CA Mortgage Bankers Association
Legislative & Regulatory Action

2019

California Consumer Privacy Act (CCPA)

The CA MBA continued to focus on legislation amending the California Consumer Privacy Act (CCPA), which originally passed in 2018 and creates a comprehensive statutory scheme for consumers to better control their personal information and to opt-out of business use and sharing of that information. There were a dozen CCPA related bills introduced in the California Legislature this year. Most of the bills introduced were supported by industry groups with the goal of clarifying and improving CCPA provisions prior to their effective date on January 1, 2020. There were also, however, bills introduced and supported by privacy and labor groups that would have significantly worsened CCPA provisions. SB 561 would have added an express private right of action to all portions of the CCPA, and AB 1760 would have created a new opt-in consent requirement for the use of consumer information under the CCPA. Fortunately, both bills died due to strong opposition during the legislative process.

On October 10, the California Attorney General's Office issued a draft of their regulations pursuant to the California Consumer Privacy Act. One the most significant questions raised by these new proposed requirements is how businesses will be able to develop compliance regiments by the time that the final regulations will be enforced, July 1, 2020, when the requirements will not be set until the rules are finalized most likely no earlier than the Spring of 2020. The CA MBA drafted and submitted to the California Attorney's Office formal comments on the draft regulations identifying areas of concern and proposing alternative solutions to clarify the regulations and assist with compliance efforts.

AB 25 – CCPA Employee Exemption

AB 25 (Chapter 763, Statutes of 2019) makes an important fix to CCPA by clarifying that employees and job applicants acting in their professional capacities are not classified as "consumers" under the Act. Under the CCPA, the definition of a "consumer" is any California resident. Without the clarification offered by AB 25, this language could be interpreted to include employees and job applicants, which was not an intended outcome of the CCPA, a law designed to address the privacy of consumers. The author of AB 25 reached a compromise agreement with labor group opposition to get them to take a neutral position on the bill, and the compromise amendments place a one-year sunset on the employment clarification in the bill (January 1, 2021). That means that there will be a need to move additional legislation in 2020 to keep the helpful changes in statute past the sunset date. The CA MBA supported AB 25.

AB 1355 – CCPA Business to Business Exemption

AB 1355 (Chapter 757, Statutes of 2019) exempts deidentified or aggregate consumer information from the definition of personal information (PI). The bill creates a one-year exemption (that expires on January 1, 2021) for certain business to business communications or transactions. Business to business communications/transactions are exempt in instances in which the consumer is a natural person who is an employee, owner, director, officer, or contractor of a government agency or business whose communications or transactions with the business occur solely within the context of the business conducting due diligence regarding or providing or receiving a product or service to or from that business or government agency.

This bill also provides clarifications and other technical amendments to several CCPA provisions:

- Clarifies the Fair Credit Reporting Act (FCRA) exemption;
- Specifies that businesses do not need to collect PI that they would not normally collect or retain it for longer than they otherwise would retain PI;
- Provides additional rulemaking authority to the AG regarding compliance with verifiable consumer requests; and
- Clarifies that a consumer's private right of action is for data breaches of nonencrypted and nonredacted PI.

SB 561 - California Consumer Privacy Act (CCPA) Private Right of Action

The CA MBA opposed SB 561 because it would have called for a private right of action to apply for all the privacy provisions of CCPA. The good news is that the bill was held in the Senate Appropriations Committee, so it will not be moving this year. The compromise agreement last year when the CCPA was passed was that the private right of action in the Act only applies to the security breach sections. SB 561 would have applied it to all portions of CCPA. This bill is authored by the chair of the Senate Judiciary Committee and is sponsored by the California Attorney General. It would have expanded a consumer's rights to bring a civil action for damages to any violations under the Act, as opposed to the current language in the Act which only applies those rights to the security breach sections. Under the Act, a business or third party may seek the opinion of the Attorney General for guidance on how to comply with the Act. This bill would have instead specified that the Attorney General may publish materials that provide businesses and others with general guidance on how to comply with the Act. Finally, the bill would have deleted the 30-day period in which to cure after receiving notice of an alleged violation.

AB 199 - Remote Notarization

AB 199 would have authorized remote on-line notarization in California by permitting an online notary public, registered with the Secretary of State, to perform notarial acts, including an acknowledgement and administering an oath and completing a jurat, for a signer who personally appears before the notary by secure audio and video communication. The bill is based on the Mortgage Bankers Association (MBA) and the American Land Title Association (ALTA) model legislation and reflects the recommendations of the National Association of Secretaries of State (NASS). The legislative author of AB 199 made it a two-year bill, so it will not be moving this year because the Judiciary Committee analysis was negative and there was not enough time to overcome issues raised in the analysis. The Judiciary Committee analysis raised concerns regarding the impact of on-line notarizations on evidentiary reliability and accessibility and long-term data retention security. The author has committed to continue to work on the bill with the Judiciary Committee chair and staff participation in an effort to move the bill next year.

SB 818 – Homeowner Bill of Rights Act

SB 818 (Chapter 404, Statutes of 2018) will reinstate the provisions of the Homeowner Bill of Rights Act that expired on January 1, 2018. These reinstated provisions impose additional requirements on mortgage servicers that experience more than 175 foreclosures of residential one-to-four real property in California in the previous twelve-month period. The reinstated provisions would apply in perpetuity rather than being subject to a future sunset date.

The original legislation implementing the Homeowner Bill of Rights Act was signed into law in 2012 with supporters arguing that the requirements put in place by the Act were necessary to address an unprecedented foreclosure crisis. Since that point in time the Consumer Financial Protection Bureau implemented and updated national servicing rules that are still in place and applied those requirements uniformly across the country. Foreclosures in California are also at a historically low level and the state is struggling to address the need for more affordable housing. Given the national servicing rules in place, the historically low foreclosure rate and the ongoing affordable housing crisis, at the very least the need for this legislation is in question, and the potential negative impact will be to decrease the availability of mortgage financing and to increase housing related costs.

Policy members, however, who continue to be sensitive to the proponents' arguments of unfair foreclosures and protecting a consumer's ability to stay in his/her home, were unwilling to kill the bill. They generally took the position that industry has been able to comply with the provisions that will be reinstated so bill passage should not be problematic. Fortunately, we were able to obtain helpful amendments to the bill that will make CA HBOR more consistent with the CFPB servicing rules. The bill was amended to create a five-business day cutoff for applications for modifications prior to the foreclosure sale date. So an application for a mortgage loan modification shall be deemed incomplete unless all documents required by mortgage servicer are received five-business days or more before scheduled foreclosure sale. An additional beneficial amendment was added that clarifies that pre-notice-of-default telephone due diligence outreach requirements are satisfied if a borrower sends written notice asking servicer to cease communications with borrower. This will help remove a potential conflict with federal Fair Debt Collections Practices Act.

