FRANDZEL

QUARTERLY PROPHETS

LEGAL TRENDS & DEVELOPMENTS AFFECTING THE FINANCIAL AND BUSINESS COMMUNITIES

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EDITOR'S INTRODUCTION

For our final 2016 edition of Quarterly Prophets we have curated an eclectic collection of interesting legal articles for our readers. Bob Benjy's article ponders the risks of lending to cannabis businesses in light of California's legalization of both medicinal and recreational marijuana. Christopher Crowell's article considers new case law concerning available remedies for wrongful residential foreclosures. We round off this edition with Morgan Petriello's article concerning the burgeoning area of Americans with Disabilities Act lawsuits arising from website accessibility issues. As always, we hope you find this edition informative and insightful and we wish all of our readers happy holidays and a successful New Year.

Taking a Hit

The Federal Government's New, More Relaxed Approach to Financial Institutions Operating in the Legalized Marijuana Sector

By BOB BENJY

Today, California and twenty-four other states, plus the District of Columbia, have legalized marijuana usage in some form or another. Of those, four states have went as far as legalizing marijuana for recreational use. In fact, on November 8 California will vote to legalize recreational use – a measure that is expected to pass with 60% of likely California voters supporting recreational legalization. If passed, the California measure is estimated to grow California's cannabis industry from $2.7 to $6.6 billion. There is a lot of money at stake and the marijuana industry desperately needs banking services, both lending and depository in nature, to support its rapid growth. Until only a few years ago, however, the federal government was vehemently opposed to state legalization and relied upon strong arm legal tactics to dissuade banking institutions from indirectly supporting the industry. Slowly but surely, however, the federal government's hard line position is starting to soften. This article is intended to provide a summary of recent developments in the murky green water of the legalized marijuana industry.

A Historical review

Under the federal Controlled Substances Act (CSA), marijuana is categorized as a Schedule 1 substance meaning that it has no currently accepted medical use and the potential to create severe psychological and/or physical dependence. State legalization of cannabis has given rise to an explosion of marijuana related businesses (MRBs), including edible products manufacturers, ancillary products manufacturers (e.g. vaporizers, pipes) and medicinal, non-profit dispensaries. During the earlier part of this decade, in an effort to counter the proliferation of MRBs, the U.S. Department of Justice (DOJ) began using its civil forfeiture powers to sue landlords and their lenders, seeking an award of title to the real property collateral free and clear of lenders' lien(s). The policy in doing so was to discourage leasing to MRBs and also discourage lenders from taking real property collateral which the lender knew or should have known was being leased to an MRB. Since mid 2013, however, the federal government has started to adopt a gentler and more practical approach, generally accepting the legalization of cannabis and leaving enforcement to state authorities.

Cole Memo: Part 1

On August 29, 2013, James M. Cole, Deputy Attorney General at the DOJ, issued a memorandum providing "guidance in light of state ballot initiatives that legalize under state

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California Courts Clarify When Borrowers May Sue to Enjoin or Set Aside Residential Foreclosures Based On Alleged Defects in Loan Chain of Title

By CHRISTOPHER D. CROWELL

Residential borrowers in default often seek to enjoin foreclosures in state court as an alternative to filing bankruptcy and obtaining the protection of the automatic stay. Borrowers also frequently sue to set aside already-completed residential foreclosures. In either case, one of the most common theories of relief is that the foreclosing lender is or was not the holder of the beneficial interest in the deed of trust, usually because of an alleged defect in the loan's chain of title from the original lender to the foreclosing lender, and therefore lacks or lacked authority to foreclose. These actions, even when ultimately found to lack merit, can cause lenders significant delay and expense.

Helpful guidance

Two recent decisions, one from the California Court of Appeal and the other from the California Supreme Court, clarify when a borrower may sue to enjoin or set aside a residential foreclosure on the basis that the lender has or had no authority to foreclose, providing helpful guidance to foreclosing lenders facing litigious borrowers.

