Joffrey Long, Private Money Expert Witness: Made or Arranged by a Broker?

Exemption from Usury: Loans Made or Arranged by a Licensed Real Estate Broker

Joffrey Long

NEWPORT BEACH, CA, UNITED STATES, April 13, 2020 /EINPresswire.com/ -- When private money real estate loans are made at interest rates that exceed the usury limits, they're generally made, or believed to have been made, under some exemption from California's usury law. If a loan is made or arranged by a licensed real estate broker, it may be exempt.

In recent years, the interest rates and costs have declined on loans made with "non-bank" funds, classified as "hard money." Expert witness testimony regarding whether or not a loan was made or arranged by a broker was not often required as fewer disputes existed in a stronger real estate market with fewer loan defaults and with interest rates that did not even require any exemption from usury.

The market changes:

In the "Covid-19" environment and related economic downturn, there's an increased need for loans. A number of the sources and investors for private money loans are no longer lending. Most "Wall Street-Backed" hard money lenders are out of the market, unable to determine what property may be worth or what yields are appropriate. Many individual, private money trust deed investors have taken a "wait and see" approach and are not buying or investing in loans because of the economic downturn and uncertainty about a changing investment landscape.

> "More borrowers will challenge whether or not their loan was exempt from usury."
>
> *Joffrey Long*

Rates go up…………"Usury" returns.

With a reduced supply of capital and increased demand for loans, hard money interest rates will increase, with more loans made at rates above usury limits. With higher interest rates and an increase in the number of defaults due to the downturn, more borrowers will challenge whether or not their loan was exempt from usury.

The disputes:

Real estate loans fall somewhere on a scale between having the clear agreement of all parties that the loan was "made or arranged by a broker," to situations where no broker was in sight or involved when the loan occurred. In disputed cases, somewhere between the two extremes noted, lenders or loan originators claim the transaction was arranged by a broker and was therefore exempt from usury, while the borrower argues that a broker did not sufficiently arrange the hard money lending.

Expert witness testimony may often assist the triers of fact in understanding industry practices and what particular aspects of a transaction indicate how the loan was originated. In private money lending, (also referred to as "hard money lending") there are different types of loans, different methods of loan delivery and funding, and numerous different borrower situations. There is a great variety in lenders, types of real estate loan brokers, other loan originators, private trust deed investors and other participants in real estate financing. Because the majority of these loans are not made by large institutions, there are large inconsistencies in loan terms, interest rates, treatment of collateral, documentation, and the ultimate servicing of the loans. Unlike what exists in conventional, institutional lending where loans that are sold to FNMA/FHLMC or to other large secondary market participants, there is little education or training available as to how private money loans are originated.

On both sides of the conflict, there are similarities as to what borrowers and lenders will allege, why transactions may not be completely clear, and in many cases, key factors that can be relied upon to clearly explain the transaction to the triers of fact. Some real estate lending topics that require the testimony of a mortgage expert witness are not only complex for a jury to understand, but may be difficult to listen to. Thankfully, the “made or arranged by a broker” cases tend to center around concepts that are easier to grasp, may be more interesting, and when presented clearly, are easier to focus on than other topics.

Joffrey Long
Southwest Bancorp
818-635-1777
email us here