AB 375 & SB 1121– California Privacy Act of 2018

The legislative timeframe for AB 375 (Chapter 55, Statutes of 2018), seven days from introduction to passage and signature by the governor, is unprecedented for legislation of such importance for California consumers and businesses. The expedited timeframe was necessary to meet the initiative withdrawal deadline of June 28th. After that date initiatives with enough signatures to qualify for the November 2018 elections must stay on the ballot. Under AB 375, California consumers have the right to obtain from a business the categories and specific pieces of personal information (PI) collected about the consumer, source(s) of the PI and the purpose for which the PI is used. They also have the right to know whether the PI is sold or shared with 3rd parties, the categories of PI sold or shared, and the categories of the 3rd parties. Further, consumers have the right to request that the business delete the PI and can opt-out of the sale or sharing of the PI with a 3rd party.

To be covered by the Act a business must meet one or more thresholds as follows: have an annual gross revenue over $25 million; buy, receive, sell or share PI of 50,000 or more consumers,

households or devices; or derive 50% or more of annual revenues from selling consumer PI. The bill requires that businesses make available at least two methods for consumers to ask for PI and they must provide requested PI within 45 days of a verifiable request from a consumer. Businesses must also disclose consumer privacy rights on their on-line privacy policy and provide a clear and conspicuous Internet homepage link titled "Do Not Sell My Personal Information" to opt-out of PI sale or sharing. Businesses cannot discriminate against a consumer exercising his or her privacy rights under the Act but can charge different prices or rates or offer a different level or quality of goods or services if the difference is related to the value provided to the consumer by the consumer's data. They can also offer financial incentives for the collection, sale or deletion of PI.

The Act allows consumers a new private right of action if nonencrypted or non-redacted PI is subject to an unauthorized access and exfiltration, theft, or disclosure because of the business' failure to maintain reasonable security procedures. The new private right of action for a data breach of consumer PI provides for $100 to $750 in damages per consumer incident or actual damages, whichever is greater.

Directly after the passage of the Act, a clean-up bill, SB 1121 (Chapter 735, Statutes of 2018), was crafted because there was not enough to address several issues with the original bill during the expedited legislative process for its passage. These issues were of interest to the mortgage industry and to the business community in general. SB 1121 made three primary changes to the original Act that are helpful to CA MBA membership: (1) Expanded exemptions from portions of the bill; (2) Clarification regarding the Private Right of Action; and (3) Delay in the implementation date for portions of the Act.

The additional exceptions to the Act provisions include expanding the Health Insurance Portability and Accountability Act (HIPAA) exception, adding a new exception for clinical trial information, and expanding the Gramm-Leach-Bliley Act (GLBA) and Driver's Privacy Protection Act (DPPA) exceptions. A second change impacts the private right of action in the bill to clarify that it only applies to the data breach provisions of the Act. All businesses will benefit from this amendment clarifying that the Act's private right of action is limited to actions arising from data security events (as opposed to violations of the Act's privacy obligations). Finally, SB 1121 also changes implementation dates by providing the AG with a six-month extension to write implementing regulations (i.e., until July 1, 2020) and by barring the AG from bringing an enforcement action until the earlier of July 1, 2020 or six months after the AG has published final regulations.

AB 2063 & SB 1087 – Property Assessed Clean Energy (PACE)

The CA MBA supported AB 2063 (Chapter 813, Statutes of 2018) and SB 1087 (Chapter 798, Statutes of 2018) because they will better protect consumers who use PACE financing to pay for energy efficiency improvements and will ensure greater public transparency of PACE providers. They are follow-up bills to last year's AB 1284, which required the licensing and regulation of PACE program administrators and the contractors they use to solicit homeowners in connection with PACE assessments. Although AB 1284 contained several important consumer protections, the bill was hastily drafted at the end of the 2017 legislative year and contained several provisions on which legislators agreed that clean-up would be necessary.

Both bills cover the same topic area so overlapping or conflicting bill provisions in each bill were removed. Among other things, AB 2063 specifies that a program administrator cannot execute an assessment contract, a home improvement contract cannot be executed, and no work can begin under a home improvement contract that is financed by that assessment contract until the program

administrator has made a good faith determination of the homeowner's ability to repay the assessment. This is an important public policy addition to the PACE program to ensure that homeowners know whether they will qualify for PACE financing before they obligate themselves to the home improvement contracts. SB 1087 will help to ensure that the Department of Business Oversight (DBO), which has oversight over PACE program administrators and solicitors and solicitor agents, can take expedited action to discipline PACE solicitors and solicitor agents. The DBO will also be able to take immediate action if the department has reasonable grounds to believe that a solicitor or solicitor agent is acting in an unsafe or injurious manner. The DBO is required by January 1, 2020 to maintain, on its Internet Web site, the identities of enrolled PACE solicitors and PACE solicitor agents. Also, the department shall maintain on its Internet Web site the identities of PACE solicitors and PACE solicitor agents ordered to discontinue engaging in the business of soliciting property owners to enter into assessment contracts.

SB 1201 – Mortgage Loan Foreign Language Translation

Current California state law requires financial organizations that negotiate a loan secured by real property in Spanish, Chinese, Tagalog, Vietnamese, or Korean, to provide a summary of the terms of the loan in that language prior to executing the loan agreement. SB 1201 would extend the same foreign translation rule to negotiations over subsequent modification of mortgage loans while allowing several translated forms associated with federal truth-in-lending laws to be used for purposes of compliance.

The bill would require for mortgage loan originations that the DBO create and make available in each of the five languages for use by a financial organization summarizing the terms of a mortgage loan; (1) the Good Faith Estimate disclosure form from the United States Department of Housing and Urban Development, (2) the Loan Estimate form from the Consumer Finance Protection Bureau, and (3) the Closing Disclosure form from the Consumer Finance Protection Bureau. For mortgage loan modifications the DBO would create and make available translated versions of; (1) the Agreement for Modification, Re-Amortization, or Extension of a Mortgage (Form 181), (2) the Loan Modification Agreement (Providing for Fixed Interest Rate) (Form 3179), and (3) the Loan Modification Agreement (Providing for Adjustable Interest Rate) (Form 3161) from the Federal National Mortgage Association. The new translation and disclosure requirements become operative 90 days following the issuance of forms by the Department of Business Oversight, but in no instance before January 1, 2019.

SB 1235 – Commercial Loan Disclosures

SB 1235 (Chapter 356, Statutes of 2018) will establish a new division 9.5 in Financial Code wherein a uniform disclosure must be provided to a borrower receiving commercial financing more than $2,500 and up to $500,000. The legislative author introduced the bill to help small businesses better understand the terms and costs of the financing available to them in the commercial financing market. According to the author, there has been tremendous growth of online lending and a spread of innovative finance products that has made it difficult for small business borrowers to compare and contrast the many offers available and determine which would be the best, and least costly for their business.

Commercial financing under the bill means an accounts receivable purchase transaction, including factoring, asset-based lending transaction, commercial loan, commercial open-end credit plan, or lease financing transaction intended by the recipient for use primarily for other than personal,

family, or household purposes. The uniform disclosure required by the bill must include, among other things, the total amount financed, the total dollar cost of financing, the term or estimated term, method, frequency, and amount of payments, description of prepayment policies, and total cost of the financing expressed as an annualized rate (this requirement sunsets on January 1, 2024). The CA MBA worked with the author and committee staff to craft amendments to exclude commercial real estate secured loans from the requirements of the bill.