In *Lucioni v. Bank of America*, 3 Cal. App. 5th 150 (2016), a deed of trust securing a home loan was transferred to a securitized trust and thereafter assigned and transferred numerous times over many years. Following default by the borrower, the lender claiming to be the beneficiary of the deed of trust caused a notice of default to be recorded. In response, the borrower brought an action in California state court under Civil Code section 2924(a)(6), which provides generally that only the holder of the beneficial interest in the deed of trust, the foreclosure trustee, or the agent of either of the foregoing, may initiate a foreclosure. The borrower alleged that the assignment of the loan was void because of "numerous breaks and misrepresentations in the chain of title" and accordingly sought to enjoin the foreclosure.

The trial court sustained the lender's demurrer to the borrower's action, and the Court of Appeal affirmed, finding that the borrower did not and could not state a cognizable claim. The Court of Appeal began by noting that the California Homeowner's Bill of Rights (HBOR), enacted in 2012 in response to the wave of foreclosures following the 2008-2009 financial crisis, includes two provisions specifically providing for injunctive relief: Civil Code sections 2924.12(a)(1) and 2924.19(a)(1). These two sections permit courts to enjoin foreclosure at any time prior to recordation of the trustee's deed upon sale, where a borrower alleges a material violation of specified HBOR provisions. These specified provisions primarily deal with lenders' obligation to consider loan modifications or other foreclosure alternatives before proceeding with foreclosure and to provide borrowers with certain information and disclosures.

Provisions for lenders

These provisions, for example, generally require lenders who hold first lien deeds of trust on owner-occupied residential property with four or fewer units to (among other things): (1) contact the borrower to "assess the borrower's financial situation and explore options for the borrower to avoid foreclosure" and notify the borrower that he or she may request "[a] copy of any assignment … of the borrower's … deed of trust required to demonstrate the right … to foreclose" (Civil Code § 2923.55); (2) refrain from proceeding with foreclosure while a loan modification is pending (Civil Code § 2923.6); (3) establish a single point of contact at the lender for loan modification discussions (Civil Code § 2923.7); and (4) review "competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information" (Civil Code § 2924.17).

'Narrow and targeted'

The Court of Appeal noted that neither section 2924.12(a)(1) nor section 2924.19(a)(1) mentions section 2924(a)(6) (the provision the *Lucioni* borrower alleged was violated) and that the California legislature (in legislative reports adopted in connection with the passage of HBOR) indicated that (1) it intended the statute's enforcement mechanisms to be "narrow and targeted" and (2) the "only" pre-foreclosure remedy available to a borrower was to enjoin a violation "of the specified sections, along with any trustee's sale."

Based on this legislative history, and applying the general principle of statutory interpretation whereby "the expression of some things in a statute implies the exclusion of others not expressed," the Court of Appeal held that a borrower alleging a violation of section 2924(a)(6) (i.e., alleging that the foreclosing lender does not have the authority to foreclose) may not seek to enjoin the foreclosure on that basis.

Lucioni briefly distinguished the California Supreme Court's recent decision in *Yvanova v. New Century Mortgage Corporation*, 62 Cal. 4th 919 (2016). Just as in *Lucioni*, the *Yvanova* borrower alleged that the original lender's assignment of her note and deed of trust to the foreclosing lender was invalid. Unlike in *Lucioni*, however, the borrower in *Yvanova* brought suit under section 2924(a)(6)

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after the foreclosure was already complete. The trial court sustained the foreclosing lender's demurrer to the borrower's cause of action for wrongful foreclosure, and the Court of Appeal affirmed.

The California Supreme Court granted the borrower's petition for review and, finding for the homeowner, reversed the Court of Appeal. The Supreme Court framed the issue as follows: "In an action for wrongful foreclosure on a deed of trust securing a home loan, does the borrower have standing to challenge an assignment of the note and deed of trust on the basis of defects allegedly rendering the assignment void?" The Supreme Court answered that question in the affirmative, by drawing a distinction between void assignments (which are subject to challenge by borrowers) and assignments that are merely voidable (which are not).

