



Monthly Bulletin

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Information Required from State-Chartered Banks Intending to Bid on Failing Institutions

The Department of Financial Institutions (DFI) as primary regulator is required to provide clearance to the Federal Deposit Insurance Corporation (FDIC) for bank licensees wishing to submit a bid to FDIC as potential receiver on failing institutions. For state-chartered institutions interested in obtaining clearance from DFI to submit a bid, the following information is required to be filed with the Department:

1. A letter describing the proposed transaction, including the premium proposed to be paid and branches proposed to be acquired/retained;
2. A pro-forma consolidating balance sheet showing the impact upon capital ratios as a result of the acquisition;
3. A copy of the board resolution showing that at least two-thirds of the directors voted in favor of authorizing the proposed transaction; and
4. A copy of the Bid Form submitted to FDIC, when available.

Should the licensee be the successful bidder, the following post successful bid information should be filed with the Department:

5. An executed purchase and assumption agreement for our records;
6. A preliminary list of branches the successful bidder will open immediately following the take-over; and
7. When the determination is made within 90 days of the takeover, a final list of branch and facility offices of the failed bank that the successful bidder will permanently maintain with the requisite fees pursuant to Financial Code Section 506.

The required information should be sent to the Assistant Deputy responsible for your institution. Should you have any questions concerning these procedures, please contact Chief Examiner Craig Carlson at 619-682-7222 or ccarlson@dfi.ca.gov.

Outreach to Licensees Regarding Unlawful Influence of Appraisers

California Business and Professions Code section 11323 provides that no appraiser licensed by the Office of Real Estate Appraisers shall engage in any appraisal activity if the licensee's commission is contingent upon the conclusion generated by the appraisal. Similarly, California Civil Code section 1090.5, subdivision (a), provides that "No person with an interest in a real estate transaction involving an appraisal shall improperly influence or attempt to improperly influence, through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan."

To further restrain undue influence upon appraisers, Civil Code section 1090.5, subdivision (c) provides, "If a person who violates this section is licensed under any state licensing law and the violation occurs within the course and scope of the person's duties as a licensee, the violation shall be deemed a violation of that state licensing law."

It is the jointly held intention of the Commissioners of the Department of Real Estate (DRE), the Department of Corporations (DOC), the Department of Financial Institutions (DFI), as well as the Director of the Office of Real Estate Appraisers (OREA), to provide outreach to their respective licensees for the purpose of informing those licensees that the following acts may constitute evidence of a violation of California law, and Civil Code section 1090.5 in particular, and should be avoided when engaging the services of a licensed real estate appraiser. Such informative outreach will be included in bulletins, newsletters, brochures, or other forms of communications issued by DRE, DOC, DFI, and OREA. The acts include:

- withholding or threatening to withhold timely payment or partial payment for a completed appraisal report, regardless of whether a sale or financing transaction closes;
- withholding or threatening to withhold future business from an appraiser, or demoting or terminating or threatening to demote or terminate an appraiser;
- expressly or impliedly promising future business, promotions, or increased compensation for an appraiser;
- conditioning the ordering of an appraisal report or the payment of an appraisal fee or salary or bonus on the opinion, conclusion, or valuation to be reached, or on a preliminary value estimate requested from an appraiser;
- requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report prior to the completion of the appraisal report, or requesting that an appraiser provide estimated values or comparable sales at any time prior to the appraiser's completion of an appraisal report;

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- providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;
 - requesting the removal of language related to observed physical, functional or economic obsolescence, or adverse property conditions noted in an appraisal report;
 - providing to an appraiser, appraisal company, appraisal management company, or any entity or person related to the appraiser, appraisal company, or appraisal management company, stock or other financial or non-financial benefits;
 - allowing the removal of an appraiser from a list of qualified appraisers, or the addition of an appraiser to an exclusionary list of disapproved appraisers, used by any entity, without prior written notice to such appraiser, which notice shall include written evidence of the appraiser's illegal conduct, a violation of the Uniform Standards of Professional Appraisal Practice (USPAP) or state licensing standards, substandard performance, improper or unprofessional behavior or other substantive reason for removal;
 - ordering, obtaining, using, or paying for a second or subsequent appraisal or automated valuation model (AVM) in connection with a mortgage financing transaction unless: (i) there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or (ii) such appraisal or AVM is done pursuant to written, pre-established bona fide pre- or post-funding appraisal review or quality control process or underwriting guidelines, and so long as the lender adheres to a policy of selecting the most reliable appraisal, rather than the appraisal that states the highest value; or
 - any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, or impartiality or violates law or regulation, including, but not limited to, the Truth in Lending Act (TILA) and Regulation Z, or the USPAP.

While the above list is illustrative of acts that may be evidence of violations of the prohibitions against undue influence contained in Business and Profession Code section 11323 and Civil Code section 1090.5, it is not exhaustive. It is, however, intended to alert licensees of practices that could potentially lead to disciplinary action.