2017

AB 1284 – Property Assessed Clean Energy Financing

AB 1284 (Chapter 475, Statutes of 2017) is one of two bills that passed this year that are intended to provide statewide requirements and consumer protections for PACE financing. The CA MBA worked on both of these bills and we believe they will be precedent setting and create a model for the regulation of an industry where there are more and more press reports of consumers being victimized by bad actors.

AB 1284 renames the California Finance Lenders Law (CFLL) the California Financing Law (CFL) and prohibits any person from engaging in the business of a PACE program administrator without obtaining a license from the Department of Business Oversight Commissioner. A program administrator is exempt from the new PACE provisions if the administrator does not provide financing for the installation of efficiency improvements on residential property with four or fewer units and that does not provide financing for the installation of efficiency improvements on real contractual assessments on property with a market value of less than one million dollars ($1,000,000).

Under the bill, program administrators are subject to, the administrative provisions of the CFL, a new Chapter of the CFL that this bill creates, and specified enforcement provisions of the CFL. Program administrators seeking to be licensed must comply with all of the same requirements applicable to persons seeking to be licensed as finance lenders or finance brokers under the existing CFL, including criminal history background checks of key management and personnel; a requirement to license one's main office and each branch office out of which it wishes to engage in business; a net worth requirement; and, a surety bond requirement.

AB 1284 also requires a program administrator to determine, prior to funding and recordation by a public agency of the assessment contract, that the property owner has a reasonable ability to pay the annual payment obligations for the PACE assessment based on the property owner's income, assets, and current debt obligations. The determination process must be based on the following factors: 1) The property owner's monthly income and housing expenses, as submitted by the property owner on their application; 2) Housing expenses, including all mortgage and interest payments, insurance, and property taxes, as specified; and 3) Debt obligations, including, but not limited to, all secured and unsecured debt, alimony, child support, and monthly housing expenses. To make the ability to pay determination the bill also requires the use of reasonably reliable third-party records, including one or more consumer credit reports from specified agencies.

SB 242 – Property Assessed Clean Energy Financing

SB 242 (Chapter 484, Statutes of 2017) is the second of the two consumer protection bills for Property Assessed Clean Energy Financing (PACE) the CA MBA worked on this year. It applies

exclusively to residential property with four or fewer units. A few of the protections put in place by SB 242 are as follows: 1) Requires a program administrator, before a property owner executes an assessment contract, confirm that at least one property owner has a copy of the contractual assessment documents, the financing estimate and disclosure form, and the right to cancel form; 2) Requires oral confirmation of the key terms and details of the assessment contract, in plain language to be recorded; 3) Requires the program administrator, if the oral confirmation was conducted primarily in a language other than English, to deliver a translation of the disclosures and contract or agreement, prior to the execution of any contract, in the language in which the oral confirmation was conducted; and 4) Prohibits a program administrator from providing any direct or indirect cash payments or other things of material value to a contractor or third party in excess of the actual price charged by that contractor or third party to the proposed owner for the sale and installation of one or more measures financed by an assessment contract.

AB 1008 – Licensee Criminal Background Check

The CA MBA originally opposed AB 1008 (Chapter 789, Statutes of 2017) and asked for an exemption from the bill when an employer has federal or state criminal background check requirements or employment restrictions based on criminal history. The bill makes it unlawful for an employer to include on an employment application any question seeking disclosure of an applicant's criminal history. It prohibits inquiring into or considering the conviction history of an applicant until that applicant has received a conditional offer. If after the conditional offer is made, the employer determines an applicant's criminal history disqualifies him or her from employment, the employer must notify the applicant of this preliminary decision and provide the applicant with a 5-business day timeframe to respond with information challenging the accuracy of the information.

Mortgage lenders, however, have strict federal and state legal and regulatory prohibitions under the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) against a person with a criminal history obtaining a mortgage loan originator license. Under the Residential Mortgage Lending Act, the Finance Lenders Law and the Real Estate Law, applicants for a mortgage loan originator license must undergo a criminal background check and the state regulator must deny the license if the applicant has a felony conviction involving fraud, dishonesty, breach of trust or money laundering in the last 7 years. The statutory and regulatory criminal background requirements for mortgage lenders were put in place by policymakers to protect consumers in sensitive financial transactions. In addition to the SAFE Act requirements, applicants for a Residential Mortgage Lending Act License and the Finance Lenders Law License must undergo a criminal background check by the state regulator as part of the licensing process and criminal history is grounds for denial of the license application. The CA MBA removed its opposition to AB 1008 because it was successful in efforts to obtain an exemption from the bill for positions where an employer has federal or state criminal background check requirements or employment restrictions based on criminal history.

AB 1526 – Debt Extinguishment

AB 1526 would have required that an action to collect upon a consumer debt be concluded within four years. It provided that the time begins to run from the date of default or the date of the last payment, whichever is earlier. And under the bill a debt would have been extinguished when the four-year statute of limitations has run. Further, creditors would have been prohibited from reporting the debt to a consumer credit reporting agency or collecting upon it in any action, including a judicial proceeding, after four years. To further complicate matters, the definition of

consumer credit transaction under the bill included real property secured loans.

The debt extinguishment provision in AB 1526 would have been particularly problematic for mortgage lenders because it diluted the value of real estate security interest. The CA MBA took an oppose-unless-amended position on the bill and worked with the author's office and bill proponents to address concerns with the bill. The bill was amended to remove all provisions impacting real property related transactions and those provisions extinguishing debt, thereby addressing CA MBA concerns with the previous version of the bill.

AB 199 – Residential Housing Construction Prevailing Wage

The CA MBA opposed the original version of AB 199 but was able to remove its opposition when the bill was amended to address association concerns. As introduced, the bill would have eliminated the residential housing construction exemption from prevailing wage rates, thereby making private market rate residential development a public work project for which prevailing wages would be paid. State legislative leaders have determined there is a shortage of affordable housing in California and have made building more affordable housing a priority. But while there have been over a dozen bills introduced this year with the goal tackling the housing crisis, the mandate in the introduced version of AB 199 to pay prevailing wages for the construction of private residential projects would have further exacerbated the problem by increasing the cost for housing construction. To address CA MBA concerns and the concerns of other housing market industry representatives, AB 199 was amended to return the bill to existing code with respect to the prevailing wage exemption for private market rate residential development.

2016

SB 1150 – Deceased Borrower & Successor in Interest - HBOR

The California MBA opposed SB 1150 (Chapter 838, Statutes of 2016) and via opposition efforts obtained extensive amendments to address industry concerns with the bill. 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 was 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. The bill was amended to clarify that a successor claimant must demonstrate an ownership interest in the property in question. Amendments were also 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.

The bill originally lacked a safe harbor for compliance successor in interest regulations promulgated by the Federal Consumer Financial Protection Bureau (CFPB), 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. The combination of the 175 or greater foreclosure threshold described earlier and the safe harbor should significantly reduce the impact of the bill for California MBA members. 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

The California MBA was a co-sponsor of and supported AB 2693 (Chapter 618, Statutes of 2016). We believe that changes to PACE programs are necessary because 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.