'Standing' requirement

The California Supreme Court acknowledged that litigants generally may only assert their own rights in litigation (the so-called "standing" requirement) and that a borrower is neither a party to nor an intended beneficiary of an assignment of his or her note and deed of trust by the lender. But, according to the Supreme Court, cases holding on that basis that a borrower may never challenge an assignment of his or her loan in connection with foreclosure "paint with too broad a brush by failing to distinguish between void and voidable agreements."

The Supreme Court continued:

If a purported assignment necessary to the chain by which the foreclosing entity claims the power [to foreclose] is absolutely void, meaning of no legal force or effect whatsoever … the foreclosing entity has acted without legal authority by pursuing a trustee's sale and such an unauthorized sale constitutes a wrongful foreclosure [subject to challenge by the borrower.] When an assignment is merely voidable, the power to ratify or avoid the transaction lies solely with the parties to the assignment; the transaction is not void unless and until one of the parties takes steps to make it so. A borrower who challenges a foreclosure on the ground that an assignment to the foreclosing party bore defects rendering it voidable could thus be said to [impermissibly] assert an interest belonging solely to the parties to the assignment rather than to herself.

The California Supreme Court answered that question in the affirmative, by drawing a distinction between void assignments and assignments that are merely voidable

In addition to establishing the principle that a borrower may sue for wrongful foreclosure by alleging that the assignment of his or her loan was void, the California Supreme Court also rejected a number of arguments which other courts have sometimes relied upon in finding for the foreclosing lender in wrongful foreclosure actions. For example, the lender in *Yvanova* argued that the borrower lacked standing because, from the borrower's point of view, it should be irrelevant who is enforcing the debt, since the end result (i.e., foreclosure) is the same.

Not so, according to the Supreme Court:

The logic of [the] no-prejudice argument implies that anyone, even a stranger to the debt, could declare a default and order a trustee's sale – and the borrower would be left with no recourse because, after all, he or she owed the debt to someone, though not the foreclosing entity. This would be an odd result indeed[.] [A] holding that anyone may foreclose on a defaulting home loan borrower would multiply the risk for homeowners that they might face a foreclosure at some point in the life of their loans. The possibility that multiple parties could each foreclose at some time, that is, increases the borrower's overall risk of foreclosure.

While *Yvanova* answers the narrow question on which the California Supreme Court granted review, the decision leaves many questions unanswered. The Court declined, for example, to provide any guidance on the all-important question of when a mortgage assignment is void as opposed to merely voidable under California state law. Nor did the Court address the level of specificity with which a borrower must allege defects in the loan's chain of title for the borrower to survive a demurrer to a cause of action for wrongful foreclosure. Finally, the Court expressly did not decide whether a plaintiff seeking to set aside a foreclosure sale on the basis of an allegedly defective loan assignment must tender (i.e., offer to pay) the amount of the secured indebtedness (as is typically the case in wrongful foreclosure actions).

Assignments are common

In the age of loan securitization, loan assignments are extremely common. Many if not most securitized residential loans are administered via Mortgage Electronic Registration System, Inc. (MERS). MERS is a private entity designed to serve as the mortgagee of record and nominee for the beneficial owner of mortgage loans, thereby eliminating the need to prepare and record assignments when trading residential loans in bulk. While California courts have generally upheld the validity of loan assignments via MERS, borrowers continue to bring challenges to MERS-assigned loans. While *Lucioni* limits borrowers' ability to enjoin foreclosure sales before the fact, *Yvanova* gives borrowers seeking to set aside already completed foreclosure sales additional ammunition and will likely fuel an increase in wrongful foreclosure litigation. In light of these decisions, lenders should review their procedures for dealing with loan assignments and securitization, to ensure full compliance with best industry practices.

