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[COMMERCIAL LENDING UPDATE]

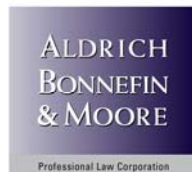
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NEW LEGAL ENTITIES IN CALIFORNIA: FLEXIBLE PURPOSE CORPORATIONS AND BENEFIT CORPORATIONS

Effective January 1, 2012, California law recognizes two new corporate entities, the flexible purpose corporation (FPC) and the benefit corporation (BC). These entities have greater flexibility in combining profitability with certain social or environmental purposes and are better shielded against lawsuits by shareholders or investors when undertaking certain social or environmental activities that may negatively impact a company's financial status. The company's status as a FPC or BC, and any specific social or similar purpose, will be stated in its articles of incorporation. When making loans to these new entities (or establishing accounts), financial institutions will want to obtain proper documentation to establish the identity of the corporation and their authorized representatives. Fortunately, the same rules regarding corporate resolutions and management powers that apply to traditional corporations also apply to FPCs and BCs.

REVISIONS TO NOTICE OF SALE FORMS

Effective April 1, 2012, lenders must include additional information in notices of sale given in connection with a deed of trust or mortgage secured by real property containing a one- to four-unit dwelling, even if the loan is a non-consumer purpose loan. The notice of sale must include information describing the risks involved in bidding on property at a trustee's sale, and inform the property owner of how it can obtain information regarding any postponement of the foreclosure sale. This information can be made available on the institution's website, via a telephone recording that can be accessed 24 hours a day, seven days a week or through other means that provide updated information 24/7. The notice requirements must be satisfied with the use of prescribed language set forth in the statute. California Civil Code Section 2924f. Lenders should update their notice of sale forms accordingly. Contact the law firm if you need assistance.



The Banking and Business Law Firm

www.abmlawfirm.com ■ 949.474.1944

18500 Von Karman Ave., Suite 300, Irvine, California 92612

Authors: Mark E. Aldrich, Esq. and Eric G. Baron, Esq.

DOJ AGGRESSIVELY PURSUING CALIFORNIA MARIJUANA DISPENSARIES AND THEIR LANDLORDS, LENDERS.

It has long been known that the California laws permitting the sale of medicinal cannabis in dispensaries are in direct conflict with applicable federal law. In June 2011, the Department of Justice (DOJ) sent a memo to the U.S. Attorneys warning of the federal government's intention to shut down illegal marijuana operations. Since then, the DOJ has been actively going after dispensary operations in many ways. This includes not only the dispensaries themselves, but also their lenders, landlords, and their landlord's lenders, threatening property seizure and forfeiture, among other things. While certain protections against seizure and forfeiture are available to innocent interest owners (e.g., deed of trust beneficiaries) with no knowledge of the illegal activity, a lender that consents or acquiesces to the illegal activity might not be protected. Given this uptick in activity, financial institutions are encouraged to review their lending relationships, including loans secured by retail space, to ensure that their borrowers and their borrowers' tenants are not engaged in any illegal activity that might pose legal or credit risk to the lender. In addition, Suspicious Activities Reports (SARs) might have to be filed if such activities are discovered.

OCC ISSUES GUIDANCE ON POTENTIAL ISSUES WITH FORECLOSED PROPERTIES

The OCC issued in December 2011 guidance for national banks and savings associations regarding the management of foreclosed residential properties. The guidance also serves as "best practices" guidelines for other types of financial institutions (e.g., credit unions and state-chartered banks) and for the management of other types of foreclosed properties (e.g., commercial or industrial). The guidance reminds institutions to consider the risks involved as owner of the properties, as servicer, property manager or even as securitization trustee.

Institutions are expected to establish robust policies and procedures to address risks associated with foreclosed (or soon to be foreclosed) properties, including operating risk (e.g., market valuation issues), compliance risk and reputation risk. Such risks must be identified and controls established in the institution's policies and procedures.

In particular, the guidance encourages institutions to consider the cost of maintenance and security, taxes, insurance, and acting as landlord for rental properties. In addition, institutions should communicate with localities and homeowner associations about specific requirements with respect to foreclosed properties (such as upkeep, notice or other requirements). For example, with commercial loans, some institutions have inadvertently violated local ordinances and incurred substantial fines by failing to register as the new owner of foreclosed gas stations or other properties containing underground storage tanks or hazardous chemicals. Also, for FHA-insured mortgages, the institution must ensure compliance with property and preservation guidance issued by HUD.

The guidance also reminds institutions to record their ownership interest in local land records, comply with OREO appraisal and accounting requirements, maintain insurance on the property and comply with applicable tenant protection laws. The board of directors and management must ensure that foreclosed properties are administered in a safe and sound manner and in compliance with laws, even if such properties are managed by third parties. Finally, institutions should comply with regulatory limitations on the ownership of real estate, such as disposition requirements or bank powers limitations on real estate investments.

The guidance can be found at <http://www.occ.treas.gov/news-issuances/bulletins/2011/bulletin-2011-49.html#>.