which you are interested, and stick with them for all similar projects. For instance, if your next venture involves a major rehab, then seek out private money firms who specialize in and will offer you maximum leverage on your rehab project. You will find that transactions with such firms will go much more smoothly and more quickly than with lenders who are truly not comfortable or familiar with rehab loans.

Similarly, some lenders also possess a preference for lending in certain areas, as opposed to others. Often, private money firms, especially the smaller ones, prefer markets within which they are located, are familiar with, and possess a certain level of expertise. So, it will be tremendously helpful to become familiar with the private money firms located in the same geographic location as the properties in which you tend to invest most frequently. It might also be to an investor’s advantage to familiarize themselves with a specific market and become an expert in that area. Then, after establishing a relationship with a local lender who specializes in that geographic location, the investor can funnel all future transactions through that office in order to fully...
SOME LOAN OFFICERS MOVE AT THEIR OWN PACE.  
(THey WILL SOON BE EXTINGHT!)  

In this business, its survival of the fastest. To succeed, you need a lender who can move—with no excuses, no hassle, and no delays.

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maximize the advantages of a long-standing lending partner. Because time translates to dollars, the level of familiarity pervading all aspects of the transaction should help bolster the rate of return for the borrower. Initially, this information may not be readily available to someone who is looking to approach these private lenders for the first time. Thus, it might also be advantageous to work with a broker who has connections to private money firms in order to widen the net cast out to potential lending partners. Although the use of a brokerage will come at an added cost, the possible added profitability that could arise through the discovery of an indispensable private lending partner may very well offset any initial fees.

Ultimately, the goal is to establish a relationship that is beneficial to everyone involved in the lending transaction. Strategic partnerships between private lenders and seasoned investors will maximize speed and minimize costs in a way that is mutually beneficial to both parties. After a certain level of trust is established, a rapport develops that is invaluable to an investor’s success. A trusted borrower will be able to make special requests to a lender when the need for urgent financing arises. In return, these investors will come to respect the lending process and will know what must first occur before obtaining access to funds. As with any relationship, this trust, honesty, mutual respect, and understanding will serve as the foundation of a healthy partnership between both parties. Investors will walk away with more profits from every transaction, and private lenders will hopefully reap the benefit of retaining a successful repeat customer. The potential for growth on both sides of the business is truly inestimable when lenders and borrowers can come together to work as partners in the realm of real estate investment.

The California MBA is coming to YOU in 2016!

Just a few of the companies we visited (and highlighted in the magazine) last year:
- Dykema Gossett
- Total Lender Solutions
- TCV (Transcontinental Valuations)
- Property Sciences
- The Compliance Group
- Comergence
- Flagstar Bank
- AAA-AMC
- Vitek Mortgage Group
- LendingQB
- Citadel Servicing Corp.
- Black Knight Financial Services
- Green & Hall
- Impac Mortgage Holdings, Inc.
- Ellie Mae
- Peak Corporate Network
- Geraci Law Firm
- Essent Guaranty, Inc.
- Bay Equity Home Loans
- OrangeGrid
- Boston National Title (BNT) Company of California
- Texas Capital Bank
- MCT
- Western Alliance Bank
- DataVerify
- Michigan Mutual
- EdgeMac
- CleanFund
- Sindeo
- Alight
- And more!

Get on our 2016 calendar! Email Carol Danaher at carol@cmba.com for more info!

Interest Rate continued from page 30...

interest wants to refinance into a new 10-year loan now and intends to keep the asset for the duration. There are two important points to address:

The loan: Is the incumbent bank willing to amend the loan to extend the maturity date for ten years? Will they improve the credit spread? The borrower may have room to negotiate a lower credit spread if the loan was made during a difficult credit environment and the asset is performing well. Bringing another bank into the mix can often help create an improved negotiating environment. In this case, another bank could offer to re-finance the loan with terms acceptable to the borrower and a lower credit spread. With only 2 years remaining on the original loan, the economics can work in the borrower’s favor to change banks due to the lower credit spread, despite the existence of a swap with negative value. This could help make the incumbent bank amenable to extending the loan for 10 years with a lower credit spread. Bottom line - competition improves the borrower’s choices.