What You Can't See Can Hurt You: Lawsuits Over Website Accessibility for the Blind and Disabled

By MORGAN W. PETRIELLO

What do Kim Kardashian and Target have in common? Both have the distinction of being sued for failing to provide adequately accessible websites to disabled internet users (specifically, individuals with visual impairment). While the suit against Kardashian's DASH online retail store is ongoing, Target entered into a multimillion-dollar settlement to end its litigation, and this national retailer is not alone in suffering monetary penalties over such issues. In March of 2016, the San Bernardino County Superior Court ordered Bag'N Baggage to pay $4,000 to a plaintiff, a California blind man, as well as attorneys' fees, for failing to provide the plaintiff full and equal enjoyment of goods, services, privileges, and accommodations under the Americans with Disabilities Act (ADA). The judgment was premised upon the fact that Bag'N Baggage's website lacked features for aiding the disabled (e.g., screen reading capabilities).

Consumers' increasing reliance on websites rather than brick-and-mortar stores to service their needs across a variety of industries has spawned a new wave of litigation in this arena. Banks and financial institutions are certainly not immune: plaintiffs' firms have begun circulating industry-wide demand letters stating that their clients' rights have been impaired under the ADA for failure to provide adequate access to online banking services. As the scope of this genre of litigation continues to expand, it is prudent that banks and financial institutions understand what is required under the ADA and how to maximize website accessibility for all clients.

Morgan W. Petriello practices in the area of commercial real estate and commercial real estate finance.

An Overview of the ADA

The ADA is a federal civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life. Title III of the ADA specifically prevents discrimination against the disabled in places of public accommodation. "Discrimination" under the ADA is broadly defined as the denial of the opportunity, by the disabled, to participate in programs or services, and providing the disabled with separate, but unequal, goods or services. Places of accommodation, on the other hand, are specifically enumerated under Title III of the ADA and include, among others, hotels, motels, restaurants, bars, banks, travel services, and offices of professionals such as accountants or lawyers. Notably, websites are not included in this definition.

However, federal courts have begun to interpret "places of accommodation" to include certain types of websites, though jurisdictions differ as to which websites fall under Title III's purview. For instance, certain circuit courts consider websites that offer direct sale of goods or services as places of public accommodation. The Third, Ninth (in which California is situated), and Eleventh Circuit courts, taking a narrower approach, have held that websites are only places of public accommodation when they are connected to goods and services available at a physical retailer, like a retail store (in other words, there must be a connection or a nexus between a website and the physical space).

By way of example, in *National Federation of the Blind vs. Target Corp.*, 452 F.Supp.2d 946 (2006), the U.S. District Court for the Northern District of California held that a retailer may be sued under the ADA if its website is inaccessible to the blind. In that case, the plaintiffs argued they suffered unequal access to Target's website since the latter lacked navigational features such as screen reader software (which vocalizes screen text and describes the content of the webpage), thus denying the blind full enjoyment of goods and services offered at Target stores. Target argued that plaintiffs failed to state a claim since they were not denied physical access to Target stores and sought a dismissal.

The court disagreed with Target's arguments because, in court's view, such an interpretation would limit the scope of Title III to only physical barriers to entry (such as ramps, elevators, and other entrance aids) and Congress's intention in enacting the ADA encompassed a far broader definition of accessibility. Specifically, the Court stated that, "[C]onsistent with the plain language of the statute, no court has held that under the nexus theory a plaintiff has a cognizable claim only if the challenged service prevents physical access to a public accommodation. Further, it is clear that the purpose of the statute is broader than mere physical access – seeking to bar actions or omissions which impair a disabled person's 'full enjoyment' of services or goods of a covered accommodation …. Indeed, the statute expressly states that the denial of equal 'participation' or the provision of 'separate benefit[s]' are actionable under Title III."