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.

SB 657 – California Residential Mortgage Lending Act Licensing

The California MBA supported SB 657 (Chapter 797, Statutes of 2016). 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.

2015

Residential Mortgage Lending Act Branch Licensing

California MBA members asked for Association assistance to resolve concerns regarding the regulatory process where Residential Mortgage Lending Act licensees were being required by the Department of Business Oversight to obtain a license for each new business location prior to operating at the location. Licensees were also being required to gain regulatory approval for each branch manager for the locations. Both of these requirements were unduly delaying the ability to conduct business at new locations. We did not believe there was statutory or regulatory authority for the Department of Business Oversight to make those requirements and that only

licensee notice to the regulator of a new location and manager are required. We assembled the statutory code references and arguments to support our position and we held meetings with industry representatives and the Department of Business Oversight commissioner on the issue. The commissioner agreed with our position and the process was changed to only require a notice of a new location and branch manager. We had also worked with the Senate Banking Committee consultant to develop language to amend the statute if a resolution could not be reached with the regulator.

SB 602 – California Earthquake Authority Seismic Safety Retrofit Financing Super Liens

SB 602 would allow the California Earthquake Authority (CEA) to offer seismic strengthening retrofits and the financing for those retrofits. Under the proposal, the CEA would be given super-priority lien status and repayment of the loan is accomplished through a tax assessment itemized within the borrower's local property tax billing. Because repayment is treated as a tax assessment, the lien associated with the improvement is granted super-priority status. These methods of finance, sometimes referred to as Property Assessed Clean Energy (PACE) loans, have received considerable attention by the Federal Housing Finance Agency (FHFA), the regulator for the government sponsored entities (GSEs). While SB 602 relates to seismic strengthening improvements and not clean energy, the methodology for funding the seismic strengthening improvement is identical. A letter from the FHFA expressed concerns with the bill and compared the products that would result to the PACE program. The California MBA has an oppose unless amended position on SB 602 and is working with other housing related industry groups in an effort to remove the super lien priority status for the CEA seismic strengthening improvement loans described in the bill and instead allow for a lien that has the force, effect, and priority of a judgment lien. Facing strong opposition in the Assembly, SB 602 did not pass prior to the Legislature adjourning in 2015, but it is eligible to be voted on in 2016.

AB 244 – Deceased Borrower & Successor in Interest - HBOR

AB 244 would have included a "Successor in Interest" under the definition of borrower for the purposes of the California Homeowner Bill of Rights (HBOR). The bill extended the rights and benefits of the HBOR to successors in interest, including consideration for a foreclosure prevention alternative, providing a single point of contact and access to a private right of action with draconian penalties. The bill applies to any successor in interest natural person who is a personal representative, a spouse, a joint tenant, or a trustee or beneficiary. The California MBA opposes AB 244. The bill was set for a hearing in the Assembly Committee on Banking and Finance but facing strong opposition, the author requested it be pulled from the hearing agenda.

A fundamental principle of the HBOR is the consideration of foreclosure prevention alternatives for distressed borrowers. By definition, "foreclosure prevention alternative" means a first lien loan modification or another available loss mitigation option. As such, a loan modification is an amendment to the original mortgage. Successors in interest wishing to become the borrower, who were not a party to the original mortgage contract, would be granted an opportunity under AB 244 to seek a modification of the mortgage they weren't a part of. Ultimately, if a successor in interest is defined as the borrower, as is done in AB 244, and desires a foreclosure prevention alternative, it's really a new loan to a new person rather than a modification of the original mortgage contract for the original borrower.

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

AB 99 – Forgiven Mortgage Debt and Borrower State Tax Relief

The California MBA supported AB 99 because it would have extended important state tax relief to borrowers, in conformity with federal law, who are not required to report the amount of debt forgiven by a lender resulting from a negotiated short sale or principal reduction. By extending the sunset date for this tax relief to January 1, 2015, AB 99 would have eliminated a significant impediment for homeowners seeking viable alternatives to foreclosure during these tough economic times. When debt is forgiven by a lender as part of an agreement with a borrower using the short sale process or a principal reduction, the borrower should not be penalized on their state income taxes. Many borrowers, who faced foreclosure last year and successfully negotiated a loan modification, may well find themselves once again unable to make their mortgage payment if they are saddled with a tax burden resulting from forgiven debt. AB 99 passed out of the Legislature but was vetoed by the Governor along with several other bills offering tax credits. In vetoing these bills he referenced the prospect of over $1 billion in cuts for next year's state budget.

AB 268 – California Finance Lenders Law - Consumer Loans

Under the California Finance Lenders Law (CFLL) there are restrictive interest rate and fee caps for consumer loans of less than a bona fide principal amount of $2,500. AB 268 originally would have repealed those consumer loan provisions and instead required the commissioner to establish an installment loan rate review process for licensees that intend to offer unsecured full amortizing installment loans of a minimum principal amount upon origination of at least $300 and a maximum principal amount of $2,500. The current statutory interest rate and fee restrictions make it difficult for CFLL licensees to offer these types of small loans to consumers.

AB 268 was set for a hearing in the Assembly Committee on Banking and Finance but the author, who is also the Chair of the Committee, requested it be pulled from the hearing agenda. It has been made a two-year bill, which means it did not move in 2015 but can be brought up again in 2016. The author has expressed a desire to update/revamp the CFLL, with a focus on expanding the ability of licensees to offer small loans to consumers in need while still providing consumer protections for credit challenged borrowers. He held a series of meetings on this topic that we attended and plans to have a legislative proposal on the topic that will be amended into AB 268. Even though the effort is focused on small loans, it is also clear that he is looking at re-writing or updating the entire CFLL because it covers such a broad group of financial products and types of lenders. As an example, the bill was amended early in 2016 to require a 48 month examination schedule for CFLL licensees. One of the concepts that the Chair is reviewing is moving real estate lending out of the CFLL so that only the Residential Mortgage Lending Act would cover real property secured loans/licensees. Other issues of interest to mortgage lenders include expanding size and types of loans covered by interest rate and fee caps and redefining the statutory term "bona fide principal amount."

2014

SB 1459 – Mortgage Loan Originator Licensing

SB 1459 (*Chapter 123, Statutes of 2014)* allows the Uniform State Test (UST) developed by the Nationwide Mortgage Licensing System & Registry to satisfy the California Mortgage Loan Originator (MLO) applicant testing requirements. It also requires additional California specific pre-licensing and continuing education. **CMBA has aggressively promoted the adoption of the Uniform State Test usage in California and supported SB 1459.** Now that SB 1459 has been signed into law, the UST can replace California's state specific test. Passing the UST would satisfy the SAFE Act's state test component requirement. Thus, an MLO who passes both the national test and the UST could apply for a license in any state that has adopted the UST. According to the National Mortgage Licensing System, 39 state mortgage agencies have adopted the concept of uniform state testing as of January 1, 2014. The Department of Business Oversight was not among them, so SB 1459 will help move toward uniform state testing in California.