The swap: The swap can be unwound, extended to match the maturity date of the new loan or allowed to run its course. What if the borrower wishes to accept the loan offer of the non-incumbent bank? There are several ways to deal with the swap. One is to transfer the swap to the new bank (sounds easy, and sometimes is, but can also be a challenge), terminate the swap, or post collateral with the initial bank,

...Interest Rate continued on page 60
leaving the swap in place through maturity and enter into a new forward starting swap for the remainder of the loan term.

Since the borrower plans to retain the asset for the duration of the loan, the next step is to structure a hedge to manage the variable interest rate risk over the new ten year term.

What about a Cap? If the existing swap is to be left in place, the new hedge would be starting in two years. While a cap could be purchased to hedge years 2-3, going further out in time increases the cost of the cap significantly, requiring a potentially expensive initial premium outlay. Therefore, when dealing with a ten year period in which the borrower intends to keep the asset, using a cap alone isn’t optimal.

What about an Insurance loan or CMBS? There are several ways to mitigate term rates 2 or 3 + years in the future. One method is to purchase a swaption, which is the right, but not the obligation to enter into a swap at a pre-determined fixed rate. As with an interest rate cap, there is premium that must be paid by the borrower. If, however, in 2 years, 10 year rates are higher than the swaption rate, the borrower is compensated upfront for the higher rate. Insurance company loans or Commercial Mortgage-Backed Securities carry a fixed rate which is indexed to the 10 year Treasury or Swap rate; however, these solutions can be more costly.

**INSIGHT #3: FIXING ISN’T NECESSARILY THE “CONSERVATIVE” SOLUTION**—

BORROWING AT A FIXED RATE OR FIXING ALL OF ONE’S FLOATING RATE DEBT CAN BE COSTLIER THAN YOU’D THINK.

Borrowers often say “our firm is very conservative and that is why we are fixing all of our debt.” Most are aware that the longer the loan term, the more likely they are to be overpaying interest vs. floating rate debt, at least in the short run. What else should be considered? How about natural hedges? If short-term interest rates rise, it usually means the economy is growing and prices for goods and services are also moving higher. This can be good for some borrowers in regards to their underlying business.

For example, does a steel manufacturer have a natural hedge in an environment where the Fed is aggressively lowering interest rates because the economy is headed towards a recession and the steel manufacturer is experiencing a drop in sales of over 25%? It could appear so if the company had most, if not all, of their debt at floating interest rates. However, if the company had entered into a swap to fix a variable rate loan, the natural hedge would have been counteracted. This is a classic example of a hedger adding risk. The steel company is an extreme example that actually happened and it is not necessarily unique. A highly leveraged borrower should be on the opposite side of the risk continuum.

**INSIGHT #4, HEDGING, IF DONE IMPROPERLY, CAN INCREASE RISK INSTEAD OF MITIGATING IT**—

OVER-HEDGING HAPPENS.

Lack of pre-payment penalty can make a bank variable rate loan attractive. However, what if a swap is put in place? What if a borrower wants to reduce the principal periodically when possible? One solution that mitigates floating rate risk without creating market risk by over-hedging is to estimate the accelerated principal payments and use that schedule as the first step to structuring a hedge. A swap could still be employed, but with a different (smaller) notional value than that of the loan.

Other structures could alternatively be employed to add optionality. Derivatives, when structured properly, offer the ability to meet the hedgers’ risk tolerance and need for flexibility. In our experience, it’s not a drop in interest rates (opportunity cost) that can cause a well-intentioned hedge to backfire, but rather when the intended hedge actually increases risk instead of mitigating it.

Analyzing multiple economic scenarios and possible hedge strategies with independent experts is the best way to avoid common hedging pitfalls and allow your business to thrive on its merits, not by coincidence.
Irvine After Hours
August 4, 2016,
Hosted by Credit Data Solutions, Il Fornaio

In addition to great networking and refreshments, attendees enjoyed entertainment that included bocce and horseshoes.

Thanks to Eric Christensen and the team at Credit Data Solutions for hosting the event! Definitely one of the more memorable events and locations!

Friends and colleagues enjoying some late evening sun!

Walker & Dunlop’s Ryan Chapman with a toss—a ringer on the way?
This year’s keynote speaker was Jim Madsen, EVP of Loan Administration with Guild Mortgage Company. Pictured here with conference co-chair Don Curtis, OSC/A Brekenridge Company.