The Court's finding was costly for Target. On October 2, 2007, the U.S. District Court for the Northern District of California certified a nationwide class action pursuit against Target Corporation consisting of all legally blind individuals in the United States who had attempted to access Target.com (http://www.target.com), and as a result, were denied access to the enjoyment of goods and services offered in the defendant's stores. Further, the order certified a California subclass, which included all legally blind individuals in California who attempted to access Target.com. In September 2008, the parties reached a settlement, stipulating that further changes would be made to the website and policies of Target Corporation and also establishing a $6,000,000 settlement fund to compensate members of the California subclass.

The "nexus" standard as described in National Federation of the Blind continues to be the guiding principle in the Ninth Circuit. In a recent unpublished decision, *Cullen v. Netflix, Inc.*, 600 F. App'x 508 (9th Cir. 2015), the Ninth Circuit held that movie and television streaming provider Netflix was not subject to the ADA because Netflix's services are not connected to "any physical space." In another unpublished decision regarding website accessibility of Internet-only retailers, *Earll v. eBay, Inc.*, 599 F. App'x 695 (9th Cir. 2015), the Ninth Circuit came to the same conclusion, stating that "[b]ecause eBay's services are not connected to any 'actual, physical place,' eBay is not subject to the ADA."

Guidelines Regarding Website Accessibility For The Disabled

Just as there is no uniform national consensus regarding which websites are places of public accommodation, there is also a lack of binding principles to follow to ensure that a website is accessible under the ADA. The closest authority appears to be voluntary guidelines published by the Web Accessibility Initiative of the World Wide Web Consortium, an international consortium that develops web standards. The most recent version is the Web Content Accessibility Guidelines (WCAG) 2.0, which was published in December of 2008. In a 2014 Consent Decree with H&R Block and in a 2015 settlement with online education provider EDX, the DOJ used WCAG as a measure of compliance. WCAG relies on four principles: websites must be perceivable, operable, understandable, and robust. Each guideline has testable success criteria (61 in all). Based on these testable criteria, websites are graded as demonstrating one of three degrees of accessibility: A, AA, or AAA. In the aforementioned enforcement actions, the DOJ required compliance with at least level AA of WCAG.

The first guideline, that websites must be perceivable, tests whether information and user interface components are presentable to users in ways they can perceive. To achieve high marks under this guideline, websites must provide text alternatives for any non-text content so that it can be changed into other forms people need (such as large print, braille, speech, symbols or simpler language), provide captions and other alternatives for multimedia, create content that can be presented in different ways (for example, making content adaptable so that it can be real aloud, enlarged, etc.), and make it easier for users to see and hear content including separating foreground from background and enabling text to be resizable up to 200%.

The second guideline provides that user interface components and navigation must be operable. A website with high WCAG operability makes all functionality available from a keyboard, provides users enough time to read and use content, does not design content in a way that is known to cause seizures, provides ways to help users navigate, find content, and determine where they are.

The third guideline, that websites must be understandable, centers around whether operation of the user interface is intuitive (for example, making text content readable, making web pages appear and operate in predictable ways, and helping users avoid and correct mistakes). Finally, the fourth guideline, that websites should be robust, tests whether the website is compatible with different browsers, including assistive technologies.

Analysis and Conclusion

In 2015 alone, over forty ADA website accessibility cases were filed against well-known entities such as the National Basketball Association, Sprint Corp., J.C. Penney Co., and Home Depot Inc. While this type of litigation initially centered on traditional retailers, plaintiffs' firms have recently broadened the scope of their targets. For example, in Colorado alone, more than sixty cases have been filed against restaurants regarding website accessibility. Now plaintiffs' firms have begun circulating demand letters among banks and financial institutions, signaling that a new wave of litigation in this arena is imminent.