AB 1393 – Personal Income Taxes: Mortgage Debt Forgiveness

AB 1393 ***(****Chapter 152, Statutes of 2014*) extends the exclusion of the discharge of qualified principal residence indebtedness for state income tax purposes to debt that is discharged on or after January 1, 2013, and before January 1, 2014. The Personal Income Tax Law provides for modified conformity to provisions of federal income tax law relating to the exclusion of the discharge of qualified principal residence indebtedness from an individual's income if that debt

is discharged after January 1, 2007, and before January 1, 2013. The federal American Taxpayer Relief Act of 2012 extended the operation of those provisions to qualified principal residence indebtedness that is discharged before January 1, 2014, and AB 1393 conforms to the federal extension. **CMBA supported AB 1393, and it has been signed into law with an immediate effective date.**

AB 1698 – Voiding of False or Forged Real Property Documents

AB 1698 originally would have required that after a person is convicted of knowingly recording or filing a false or forged real property instrument in any public office within the state, the criminal court must issue a written order that the false or forged instrument be adjudged void ab initio. The measure is designed to help a homeowner or business who has been victimized by false or forged deeds by providing an alternative to requiring the victim to go to civil court for a 'quiet title action' at their own expense. **CMBA had concerns with the original version of the bill because it did not protect the rights of a good faith transferee or obligee relative to their interest in the real property and their ability to enforce any obligation incurred or secured by the underlying property. CMBA worked with the author of AB 1698 and the law enforcement sponsors of the measure to craft amendments resolving CMBA's concerns.** The amendments provide multiple notices to interested parties in the real property regarding the actions being taken by the criminal court and provide the opportunity for those parties to argue their position in court.

AB 2416 – Employee Wage Liens on Employer Property

AB 2416 would have allowed an employee to place a lien for any wages, other compensation, and related penalties and damages owed to the employee on the employer's real and personal property, including property upon which the employee bestowed labor. The amount of the lien includes alleged unpaid wages or compensation, penalties and damages available under the Labor Code, interest at the same rate as for prejudgment interest in this state, and the costs of filing and service of the lien. The lien attaches to all real property owned by the employer at the time of the filing of the notice of lien, or that is subsequently acquired by the employer, that is located in any county in which the notice of lien is recorded. **The lien was originally a super-lien, which was one of CMBA's main concerns with the bill, but the super-lien provision was removed.** The lien, however, would still have applied to unsecured loans and non-purchase mortgage loans made on or after January 1, 2016. In addition to removing the super-lien provision, the author exempted an employer's principal residence from coverage by the bill and included a mechanism to enable an employer to remove the wage lien in certain circumstances. **CMBA opposed AB 2416, and it died in the Senate.**

SB 1021 – Local Parcel Taxes Impacting Commercial Properties

State law mandates that parcel taxes be levied equally on all property owners in a school district, regardless of parcel size or number of living units. Some school districts have sought creative approaches to raise additional revenue from larger commercial parcels, but a recent Court of Appeals ruling put those approaches in question. Borikas v. Alameda Unified School District, pertains to a parcel tax that Alameda Unified passed in 2008, in which it assessed owners of

many commercial properties a different and higher parcel tax than homeowners and small businesses had to pay. In December 2012, a three-judge panel of the First Circuit of the Court of Appeals invalidated this new tax. SB 1021 basically would have overturned the court ruling by allowing school districts to create a special tax targeting commercial properties. The new tax could be imposed on a per parcel basis, according to the square footage of a parcel or the square footage of improvements and according to the parcel's use. Multiple parcels of real property could also be treated as one parcel for purposes of the special tax, where the parcels are contiguous, under common ownership, and constitute one economic unit. School districts currently can create special taxes but they must be uniform, so this bill would have changed the definition of uniform so that commercial properties could be taxed at a different rate as compared to residential properties. **CMBA opposed SB 1021, and it died in the Assembly Revenue and Taxation Committee.**

AB 1770 – Termination of Equity Lines of Credit

AB 1770 (Chapter 206, Statutes of 2014) creates a statutory method for suspending and closing a home equity line of credit by way of a codified notice signed by the borrower(s) and transmitted by an entitled person (i.e. title company) to the beneficiary (lender). **CMBA participated in extensive negotiations with title industry representatives, policy makers and legislative staff to address CMBA concerns with the original proposal and to reach a compromise on the final version of the bill that was signed into law.** This legislation is intended to reduce litigation between lenders and title companies that has been occurring when lines of credit are not terminated when real property changes ownership. The bill also includes a July 1, 2015 delayed effective date, a July 1, 2019 sunset date for the statute, and a statement that the beneficiary may conclusively rely on the borrower's instruction to suspend and close the equity line of credit provided by the entitled person.

2013

AB 59 – Local Parcel Taxes impacting Commercial Properties

AB 59 would have allowed school districts to enact a real property parcel tax at a higher level for businesses as compared to residential property. The bill also stated that the amendments are declaratory of existing law, and shall apply to transactions predating its enactment**. CMBA opposed AB 59, and it died in the Assembly.**

AB 188 – Split Roll Property Tax

AB 188 would specify that if 100% of the ownership interests in a legal entity are sold or transferred in a single transaction, the real property owned by that legal entity has changed ownership, whether or not any one legal entity or person that is a party to the transaction acquires more than 50% of the ownership interests. Under the bill "Single transaction" means a transaction in which 10% of the ownership interests are sold or transferred in either one calendar year or within a three-year period beginning on the date of the original transaction when any percentage of ownership interests are sold or transferred. The person or legal entity acquiring ownership interests in the legal entity must file a change in ownership statement signed under penalty of perjury with the State Board of Equalization. Penalties for failure to file a change in ownership statement would increase from 10% to 20%. **CMBA has an oppose position on AB 188, and it died in the Assembly.**

AB 561 – Documentary Transfer Tax

AB 561 represented a potential massive tax increase on commercial, industrial, and residential rental property by adopting the "change in control" definition from property tax law for purposes of determining whether a documentary transfer tax is due. Under this bill, a legal entity (corporation, partnership, LLC, etc.) that owns real estate and undergoes a change in control for property tax purposes would be required to pay a transfer tax. **CMBA opposed AB 561, and it died in the Assembly**.

AB 1091 – Administrative Citation Authority

AB 1091 (*Chapter 243, Statutes of 2013*) allows the Department of Business Oversight commissioner to issue a citation to correct a violation or violations and an assessment of an administrative fine not to exceed $2,500, if the commissioner, upon investigation, has cause to believe that a licensee, or unlicensed entity, under the California Finance Lenders Law or the California Residential Mortgage Lending Act is violating the law. In assessing a fine, the commissioner must give consideration to the appropriateness of the amount of the fine with respect to factors including the gravity of the violation, the good faith of the person or licensees cited, and the history of previous violations. The citation and fine payment shall not be reported as disciplinary action taken by the commissioner. The bill would also expand an existing commercial loan exemption under the California Finance Lenders Law to state that the division does not apply to any person who makes five or fewer loans in a 12-month period if the loans are incidental to the business of the person relying upon the exemption. The bill was sponsored by the Department of Business Oversight. **CMBA worked with the bill's author and proponents to help ensure that the citation provisions were consistent with previous legislation providing the same authority to the Department of Real Estate**.

