

# Commercial Law Update: The Latest in Lending

## 2019 Bank Counsel Seminar

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Moderator: Steven Bloom, Shareholder, Frandzel Robins Bloom & Csato, L.C.

### I. **LIBOR: Is This The End? What Next?**

- A. Current alternatives being considered
- B. What should banks be addressing in their dealings with customers
- C. Operational issues in connection with the end of LIBOR
- D. Implementation Issues

### II. **Default Interest / Late Charges: When Do They Become Unconscionable?**

- A. Current state of the law
- B. Civil Code § 1671: factors considered in determining unconscionability
- C. Drafting Considerations in Loan Documentation

### III. **Hemp/Cannabis: Rewards And Risks**

- A. The Agricultural Improvement Act of 2018: the legalization of hemp and what it means to banking
- B. Private banks and cannabis: where we are today, what may happen in the future, and how may it impact commercial banks
- C. Banking MRBs: existing customers v. new customers

IV. **Lender Liability For Wrongful Foreclosure**

- A. Recent evolution of wrongful foreclosure litigation in California
- B. New cases and lessons to be learned
  - *Turner v. Seterus* 27 Cal.App.5<sup>th</sup> 528
  - *Hacker v. Homeward Residential* 26 Cal.App.5<sup>th</sup> 270
  - *Brown v. Superior Court* 19 Cal.App.5<sup>th</sup> 1208
  - *Hart v. Clear Reconveyance Corp* 27 Cal.App.5<sup>th</sup> 322
  - *Citrus El Dorado v. Chicago Title* 32 Cal.App.5<sup>th</sup> 943
  - *Saccameno v. Ocwen* 372 F. Supp. 3d 609
- C. Statutory foreclosure protections extended

V. **Lending Potpourri**

- A. Lending to Receivers: beware of recent *Sierra Madre v. SunTrust Mortgage* case awarding superpriority lien for substandard housing repairs
- B. 9<sup>th</sup> Circuit adopts Lender's position and adopts a "sliding scale of deception" in *CFPB v. CashCall* (this is not fake news)
- C. Guaranty waiver language parsed by USDC CA to eviscerate lender's rights