Given the growth of this area of litigation, companies should take prompt action to analyze whether their websites are in compliance with applicable law and, if not,

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Fed's new approach in marijuana sector

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law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale." (Cole Memo 1). The memorandum explains the DOJ's "enforcement priorities" with regard to cannabis. Those priorities are summarized as preventing: (1) distribution to minors; (2) revenue from marijuana from going to criminal enterprises; (3) distribution of marijuana from legalized states to states where it is still prohibited under state law; (4) state-authorized marijuana activity from being used as a pretext for trafficking of other illegal drugs or activity; (5) violence in connection with cannabis cultivation or distribution; (6) driving while under the influence of marijuana "and the exacerbation of other adverse public health consequences associated with marijuana use"; (7) cultivation on public lands; and (8) possession or use on federal property (collectively, Federal Priorities).

Cole Memo 1 goes on to provide: "In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above …. In those circumstances … enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity."

Cole Memo 1 strongly insinuates that where state law has legalized the use of marijuana and any cannabis activity in those states does not run afoul of any of the Federal Priorities, the federal government is generally going to take a hands-off approach to marijuana enforcement in those states that: (a) have legalized its cultivation and use; and (b) established reliable regulatory and enforcement systems concerning state legalized marijuana activities.

Cole Memo 1 memorializes a shift away from the federal government's prior, more aggressive anti-cannabis posture. This is significant in light of the fact that, pursuant to the supremacy clause of the U.S. Constitution, federal law trumps inconsistent state law. Stated otherwise, if the federal government wanted to, it could elect to ignore state law and aggressively prosecute any violation of the CSA – including cultivation, distribution, sale and use of cannabis for any purpose. For the time being, however, the DOJ has elected a more passive approach, opening the door for further growth in the cannabis industry and likewise reducing the angst of lenders electing to knowingly lend against real property collateral leased to MRBs.

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The Guidance Memo

On February 14, 2014, the U.S. Department of the Treasury Financial Crimes Enforcement Network issued a guidance memorandum entitled: BSA Expectations Regarding Marijuana-Related Businesses (Guidance Memo). The Guidance Memo "clarifies how financial institutions can provide services to marijuana-related businesses consistent with their [Bank Secrecy Act (BSA)] obligations …." It advises that financial institutions interested in providing services to MRBs are obliged to conduct customer due diligence on a host of issues. Among other things, the institution should confirm whether the business is licensed/registered; review its license application; request available information about the business from the licensing authorities; develop an understanding about the business' products, customers and normal business activities; routinely monitor public sources of information about the business to search for adverse information about the business and parties related thereto; etc. The Guidance Memo strongly suggests that this due diligence scheme represents a continuous and ongoing obligation of the financial institution.

Where the institution's due diligence provides no reasonable basis to conclude that the MRB is violating any of the Federal Priorities, the institution is mandated to file "Marijuana Limited" Suspicious Activity Report (Limited SAR). The Limited SAR must disclose the names and addresses of the marijuana-related business and its related parties (e.g., principals) and should expressly state that the Limited SAR is being filed "solely because the subject is engaged in a marijuana-related business".

Conversely, if customer due diligence results in the discovery of facts to suggest that one or more of the Federal Priorities are implicated by the activities of the MRB, the institution is obligated to file a "Marijuana Priority" Suspicious Activity Report (Priority SAR). Priority SARs are considered more urgent than Limited SARs. The Guidance Memo provides that Priority SARs must include more detailed information concerning the MRBs activities, including but not limited to details concerning the Federal Priorities the institution believes have been implicated and "dates, amounts, and other relevant details of financial transactions involved …."

Where the institution "deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program," it should also file a "Marijuana Termination" Suspicious Activity Report (Termination SAR).

Cole Memo: Part 2

On February 14, 2014, simultaneously with the issuance of the Guidance Memo, the DOJ issued a follow up to Cole Memo 1 (Cole Memo 2). This new memorandum reiterates the Federal Priorities and provides additional guidance concerning financial transactions involving MRBs. Specifically, it discusses various violations of federal criminal law that could arise in connection with engaging in financial transactions paid for with proceeds generated from the sale of cannabis, pointing out that "prosecution under these offenses … does not require an underlying marijuana-related conviction under federal or state law."

