

# Mortgage Expert Witness: Joffrey Long, the Expert Report

*The Private Money Expert Witness Report*

GRANADA HILLS, CA, UNITED STATES, December 22, 2020 /EINPresswire.com/ -- In mortgage litigation related to private (hard) money lending, expert witness reports may be required or useful. In certain Federal Court cases, a comprehensive expert witness report is required when designating an expert witness.

Expert reports are generally not required in California State Courts at the time of expert disclosure. In State Courts, where they are primarily referred to as declarations, they may be used as supportive documentation when filing motions for summary judgement or other with other filings, where appropriate.



Joffrey Long

## OTHER REASONS:

Expert reports or declarations are often helpful in assisting the parties in reaching settlement of their dispute. First, merely educating the parties as to the making, arranging, and servicing of loans by private money lenders may assist the parties in better understanding the strength of their own and of the opposing party's position in the matter, making them more likely to reach settlement.



Expert witness reports must be prepared carefully and with awareness they may be read in the expert's absence."

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The expert report may be very helpful to opposing counsel in several respects:

- Providing opposing counsel with the expert's qualifications, information about his/her involvement in the matter, and a list of their opinions, prior to expending the time, preparation, and expense of the deposition of the

expert

- Giving opposing counsel sufficient time, after reading the expert's report or declaration and in advance of any deposition, to consider questions to be asked of the expert

- Enabling opposing counsel to better evaluate their client's case and better advise the client about settlement demands, possibly leading to resolution of a dispute related to mortgage lending.

#### REPORTS THAT WORK:

Expert witness reports and declarations must be prepared carefully. As written documents submitted to courts or arbitrators, they clearly articulate opinions and sources of information. Often, they are relied upon by the triers of fact – when the expert is not there to explain.

In many cases, opposing counsel may “pick apart” the report, in an effort to discredit the expert witness and his/her testimony.

Regardless of the extent of an expert's knowledge or how carefully a report may be prepared, experts must keep in mind that not all of it may be read. The writing should be sufficient to express the opinions and on what they were based, but reports should also be written with consideration of the extent to which the reader will review and be able to understand the report.

Reports and declarations provided by a [mortgage expert witness](#) may contain, among other items:

- A brief summary of the qualifications of the expert
- A statement describing the court or arbitration case, an indication of the expert's retention in the matter and by which party or parties they are retained and a statement describing the expert's assignment in the matter
- A list of items reviewed including, but not limited to exhibits, depositions, pleadings, any recordings, reports from other experts or related parties, and any rulings already issued by the court or arbitrators

#### PRIVATE MONEY LENDING SPECIFICS:

In legal disputes related to loans made related to private investments in whole loans or in [fractionalized trust deeds](#), expert witness reports may often relate to matters such as the investments made, the loans originated, the interactions with borrowers, the disclosures made, and the licenses, permits, or exemptions under which different loans were made, as well as other aspects of hard money lending.

#### PROBLEMS IN REPORTS:

Expert witness reports should be clearly worded to reflect opinions of the expert and on what the opinions are based. Certain statements in expert witness reports or declarations may be damaging to the expert's credibility. For example:

Statements of fact that the expert would have likely been unable to know: “Mr. Montez knew that providing this loan to the Martins would cause them to default.”

It would be impossible for an expert, under any ordinary circumstances, to know what someone knew in the past. The statement the "this loan...would cause [ the Martins ]to default," is also something the expert would not have known. A similar statement or statements could have been worded to fit within the limits of the information available to the expert and their expertise. Once an expert states a fact that they couldn't have known, the remainder of the report may be called into question.

Assumptive statements: "It was obvious that the Laguna Project was meant to be a speculative investment."

Obvious to whom? And how does the expert know what the party's intentions were or what anyone "meant?" Again, experts must limit themselves to what they are able to know or to opinions based on what they have reviewed or know from experience.

Advocacy statements or statements that clearly show the expert is on the side of one of the parties: "Karen Masters was clearly working against Mr. and Mrs. Belson from the start. She did everything she could to mislead the Belsons."

Again, unless the expert can point to specifics, it is NOT clear what Ms. Masters was actually doing. Further, what does "working against" mean? Specific actions could be contrary to the interests of Mr. and Mrs. Belson, but the expert's appearing to "clearly have determined that one party is wrong" reduces the perception of impartiality. Last, the expert should be careful about referring to the "interests of Mr. and Mrs. Belson," unless they can demonstrate how they know what those interests were or on what assumptions their opinion is based.

Slang: "The loan servicing company continued to stonewall the borrowers." Stonewall? What does that mean? And, unless the expert can point to specific events of whatever "stonewalling" activity the servicer was engaged in, the statement is left open for opposing parties to pick apart.

Legal opinions: "This clearly violated the Truth in Lending Act." Judges are generally not of the opinion that they need a legal expert. They already know one for whom they have the greatest respect. The same issue that did "violate the Truth in Lending Act" could be expressed by the expert in a manner that would prevent it from sounding like a legal opinion.

#### A WORD OF CAUTION:

Generally, attorneys will discuss the possibility of a report with an expert before any preparation begins, and in some cases, I've been specifically instructed not to prepare one until requested. Further, experts may consider discussing carefully the areas that should be covered in the report and the procedures to be followed regarding incomplete drafts, questions that arise during preparation, and the timeline for completion of the report.

#### A GRAND MOMENT:

When an expert report or declaration is completed, it's usually a satisfying experience for an expert. One sees their opinions, the supportive information, and the description of documents, depositions, and other materials that were reviewed. It tends to summarize what is often a large body of work into one visible document.

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