

Private Money Lending: Expert Witness Joffrey Long Explains Areas of Testimony

Testimony Regarding the Mortgage: Expert Witness Joffrey Long Explains

NEWPORT BEACH, CA, UNITED STATES, December 21, 2020 /EINPresswire.com/ -- In legal cases involving private (hard) money lending, expert witness testimony often assists judges, arbitrators, and juries in reaching conclusions about cases. In addition, such testimony may be helpful in depositions, allowing the parties to better evaluate the case for settlement through some of the statements from the private money expert witness.

In real estate lending, specifically the area of private money lending, there are different types of mortgage litigation disputes. There are seven types of cases that are most frequent at this time. They include:

* The "business-purpose" fraud allegation: In this case, a loan originator or lender claims to have arranged or made a loan based on the business purpose exemption. (www.BusinessPurposeExemption.com) Where a lender making a real estate loan for consumer purposes, depending on the collateral, may be required to document the borrower's ability to repay, some loans may be exempt from this requirement if they are for business purposes. In the disputes, borrowers may indicate that the loan was actually for consumer purposes, while originators and lenders may take the position that they believed the loan was for business purposes. Trying these cases requires extensive knowledge, not only in the related laws, but in the specific industry practices in this complex area.

* Claims by defrauded property owners or lienholders and often, title insurers, that a loan was made negligently and that an appropriate investigation of the loan would have lead to the discovery of the fraudulent transaction. On one side, parties will allege that the nature of private money lending doesn't require extensive scrutiny of a loan, while the opposing parties state that any amount of investigation of the loan was below what any reasonable individual or organization would have completed.

* Charges, costs, and loan terms: In these matters, borrowers dispute all or part of the loan terms as unreasonable. Default interest rates are often an area of dispute. Claims are made regarding a lack of disclosure of the default interest rate, inappropriate charging of the rate, or a lack of a relationship between the default interest rate and any damages to the lender as a result of the default. Other issues relate to interest rates and penalty charges of various types.

* Was the loan made or arranged by a broker? Usually attempting to take advantage of the exemption from usury for real estate loans made or arranged by a licensed real estate broker, parties will claim that a loan was so arranged. In some cases, any real estate broker's involvement in the matter may have been less than what one would fully expect of a broker.

In these matters, careful analysis of the broker, their involvement in the transaction, their relationship with the parties, and the relationship between the borrowers and lenders may be considered.

* Are you MY broker? -agency issues. Here, claims by borrowers that brokers or others owed a duty to them and failed to meet those requirements are contrasted by claims from lenders and loan originators, either that the borrower didn't understand that someone wasn't their agent or that the individual didn't live up to their duties as the borrower's agent or lender's agent. In addition, dual-agency issues are disputed where more than one party to a transaction is represented by one intermediary and one or more of the parties claims they didn't understand the dual agency arrangement. Another "agency" case is the case where a broker is acting as a lender/principal, lending their own money. In these cases, disputes arise over whether or not the borrower understood that the funds they were borrowing were the property of the broker.

* Private Money Investors: Often investors in private (hard) money loans and in [fractionalized trust deeds](#) enter into disputes with the broker, fund manager, or other sponsor that provided the investment, indicating that a loss could have been prevented, had the investment sponsor made a more careful investigation into the potential loan, performed more stringent underwriting, made better disclosures to the prospective investor, or had adequately considered the investor's circumstances when offering them a specific trust deed investment. Expert witness testimony is often required in these matters, to help understand the standard practices in assessing risk and offering trust deeds to private money investors.

* The loan servicing dispute: In these matters, there are conflicts between borrowers or trust deed or investors and a loan servicer. There are also disputes related to loan servicing, involving lenders who "self-service," or service loans on behalf of themselves. Some loan originators continue to service loans after selling them to investors, which may give rise to conflicts. In loan servicing, disputes arise over payments made, loan modifications offered, communication during the foreclosure process, and allegations from trust deed investors that a loan servicer's actions contributed to a monetary loss.

There are many other types of disputes in the field of private money. Hopefully, this article has provided you with a useful look at some common types of disputes.

Joffrey Long
Southwest Bancorp
+1 818-635-1777

[email us here](#)

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