AB 1169 - Escrow Agent Rating Service

The Federal Dodd-Frank Act created new financial institution third party vendor risk management requirements. Minimizing those risks includes verifying that a vender service provider understands and can comply with federal consumer financial law. Supporters of the bill reported that escrow agents are being charged fees by risk management provider venders to be included on databases to maintain "accreditation." The bill would require venders providing these escrow agent rating services to comply with the same requirements as Consumer Credit Reporting Agencies and to the requirements of a reseller of credit information**. CMBA worked with the sponsors of AB 1169 (*Chapter 380, Statutes of 2013*) to resolve concerns with the original version of the bill. A creditor exemption was added for situations when a creditor evaluates an escrow agent in connection to an extension of credit by that creditor to protect against being required to comply with all of the new requirements created by the bill.**

SB 426 – Deficiency Judgments

SB 426 (Chapter 65, Statutes of 2013) prohibits a deficiency from being owed or collected following foreclosure. **The bill was amended to address CMBA concerns regarding negatively impacting situations where a deficiency could be satisfied by a guarantor or from assets other than the property securing the mortgage loan, either in residential or commercial transactions.** CMBA worked with the author and bill proponents to address those concerns, and amendments were added to make it clear that the new statute does not affect the liability that a guarantor, pledgor or other surety might otherwise have with respect to the deficiency, or that might otherwise be satisfied in whole or in part from other collateral pledged to secure the obligation that is the subject of the deficiency.

SB 30 – Mortgage Debt Forgiveness

SB 30 would extend the operation of the state exclusion of the discharge of qualified principal residence indebtedness to debt that is discharged before January 1, 2014, thereby extending the application of the exclusion for an additional year. Earlier this year SB 30 was amended so that it would become operative only if SB 391, which would enact a new fee for the recordation of certain real property transaction documents, is enacted and takes effect. **CMBA has a support position on SB 30 but it has been held in the Assembly**.

2012

California Homeowner Bill of Rights

Nine of the eleven original bills in the California Homeowner Bill of Rights were of concern for CMBA members. **Of those nine bills, CMBA was successful in working with policy makers, staff and consumer group representatives to advocate in favor of amendments enabling CMBA to support five of the bills.** Two of the bills CMBA supported, AB 2314 (*Chapter 201, Statutes of 2012*) and SB 1472, were intended to assist in combating blight in communities by, among other things, removing the sunset date under current law to permanently enact a civil monetary penalty of $1,000 per day imposed against legal owners who purchase or acquire vacant property at foreclosure and fail to maintain that property.

CMBA also supported AB 2610 (*Chapter 562, Statutes of 2012*) and SB 1473, which were designed to provide tenants with protection where delinquent landlords subject to foreclosure fail to adequately communicate their financial condition to their tenants. The protections in these measures include increasing the time period prior to a tenant's eviction from 60 to 90 days or for the remainder of a previously executed lease.

Finally, CMBA supported AB 1950 (*Chapter 569, Statutes of 2012*), which indefinitely extended provisions of existing law prohibiting a third party from charging a fee or other compensation, to be paid in advance by a borrower, for negotiating or attempting to negotiate, arrange or otherwise offering to perform a residential mortgage loan modification. It also extended the existing law statute of limitations from one year to three years for prosecution of violations of the loan modification advance fee law.

Four of the bills that CMBA opposed in the Homeowner Bill of Rights died in their original policy committees, AB 1602, AB 2425, SB 1470 and SB 1471. Those four bills were ultimately replaced with two alternative bills, AB 278 and SB 900. These two bills were sent to conference committee by legislative leadership in lieu of the normal committee process, significantly amended, passed out the Legislature and were signed into law. Listed below is a short summary of key aspects of AB 278 and SB 900 and improvements made to the measures to address concerns with the initial drafts. **CMBA continued to opposed AB 278 (*Chapter 86, Statutes of 2012*) and SB 900 (*Chapter 87, Statutes of 2012*), and though still problematic, CMBA advocated in favor of changes that made significant improvements.**

- A mortgage servicer must render a decision on a submitted loan modification application before initiating/advancing the foreclosure process. The foreclosure process is halted upon completion of a loan modification application. Federally/chartered and state

licensed entities with annual foreclosures of 175 or less have a simplified process that excuses them from many procedural aspects of the legislation.

- A single point of contact (SPOC) requirement is triggered by a borrower request for a foreclosure prevention alternative. SPOC could include a team of individuals; each must have knowledge of borrower's status and loss prevention alternatives, access to decision makers, and the responsibility to coordinate documentation between borrower and servicer. SPOC does not apply to entities with annual foreclosures of 175 or less.

- The main provisions are limited to first lien mortgages or deeds of trust, securing residential owner occupied real property containing no more than four units that is security for a loan made for personal, family, or household proposes (thereby excluding commercial transactions).

- The legislation limits the private right of action to material violations so the bills require more than a showing of a mere violation of the law to bring a suit. There is an ability to cure violations, and the legislation provides that there is no liability if a violation is fixed.

- Attorneys' fees and costs may be awarded at the discretion of the court. Originally the court was required to award attorney's fees/costs and the burden to prevail was far lower.

- The original "Robosigning" provisions were significantly narrowed. They are limited to failure to review competent evidence supporting claims made in court filings and recorded documents. Enforcement by regulators and government agencies is limited to repeated failure to review documents for accuracy rather than any inaccuracy in a document, as originally proposed.

- Original language requiring all assignments to be recorded was deleted, as was the provision requiring the servicer to start foreclosure only with the specific direction of the owner of the note.

- Injunctive relief is the only remedy before sale. An action for actual damages may be brought after a foreclosure sale. Statutory penalties were removed unless there are willful and intentional violations.

- Most of the more burdensome provisions sunset in 5 years, and there is an exemption from the more burdensome provisions of the bills for entities with an annual 175 or less residential foreclosures.

2011

AB 406 – Ban on Balloon Payments

AB 406 would have prohibited balloon payments from being included in the terms of an adjustable rate loan for real property containing 1 – 4 residential units secured by a mortgage or deed of trust. **CMBA opposed AB 406, and it died in the Assembly.**

AB 448 - Split Roll for Commercial Properties

AB 448 created a new change in ownership triggering event, thus creating more frequent reassessments for commercial properties. The bill provided that if cumulatively 100 percent of the ownership interests in a legal entity are sold or transferred within a three-year period, the purchase or transfer of the ownership interests would be considered a change of ownership of the real property owned by the legal entity, whether or not any one legal entity that is a party to the transaction acquires more than 50 percent of the ownership interests. The bill would also have increased the penalties for failure to file a change in ownership statement from 10% to 20% of the taxes applicable to the new base year value, or from 10% to 20% of the current year's taxes on that property for failure to file upon request of the BOE. **CMBA opposed AB 448, and it died in the Assembly.**