Importantly, Cole Memo 2 points out that the decision to prosecute violations arising from proceeds of cannabis sales should be made with an eye towards whether any of the Federal Priorities have been implicated. If no Federal Priority has been implicated, "prosecution for these offenses may not be appropriate."

According to Cole Memo 2, financial institutions have an increased risk of running afoul of the federal government (i.e., risking prosecution or civil forfeiture) where: (a) the MRB is not compliant with state regulatory and enforcement systems; or (b) the transactions are being conducted in a state "lacking a clear and robust regulatory scheme." For example, if the state in question has not legalized marijuana-related activities, the institution should recognize that the proceeds from the sale of cannabis products are very likely to be diverted to illegal enterprises – something that directly implicates one of the Federal Priorities.

Analysis and conclusion

Through the foregoing memoranda, the federal government is communicating that it will generally stay out of marijuana enforcement matters except where the activity in question implicates one or more Federal Priorities. The Federal Priorities are generally geared towards high-risk activities or activities that have a more wide spread risk profile for the public (e.g., protecting minors, avoiding enrichment of organized crime, etc.).

Some general lessons that can drawn from the foregoing is that financial institutions now have some additional flexibility on the issue of whether to lend to MRBs. That flexibility is probably greater in the context of a lender making a loan to a landlord that leases its real property to MRBs. Notwithstanding the foregoing, it is important to recognize that the foregoing policy memoranda are not binding legal authority. They are nothing more than policy statements, meaning that the federal government could, in its discretion, revert to more aggressive measures (e.g., criminal prosecution, civil forfeiture, etc.) at any time.

Another important distinction is that the foregoing policy statements do not adopt a lax approach when it comes to issues of money laundering. As discussed in Cole Memo 2, "financial institutions must continue to apply appropriate risk-based anti-money laundering policies …." This indicates that financial institutions must continue to exercise substantial due diligence in dealing with depository relationships for MRBs. MRBs often deal in large sums of cash transactions, requiring depository institutions to file currency transactions reports (i.e., for transactions exceeding $10,000 in cash per day), among other things.

In summary, the risk of criminal or civil entanglement with federal authorities appears to have been reduced in the context of lending against real property collateral associated with MRBs as tenants. Depository relationships, on the other hand, are still challenging in that the oversight expense of monitoring such relationships, the existence of federal laws that make marijuana an illegal substance and the downside risks associated therewith may not justify the modest potential for profit associated therewith.

Names in the News

Michael G. Fletcher and **Hemal K. Master** presented a series of fraudulent transfer seminars to credit administrators, work out professionals and line lenders at a major regional bank.

Andrew K. Alper spoke at the National Equipment Finance Assn.'s conference concerning the California Finance Lenders License Law and instructed a leasing class for the Equipment Leasing and Finance Assn.

Hal D. Goldflam spoke at the National Assn. of Equipment Leasing Brokers on fraud in the equipment leasing and finance industries.

Loren R. Gorden was selected as co-chair of the Commercial Transactions Committee for the Business Law Section of the State Bar of California.

Michael J. Gomez spoke at the 28th Annual Insolvency Conference of the California Bankruptcy Forum and moderated the "Agricultural Loan Workout & Water Rights" program for the 7th Annual Special Assets Management Assn. Conference.

Disability

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enhance their sites to bring their websites into compliance. Companies should start working now with either in-house or third-party vendor technology professionals to increase website accessibility according to the WCAG 2.0 guidelines.

Certainly staving off possible litigation is a goal of this work, but even more significantly, corporations that do their best to serve the needs of their entire client base during these rapidly advancing technological times are more likely to grow and retain a diverse and satisfied client base.

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