The California Legislature and the Courts – What Creditors Need to Know

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Lenders & Chief Credit Officers Conference

Key Legislative Dates

- 9.13.25 – Legislature adjourns
- 10.13.25 – Governor’s signature/veto deadline
- 1.1.26 – Most new laws take effect
- 1.5.26 – Legislature reconvenes

Wildfire Relief – Forbearance

AB 238 (Harabedian)

- Authorizes a borrower who is experiencing financial hardship due to the Los Angeles wildfire disaster to request forbearance.
- Relief could be extended up to 12 months.
- Limits lump sum payments and negative credit reporting.
- Signed. Took effect Sept. 22, 2025.

Impound Account Interest

AB 493 (Harabedian)

- Requires a financial institution that holds hazard insurance proceeds in a loss draft account pending property rebuild or repair to pay interest of at least 2 percent per annum.

- Signed. Took effect August 29, 2025.

Zombie Subordinate Mortgages

AB 130 (Budget Trailer Bill)

- AB 130, an omnibus budget trailer bill, enumerates certain actions as constituting an unlawful practice.
- Requires certification under penalty of perjury to accompany an NOD filing.
- Applies to subordinate mortgages secured by residential real property.
- Signed. Took effect June 30, 2025.

Consumer Financial Protection

SB 825 (Limón)

- Allows California DFPI to enforce UDAAP claims against state-licensed entities without providing notice to CFPB.
- If signed, takes effect January 1, 2026.

State-Level Community Reinvestment Act

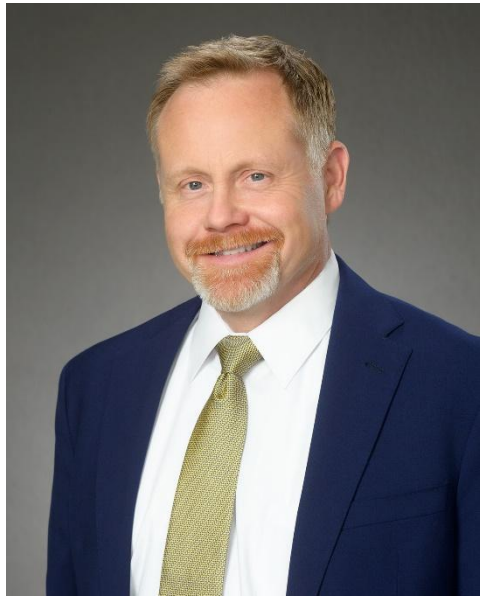
Coming back in 2026: California CRA

AB 801 (Bonta)

- Establishes a new California-specific CRA obligation for state-chartered banks, credit unions and mortgage lenders.

This bill DID NOT become law, but will return in 2026.

Government Relations Team



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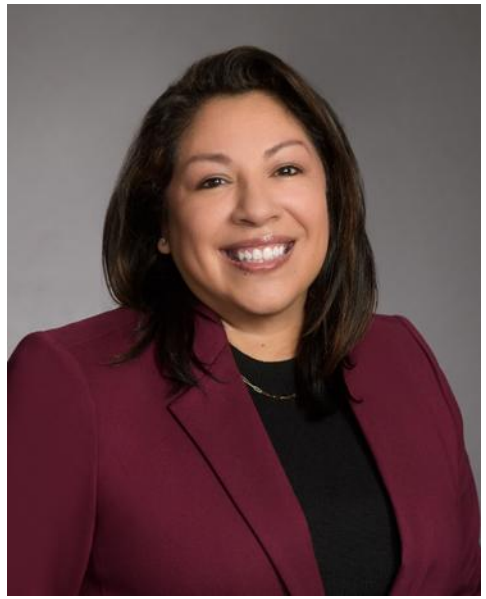

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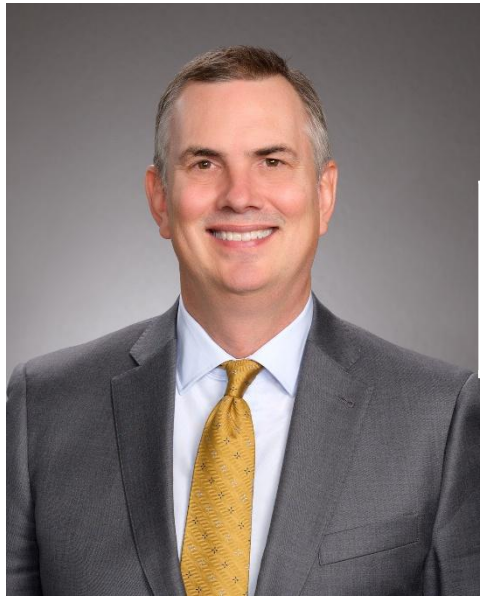

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Court Decisions in 2025 and Beyond