In addition to the above, licensees of DRE, DOC, DFI and OREA will be informed that neither Civil Code section 1090.5 nor any other California code section prohibits a person with an interest in a real estate transaction from asking an appraiser to do any of the following: (1) consider additional, appropriate property information, (2) provide further detail, substantiation, or explanation for the appraiser's value conclusion, and/or (3) correct objective factual errors in an appraisal report.

Licensees of DRE, DOC, DFI, or OREA will also be cautioned through this outreach that a violation of Civil Code section 1090.5 is a basis for disciplinary action, which could result in the revocation of their State license(s).

DFI Will Close on First and Third Friday of Each Month Starting February 6, 2009

Pursuant to Governor Schwarzenegger's Executive Order S-16-08, the Department of Financial Institutions (DFI) will close its offices in Los Angeles, Sacramento, San Diego and San Francisco on the first and third Friday of each month, beginning February 6, 2009 and until further notice. This includes the DFI Consumer Services Office. All offices will reopen the following Monday during regular business hours.

DFI Closes 1st Centennial Bank

On Friday, January 23, 2009 the Commissioner of Financial Institutions took possession of 1st Centennial Bank, Redlands, CA and ordered that it be liquidated. The Commissioner appointed the Federal Deposit Insurance Corporation ("FDIC") as Receiver, and the FDIC accepted the appointment. The FDIC entered into a purchase and assumption agreement with First California Bank, Westlake Village, CA, to assume the insured deposits of 1st Centennial Bank.

DFI to Cease Filing the Group 990 Tax Returns for California State-Chartered Credit Unions

Due to significant changes by the IRS, the DFI will no longer file the Group Return for Credit Unions (Form 990 "Return of Organization Exempt from Income Tax"). Previously, as an accommodation to the state-chartered credit unions in California, particularly smaller credit unions, the DFI prepared and filed these returns.

The return's growing complexity, liability, and costs to the DFI led to the decision. Many other state credit union regulators have discontinued the group filing. Accordingly, each state-chartered credit union will be responsible for filing its own Form 990 beginning with the 2008 tax year.

February is *Go Direct*/Direct Express Month

February is [Go Direct/Direct Express Month](#) – the best time of year to call attention to the safety and convenience of electronic payments for senior citizens, people with disabilities, veterans and others who get federal benefit checks.

The campaign has created tools your organization can use to spread the word about electronic payments:

For Financial Institutions

- [Go Direct Month Overview](#) – provides a short overview of how you can get involved
- [Newsletter copy](#) – short customizable newsletter articles that you can use in your internal and external printed or online publications
- [Statement insert](#)

- [Statement message](#)
- [Teller reminder messages](#)
- [Branch communication kit](#)
- [Teller tip sheet](#)
- [Poster](#)
- [Web banner](#)

You can [order additional materials](#) by contacting a *Go Direct* campaign representative at (952) 346-6055 or GoDirect@webershandwick.com.

Commercial Bank Activity

Acquisition of Control

Dante Benedetti, to acquire control of Exchange Bank
Filed: 12/3/08

Grace Cosentino, Louie Cosentino, Anthony Cosentino and Nella Cosentino Cantania, to acquire control of Pacific Valley Bank
Filed: 12/9/08
Approved: 1/9/09

Premium Finance Company Activity

New Premium Finance Company

Seaway Premium Finance Company
500 N. State College Boulevard, Orange, Orange County
Approved: 1/15/09

Acquisition of Control

BB&T Corporation to acquire control of Charleston Premium Finance Company of California, Inc.
Approved: 12/30/08

Voluntary Surrender of License

Allied Premium Finance Co., Inc.
Effected: 1/14/09

Credit Union Activity

Merger

1st United Federal Credit Union, San Jose, to merge with and into the Golden 1 Credit Union, Sacramento

Effected: 8/29/08

Ocha Credit Union, Orange, to merge with and into Pacific Community Credit Union, Fullerton

Effected: 12/1/08

Transmitter of Money Abroad Activity

Voluntary Surrender of License

JOM Corporation

Effected: 1/5/09

Orlandi Valuta, Inc.

Effected: 12/23/08

Vigo Remittance Corporation

Effected: 12/23/08

Change of Name

BANIF & Comercial dos Acores, Inc. to change its name to BANIF ACORES, INC.

Effected: 11/14/08

Express Padala (USA), Inc. to change its name to BDO Remittance (USA), Inc.

Effected: 10/22/08

Issuer of Payment Instrument Activity

Voluntary Surrender of License

Vigo Remittance Corporation
Effected: 12/23/08

WILLIAM S. HARAF
Commissioner of Financial Institutions

Bulletin for Month ended
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to Financial Code section 258



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