AB 935 - Foreclosure Tax

AB 935 would have required that no notice of trustee's sale shall be accepted for filing with the county recorder until the mortgage servicer pays a foreclosure tax of 5 % of the price for which the house was last sold, not to exceed $20,000. The tax would apply to adjustable rate mortgage loans and to fixed rate mortgage loans with a term of less than 15 years. The bill exempted loans made by a mortgage lender with assets of less than $10 billion and exempted credit unions. The bill also exempts a servicer that has done everything possible to modify the loan, including offering the property owner a principal write down on the loan. The bill stated that the tax cannot be passed on to borrowers. Tax revenue generated by the bill would have been deposited in a state fund, to be allocated to various local agencies. **CMBA opposed AB 935 because of its punitive provisions and because of the negative impact it would have had on the mortgage marketplace. The bill died in the Assembly.**

AB 1321 - Mortgage Document & Assignment Recordation Mandate

AB 1321 would have required that mortgages and deeds of trust and assignments of a mortgage or a deed of trust be recorded within 30 days of the execution of the deed or other document creating a security interest in the real property or within 30 days of execution of the assignment. It also required the promissory note or a certificate affirming the existence of the promissory note be attached at the time of recordation. It would have further prohibited the mortgagee, trustee, or beneficiary from recording a notice of default until 45 days after it has recorded the mortgage or deed of trust and any assignment of the mortgage and deed of trust. Under the bill the county recorder was not required to certify that the documents have been properly recorded. **CMBA opposed AB 1321, and it died in the Assembly.**

SB 729 - Foreclosure Modification Requirements

SB 729 would have required that a Notice of Default (NOD) cannot be recorded unless a reasonable good faith effort is made to evaluate a borrower for all available options to avoid foreclosure. The bill required that an application for available loan modification alternatives be sent to the borrower, and if the borrower initiated the application, a NOD cannot be recorded until a good faith effort is made to review the application, render a decision, and send the borrower a detailed explanation letter. If an NOD was recorded it must include a declaration of compliance with the new outreach and modification review requirements. A declaration of compliance with the outreach/loan modification review requirements signed by an individual with personal knowledge of the facts stated within or who has the authority to bind the mortgage servicer and who certifies it is based on records made in the regular course of servicer's business must be sent to the trustee and attached to the NOD. A borrower can seek a court injunction for noncompliance with the requirements, and failure to comply constitutes grounds for the borrower to pursue, post trustee sale, the greater of treble actual damages or extensive statutory damages.

If title has been transferred to the foreclosing party at trustee sale, the borrower may bring action to void the foreclosure sale. A NOD must include proof of ownership including copies of the mortgage or deed of trust and evidence of all assignments and endorsements and a declaration certifying ownership and the right to foreclose. **CMBA opposed AB 729 because it would have instituted an unworkable foreclosure process that would have greatly extended the timeline and resulted in increased frivolous litigation. The bill died in the Senate.**

2010

AB 1639 – California Mediated Mortgage Workout Program

AB 1639 would have created an extensive new California mediated mortgage workout program administered by the state and entangling the state in mediations. The bill required the borrower be informed via certified mail accompanying notice of delinquency that the borrower may elect to participate in a state Mediated Mortgage Workout Program (MMWP). The borrower had 30 days after receiving the notice to elect to participate in the MMWP, and if the borrower elected to participate in the MMWP no further action can be taken to exercise a power of sale during the MMWP process. The mediation process initiated by AB 1639 would have resulted in longer delays in the foreclosure process and would have likely further prolonged California's housing downturn and hindered the state's economic recovery. **CMBA opposed AB 1639, and it died in the Assembly**.

AB 2653 - Investor Disclosure of Price Paid for Purchased Mortgages

AB 2653 would have mandated subsequent owners of a mortgage or deed of trust to provide a borrower, upon request, the price paid for the mortgage or deed of trust. The requirements would have been retroactive in that they apply to mortgages or deeds of trust purchased on or after January 1, 2005. **CMBA opposed AB 2653, and it died in the Assembly**.

SB 931 - Deficiency Judgments

SB 931 (*Chapter 701, Statutes of 2010*) prohibits a deficiency judgment under a note secured by a first deed of trust or first mortgage for a dwelling of not more than 4 units in any case in which the holder of the first deed of trust or first mortgage provides written consent for a short sale. The measure specifies that those provisions would not limit the ability of the holder of the first deed of trust or first mortgage to seek damages and use existing rights and remedies against the trustor or mortgagor or any 3rd party if the trustor or mortgagor commits either fraud with respect to the sale of, or waste with respect to, the real property that secures that deed of trust or mortgage. **CMBA worked with the author and proponents of the bill to help ensure that the provisions were workable and would not unintentionally impact major commercial real property transactions**.

SB 1178 - Deficiency Judgments

This measure would have, for refinances, extended the application of anti-deficiency protections during judicial foreclosure to the original principal amount of the purchase loan. The new anti-deficiency protections would have applied to pre-existing mortgage contracts that had already been negotiated. **CMBA opposed SB 1178, and it was vetoed by the Governor**. The veto message stated that the measure would have fundamentally altered the nature of and impaired the value of previously negotiated contracts and that fundamentally altering the nature of a contract

after its consummation is a bad precedent and would provide uncertainty for future lending transactions.

SB 1275 – Restructure of Nonjudicial Foreclosure Process

SB 1275 would have required that between 16 and 70 days after mortgage delinquency the borrower must be provided with a detailed notice regarding foreclosure avoidance options and the foreclosure process, and if any modification process is available, how to apply for a loan modification. The notice must be provided in English and in a foreign language translation form. A Notice of Default (NOD) cannot be filed until the notice has been provided to the borrower; a Declaration of Compliance Borrower Contact form is completed, sent to the foreclosure trustee and filed with the NOD; and a borrower who expressed interest in a loan modification but was not offered a modification, is sent a detailed denial explanation letter by certified mail. SB 1275 also included language requiring the declaration to be signed either by an individual having personal knowledge of the facts stated within, or by an individual with authority to bind the mortgage servicer, who certifies that the declaration is based upon records that were made in the regular course of the servicer's business at or near the time of the events recorded. The bill would have allowed for the borrower to seek a court injunction until there was compliance with the requirements and failure to comply constituted grounds for the borrower to pursue, post trustee sale, the greater of treble actual damages or extensive statutory damages. If title had been transferred to the foreclosing party at a trustee sale, the borrower could bring an action to void the foreclosure sale. **CMBA opposed SB 1275, and it died on the floor of the Assembly.**

2009

SB 36 – California SAFE Act Mortgage Loan Originator Requirements

The primary focus of SB 36 (*Chapter 160, Statutes of 2009*) was to implement at the state level the requirements of the new Federal SAFE ACT. The Federal SAFE Act requires states to have in place a system to license individual mortgage loan originators. Under the new requirements, employees of Residential Mortgage Lender Act licensees and employees of California Finance Lenders Law licensees who intend to act as a mortgage loan originator must obtain a mortgage loan originator license. Real estate licensees are required to obtain a license endorsement before conducting business as a mortgage loan originator. Applicants need to complete pre-licensing education approved by the Nationwide Mortgage Licensing System and Registry (NMLSR), pass a written test developed by the NMLSR and administered by an approved provider and complete continuing education annually. Applicants are required to submit specified background information and meet specified requirements. There are also restrictions if an applicant has been convicted of a felony or pled to a felony. **CMBA worked with the author and proponents of the bill to help ensure that the bill requirements were consistent with Federal statute and were workable for market participants**.