The networking lounge was buzzing with activity, including with USFN’s Alberta Hultman.

Thanks to our great sponsors, including Peak Corporate Network! From left: Sabrina Hall, John Butler.

Thanks to Dark Star Cellars for providing the wine for our reception!
Thanks to our great sponsors, including the team at Dimont! From left: Rebecca Lopez, Collin Harbour, and Mark Lehner.

Star power at this year’s conference! From left: Don Curtis, OSC/A Breckenridge Company; Rick Sharga, Ten-X; Wes Iseley, Carrington Mortgage Services; Susan Milazzo, California MBA; and Douglas Duncan, Fannie Mae.

Attendees enjoyed great local cuisine, including San Diego’s famous fish tacos!

A packed house in the networking lounge!
Attendees enjoyed great opportunities to network and chat during the reception!

Our great regulator panel was one of the highlights of the conference. From left: Caroline Patane, Fannie Mae; Kirk Stephens, Peak Corporate Network; Laurie Maggiano, Consumer Financial Protection Bureau (CFPB); Jim Shankle, CrossCheck Compliance, LLC; Susan Milazzo, California MBA; Nicholas Corpuz, Mortgage Quality Management & Research (MQMR)

The California MBA Future Leaders also met during the conference to discuss networking and business development strategies with conference co-chairs Don Curtis and Wes Iseley. From left: Dustin Hobbs, California MBA; Mark Gerster, Parkside Lending, LLC; Mary Nguyen, CMG Financial; Michael Steer, Mortgage Quality Management & Research (MQMR); Laura Martell, Mountain West Financial; Michael Wojick, Transcontinental Valuations (TCV); Greg Pettersen, Residential Wholesale Mortgage, Inc.; Don Curtis, OSC/A Breckenridge Company; and Wes Iseley, Carrington Mortgage Services.
DiamondView After Hours
August 25, 2016,
Hosted by MCT, San Diego, CA

The view from our great site for this event, the Skybox at DiamondView! Thanks to our great hosts at MCT!

Attendees enjoyed the sunshine and great atmosphere as they mingled and relaxed.

Thanks once more to hosts at MCT for providing one of the more unique sites to hold one of our networking events!

Friends and colleagues sharing refreshments and great company!
19th Annual Western States CREF Conference
September 7–9, 2016, Las Vegas, NV

Our two keynote speakers (from left) Mitch Rochelle with PwC and Heitman’s Mary Ludgin with conference chairman Ryan Chapman, Walker & Dunlop.

Always a hit at the conference, Cafe CREF was sponsored this year by Walker & Dunlop!

Big thanks to our President’s Council Sponsors: Alight, CMG Financial, and Bankers Insurance Service.

Our construction lending panel, from left: Jason Choulochas, Bank of the Ozarks; Martin Kearney, BMO Capital Markets; Kyle Jeffers, ACORE; and Peter Smyslowski, HFF.
The California MBA commercial/multi-family board members with our keynote speaker, political guru Dr. Larry Sabato!

The California MBA’s Future Leaders met with commercial/multi-family members of the board of directors, a truly unique opportunity to gain valuable insight. From left: Kevin Randles, CBRE; Tup Fisher, Washington Capital Management; Ryan Chapman, Walker & Dunlop; Marina Elias, Barry Slatt Mortgage (Future Leader); Michael Wojick, Transcontinental Valuations (TCV) (Future Leader); Morgon Fraser, CBRE (Future Leader); and Dennis Sidbury, NorthMarq Capital.

Before the conference got started, attendees enjoyed a round of golf at the conference’s annual tournament.

Friends and colleagues enjoy time together at the tournament.
19th Annual Western States CREF Conference
September 7–9, 2016, Las Vegas, NV

Thanks to our exhibitors like Partner Engineering & Science, Inc. for making the networking lounge a success!

Thanks to Umpqua Bank for their support!

Thanks as well to Property Sciences, another great sponsor and exhibitor!

Thanks to the team at Dougherty Funding for their support for the conference!
Newport Beach After Hours
September 15, 2016
Offices of Wright, Finlay & Zak, LLP

Thanks to Robert Finlay and the team at Wright, Finlay & Zak, LLP for hosting the event, which was a great success!

As always, our networking events are a great opportunity for colleagues to meet and friends to catch up.