- **Impactful Court Decisions in 2025**
- **On the Legal Radar – AB 130**

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United States v. Miller, 145 S.Ct. 839 (2025)

- **Facts**
  - Utah company collapsed; shareholders diverted $145,000 in company funds to pay their personal federal taxes.
  - Bankruptcy trustee sued U.S. Bank to claw back the payments as fraudulent transfer under state law.
  - Bankruptcy Code § 544(b), which allows a trustee to "avoid any transfer of interest by a creditor holding an unsecured claim under applicable law."
  - Trustee claimed that Utah's fraudulent transfer statute constituted "applicable law" to set aside the statute.
  - U.S. government claimed sovereign immunity.
  - Trustee pointed to Bankruptcy Code § 106(a)(1), which states: "sovereign immunity is abrogated as to a government unit with respect to" § 544.

- **Bankruptcy Court, District Court, and Tenth Circuit:** All sided with the trustee, reasoning that § 106(a) waives sovereign immunity "with respect to" § 544, permitting a state law fraudulent transfer claim.

United States v. Miller, 145 S.Ct. 839 (2025)

- **Holding (8-1, Justice Jackson)**
  - Reversed.
  - Waivers of sovereign immunity are jurisdictional only; they do not create substantive rights or alter the elements of claims.
  - § 544(b) requires an "actual creditor" who could sue under nonbankruptcy law.
  - Since no creditor could sue the U.S. under state law due to immunity, the trustee's claim fails.
- **Practical Impact:**
  - Resolved split among the circuit courts.
  - Trustee's cannot claw back IRS or federal payments via state law.
  - Limits the availability of funds available to pay creditors of the debtor.
  - Trustees limited to Bankruptcy Code § 548 (2-year lookback) for fraudulent transfers.
  - Reinforces importance of monitoring shareholder misuse of funds
- **J. Gorsuch, Dissent:** would have found the waiver extended to the state-law elements as well.

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Kivett v. Flagstar Bank, 2025 U.S. App. LEXIS 25609 (9th Cir. Oct. 2, 2025, No. 21-15667)

FACTS

- **2014-2017:** Flagstar collected borrower escrow funds for taxes and insurance but failed to pay 2% annual interest as required by Civil Code § 2924.8(a).
- After 2017, Flagstar complied with § 2924.8 for loans it subservices for third-party investors, but **not** for loans it owned.
- U.S. Supreme Court remanded to the Ninth Circuit under *Cantero v. Bank of America* 602 U.S.204 (2024), directing a "nuanced comparative analysis" of federal preemption with a practical assessment of the nature and degree of the interference caused by a state law.

Kivett v. Flagstar Bank, 2025 U.S. App. LEXIS 25609 (9th Cir. Oct. 2, 2025, No. 21-15667)

- **Legal Issue:** Does the National Bank Act (NBA) preempt California's escrow-interest statute (Civil Code § 2954.8(a))?

- **Decision:**
  - *Lusnak v. Bank of America*, 883 F.3d 1185 (2018): NBA does not preempt § 2954.8; banks must pay 2% interest.
  - Ninth Circuit ruled it "had no authority to over rule" *Lusnak* under *Miller v. Gammie*, 335 F.3d 889 (9th Cir. 2003) (en banc). A three judge court cannot overrule a prior decision.
  - Court found that *Cantero* was not inconsistent with ruling in *Lusnak*.

- **Holding:** "Because *Lusnak* is not clearly irreconcilable with *Cantero*, we cannot overrule it."

Guracar v. Student Loan Sols., LLC, 111 Cal. App. 5th 330 (2025)

- **Facts:**
  - Borrower received a $7,000 student loan from Bank of America in 2007.
  - Borrower agreed to make monthly payments for 20 years.
  - Borrower stopped paying in 2009.
  - In 2010, Bank of America charged off the loan, but sent a demand letter to collect.
  - Bank of America sold the loan in 2017 to Buyer.
  - Buyer's attorney sent demand letter to Borrower.
  - Buyer sued Borrower in 2022 for nonpayment.
  - Borrower filed cross-complaint against Buyer and Buyer's attorney for violating the Rosenthal Act, the Fair Debt Collection Practices Act, the Private Student Loan Collections Reform Act, and the Debt Buyer's Act by filing a time barred lawsuit and by not sending required notices.
  - Buyer and Buyer's attorney filed an anti-Slapp Motion.

Guracar v. Student Loan Sols., LLC, 111 Cal. App. 5th 330 (2025)

- **Trial Court Ruling**
  - Granted anti-Slapp because statement made in anticipation of litigation and in complaint.
  - Debt collection statutes did not preclude anti-Slapp.
  - Lawsuit timely due to installments owed four years before lawsuit plus accelerated in 2022.
  - Borrower appealed; Buyer cross appealed, claiming Borrower lacked standing because no concrete harm.