SB 94 – Mortgage Loan Modification Advance Fees

SB 94 (Chapter 630, Statutes of 2009) prohibited any person who attempts to or actually negotiates, arranges, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower in regard to a residential mortgage loan from: (1) Demanding or receiving any compensation until after the services contracted for are performed; (2) Requiring any security as collateral for final compensation; or (3) Taking a power of attorney from a borrower. The bill also required a

specified notice to be provided to the borrower. **CMBA worked with the author and proponents of SB 94 to craft amendments creating an exemption from the notice if the person (or an agent of the person acting on the person's behalf) is offering the modification or forbearance service for a loan owned or serviced by that person**.

AB 260 – High Priced Mortgage Loans

AB 260 (*Chapter 629, Statutes of 2009*) creates new restrictions for "higher-priced mortgage loans." The bill's provisions include: prepayment penalty limitations for higher-priced mortgage loans; restrictions on mortgage brokers including restrictions on their compensation when arranging higher-priced mortgage loans containing prepayment penalties; a prohibition on higher-priced mortgage loans that contain a provision for negative amortization; a limited right to cure as specified for higher-priced mortgage loans that are not in compliance with specified requirements; the ability for state regulators to enforce specific federal laws/regulations, such as RESPA, HOEPA, TILA, etc.; an express fiduciary duty on licensed persons who are providing mortgage brokerage services for residential mortgage loans; and penalty provisions for violations of the higher-priced mortgage loan law.

AB 1160 – Residential Mortgage Foreign Language Translations

AB 1160 (*Chapter 274, Statutes of 2009*) applies a foreign language translation requirement for a supervised financial organization if it negotiates a loan secured by residential real property primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean. It required the Department of Financial Institutions and Department of Corporations to create a boilerplate translation form to be made available in each of the five languages and allows them to use the United States Department of Housing and Urban Development's Good Faith Estimate disclosure form as the basis for the new translation forms. The translation form must be provided to the borrower no later than three business days after receipt of the written application, and if any of the loan terms summarized materially change after provision of the translation but prior to the consummation of the loan, an updated version of the form must be provided to the borrower. The measure also specified an operative date of July 1, 2010, or 90 days following the issuance of the new translation form, whichever occurs later. **Key negotiation points for CMBA were that the translation would only be required if the loan was actually negotiated in one of the specified languages and that the state must provide a boiler plate statutory form that could be used for the translation, thereby ensuring that the institution was not sued later with allegations that the translation was not accurate or did not cover all of the relevant details**.

AB 1588 – Mandated Monitored Mortgage Workout Program

AB 1588 would have created the Monitored Mortgage Workout (MMW) Program administered by the California Housing Finance Authority (CHFA). It would have been a mandated program applying to all residential real estate property where a notice of default (NOD) is sent. It would have required that a NOD include a separate notice advising the borrower about the right to participate in the MMW Program. Any borrower receiving a NOD would be eligible to participate in the MMW Program and if the borrower elected to participate, CHFA would select a monitor to oversee the workout program. Once the MMW Program has been initiated, no further steps could be taken to foreclose until the MMW Program had been completed. The monitor was required to prepare a loan modification proposal, and if the trustee rejected the monitor's proposal or the monitor determined that the trustee had failed to meaningfully participate in the MMW Program or had acted in bad faith, the bill would have allowed the borrower to institute an action in superior court to enforce the proposal. **CMBA opposed AB 1588, and it died in the Assembly**.

2008

AB 2740 - State Regulation of Mortgage Loan Servicing

AB 2740 originally contained very prescriptive language for state licensed/chartered lenders servicing mortgage loans, including restricting fees that can be charged in a serviced mortgage to only three fees, interest, NSF and late fees. The language strictly regulated collateral insurance on serviced mortgage loans and would have created comprehensive new rules on the resolution of customer disputes. Facing strong opposition, all of this language was deleted from the bill and new language was added that closely tracked the servicing language that passed in North Carolina in 2007, HB 1374. As amended the bill included mortgage servicing language defining how escrow accounts are treated, stating when and how fees can be assessed and identifying the information that must be provided to a borrower upon written request and creating new penalties for violations. **CMBA opposed AB 2740 because it would have created new burdens and costs for California borrowers and because it would have diminished the desire of investors to acquire California originated mortgages. The bill died in the Assembly**.

AB 2359 – Secondary Market Investor Liability

AB 2359 originally would have deleted exemptions from liability for a mortgage assignee that is a holder in due course and the exemption for persons chartered by Congress to engage in the secondary mortgage market. It would have made any subsequent holder or assignee of specified mortgage loans subject to all affirmative claims and any defenses with respect to the loan that the consumer could assert against the creditor who originated the loan. **CMBA opposed AB 2539 because of the negative impact it would have on the California mortgage secondary market, and the bill died in the Senate.**

SB 1137 - Residential Mortgage Loans Pre-foreclosure Procedures

SB 1137 (*Chapter 69, Statutes of 2008*) provides a good example of CMBA working with consumer groups and policy makers to develop new processes to reach out to homeowners prior to foreclosure to provide them with additional information on the foreclosure process and to continue efforts to avoid foreclosure where possible. **The final version of the bill reflected extensive negotiations to remove the most onerous provisions of the original proposal and to create as workable as possible pre-foreclosure notice process.** Bill provisions include requiring a borrower be contacted for a meeting to occur 30 days prior to filing a notice of default to discuss potential alternatives to foreclosure. Any subsequent notice of default must include a declaration that the borrower has been contacted or that due diligence has been completed in attempts to contact the borrower. These provisions only applied to residential real property loans made between Jan 1, 2003 and Dec 31, 2007. The bill also provided for additional notices to tenants of foreclosed properties and created new requirements for the maintenance of foreclosed properties to protect impacted neighborhoods.

Pre-2008 Significant Legislative Action

California Residential Mortgage Lending Act

CMBA sponsored legislation that established the California Residential Mortgage Lending Act, which for the first time established a California lending law specifically designed to license residential mortgage lending. The California Residential Mortgage Lending Act was enacted in

1996 in order to provide mortgage bankers and state regulators with a licensing law and regulatory scheme intended to regulate the originating and servicing of mortgage loans.

Resolution of Reconveyance Litigation Exposure

CMBA lead a successful effort to pass legislation, in spite of vigorous opposition from the trial bar, abrogating the holding in the case of Bartold v. Glendale Federal Bank. In Bartold, the court concluded that lenders were required to process a request for reconveyance the same day that a loan was satisfied. This case created an immediate litigation exposure for the mortgage industry in excess of $5 billion.

Combating Predatory Lending

CMBA took a leadership role in working with consumer group representatives, other industry segments and lawmakers in 2001 to put in place Division 1.6 of the Financial Code, which created a comprehensive new mechanism to combat predatory lending practices by imposing new restrictions and conditions on covered loans where consumers are in the most need for additional protections. This predatory lending law balanced the competing needs of making mortgage capital available to a broad segment of California consumers and combating unfair, deceptive or illegal lending activities.