The relaxed atmosphere and beautiful weather makes networking a breeze!

Want to host a networking event of your own? Email carol@cmba.com for more information!
San Francisco After Hours
September 22, 2016
Offices of Duane Morris

Thanks to the entire team at Duane Morris for hosting our networking event in San Francisco. From left: Jolie-Anne Ansley, Duane Morris, LLP; Chris Robbins, CleanFund; Bob Bednarz, Guarantee Mortgage; Susan Milazzo, California MBA; Terrance Evans, Duane Morris, LLP.

In addition to the great educational portion, the event featured a chance for attendees to network and enjoy some refreshments.

Big thanks to Terrance Evans (left) for his effort in helping to organize the event!

The event was highlighted by a presentation entitled "What’s Shaking: A Conversation About Real Estate Finance, Mortgage Banking and Earthquakes!"
Building Stronger Relationships

“...on our job serving our members, unless we get to know them in their own environment first.”

— SUSAN MILAZZO,
California MBA Executive Director

Staying local in Sacramento, Susan visited the offices of GFL Capital Mortgage, a residential mortgage lender licensed throughout the Western US. Thanks to Cherry Lee (left) and Greg Louie (center) for their time and support. For more info, go to www.gflcapital.com or call (888) 557-8836.

Next, Susan headed down to Orange County to meet with Carrington Mortgage Services’ Wes Iseley. The company operates two loan servicing locations that together provide integrated full life cycle mortgage loan servicing support to borrowers and investors. For more, call (800) 651-4567 or go to www.carringtonms.com.

Next, in Aliso Viejo, Susan met with (from left) Tom Kish and Paul Servo with JMJ Financial, a lender with locations throughout Southern California. To find out more, go to www.jmj.me or call (949) 340-6336.
Building Stronger Relationships

Susan also met with former California MBA Chairman Tom Hammond of Hammond Securities and Maria Heller with Bankers Insurance Service. Special thanks to both for their years of support and dedication to the California MBA!

Down the street in Sacramento, Susan met with the team at Catalyst Mortgage, a leading local lender. Thanks to company President/CEO Brandon Haefele for his support! To find out more, call (877) 268-8194 or go to www.catalystmortgage.com.

In Huntington Beach, Susan met with the team at Stratis Financial, a lender with offices in Huntington Beach and Torrance. Thanks to co-owner Bob Shlaudeman for his support! For more, go to www.stratisfinancial.com or call (714) 901-2301.

Heading north, Susan met with execs at PennyMac, a leading national lender and servicer. From left: Kimberly Nichols, Tom Gillis, Karen Chang, and Michael Drawdy. To find out more, call (866) 549-3583 or go to www.pennymacusa.com.
Building Stronger Relationships

In Calabasas, Susan stopped off to meet with Doug Mayers (left) and John Ardy (right) of Resitrader, a trading and operations platform for residential, whole loan mortgages. For more, go to www.resitrader.com or call (310) 266 1773.

Susan headed next to Chatsworth for a meeting with Best Capital Funding, a multi-state residential mortgage banker. Thanks to the team for their time and support! From left: Mike Yates, Oscar Moran, Ulrik Singintiko. For more, go to www.bestcapfunding.com or call (818) 887-2779.

Rounding out the day in Valencia, Susan stopped off at the Pacific Funding Mortgage Division offices, and met with (from left): Jeff Scott; Jennifer Settlow; John Ferri; Lynn Matevosian; Sandra Barlavi; and Mike Moeller. For more, call (661) 290-3333 or go to www.pfmd.com.

Meeting (and taking a selfie!) with one of our old friends, Susan stopped off at the Skyline Home Loans offices in Calabasas to meet with Bill Dallas, former member of the California MBA Board of Directors. For more about Skyline, go to www.skylinehomeloans.com.
Building Stronger Relationships

At the MBA’s Annual Convention in Boston, Susan met with Joey Davidson (left) and Stonie O’Briant (right), two of the top execs at Acopia Home Loans. For more information, call (615) 859-5537 or go to www.acopiahomeloans.com.

In the heart of San Francisco, Susan met with the team at the Bank of San Francisco. From left: Victor Vazquez, Wendy Ross, Samuel Clonnell, Ed Obuchowski. To find out more, go to www.bankofsf.com or call (415) 744-6700.

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