- **Court of Appeal**
  - Reversed.
  - Borrower has standing to sue under consumer protection (Rosenthal, FDCPA, etc.) even if Borrower suffered no concrete harm from not providing statutorily required notices.
  - The court found the debt time-barred, ruling that Bank of America accelerated the loan in 2010 by demanding the full principal and interest after charging off the loan, clearly stating it was collecting the debt owed.

In re Glob. One Media, Inc., 667 B.R. 878 (Bankr.9th Cir. 2025)

Facts

- Debtor, a Delaware corporation, obtained loans secured by personal property located in Nevada and New Mexico.
- Creditor filed UCC-1 financing statements in Nevada and New Mexico, but not in Delaware.
- Bankruptcy Trustee objected to the secured claim for lack of perfection.
- The Bankruptcy Court held the security interest was properly perfected by filings in Nevada and New Mexico, where the collateral was located.

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In re Glob. One Media, Inc., 667 B.R. 878 (Bankr.9th Cir. 2025)

Ruling by 9th Cir. BAP

- Overruled bankruptcy court
- Revised Article 9 (2001) – UCC filing must be made a debtor's location
- Debtor, a Delaware corporation, is "located" in Delaware
- Debtor's collateral, Delaware law governs "perfection" (meaning, what must be done to perfect a security interest in collateral)
- Nevada and New Mexico law decided *effect* of perfect and nonperfection and any priority disputes.

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Studco Bldg. Sys. US, LLC v. 1st Advantage Fed. Credit Union, 133 F.4th 264 (4th Cir. 2025)

- **Facts**
  - Studco received a fraudulent email appearing to be from supplier Olympic, instructing payment to a new account at 1st Advantage FCU (new routing number and account number).
  - Studco wired $550,000 to scammers, who stole the funds; Studco later repaid Olympic and sued the credit union.
- **District Court**
  - Ruled for Studco.
  - Credit union's monitoring system generated thousands of daily "name mismatch" alerts but no one reviewed or acted on them.
  - Found credit union negligent and liability under UCC § 4A-207 (equivalent to California Commercial Code § 11207) for failing to detect the misdescription of the account.
  - Found common law bailment relationship.

Studco Bldg. Sys. US, LLC v. 1st Advantage Fed. Credit Union, 133 F.4th 264 (4th Cir. 2025)

- **Holding**
  - **Reversed.**
  - **No bailment or negligence:**
    - ✓ Bailment applies only to physical property (chattel), not wire transfers.
    - ✓ UCC § 4A-407 preempts common law.
    - ✓ Credit union owed no duty of care to Studco
    - ✓ Studco negligent for failing to verify payment instructions
  - **UCC § 4A-207**
    - Beneficiary bank liable only if it had actual knowledge of name/account mismatch.
    - "Actual knowledge" ≠ "knowledge obtainable with due diligence."
    - No duty to check for conflicts between account number and beneficiary name.

On the Legal Radar: AB 130

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Cline v. Real Time Resols., Inc., No. 2:25-cv-02001-TLN-AC, 2025 U.S. Dist. LEXIS 179127 (E.D. Cal. Sep. 12, 2025)

Facts:

- 2013 – Lender notified borrower that loan had been "closed" and "charged off."
- 2024 – No communication until Lender notifies borrower about delinquent deed of trust
- March 17, 2025 – Notice of Default recorded.
- July 17, 2025 – Borrower sues to enjoin sale per Civil Code 2924.13.

Legal Issue: Whether Civil Code section 2924.13 applies retroactively?

Ruling: Not retroactive. No certification needed to filed.

Montoya v. FCI Lender Servs., No. 5:25-cv-01732-JC, 2025 U.S. Dist. LEXIS 187209 (C.D. Cal. Sep. 22, 2025)

Facts:

- 2009 – 2020 – No communications from Lender
- 2021 – Notice of Default recorded
- 2021 – Lender and Borrower enter into loan modification at 9.5% interest rate (3 times market rate) "under pressure" with trustee's sale two weeks away
- July 16, 2025 – Borrower sued to invalidate loan modification under 17200 as unfair business practice
- Lender moved to dismiss.
- On September 22, 2025, Court denied motion to dismiss. Court noted: "Although that [Civil Code § 2924.13] did not become effective until June 30, 2025, it at least provides some further support that the alleged conduct violates public policy in California concerning fair loan servicing practices." Court pointed to lack of periodic notices and increased interest rate as economic injury.

California Mortgage Association v. Bonta (E.D. Cal. 2025)

Background

- AB 130 enacted Civil Code § 2924.13 on June 30, 2025.
- Intended to target "zombie mortgages" — old, dormant debts secured by subordinate liens.
- Applies broadly to all subordinate liens on residential real property (1–4 units, apartments, mixed-use).
- Affects both consumer and business loans.

California Mortgage Association v. Bonta (E.D. Cal. 2025)

Restrictions: A subordinate lien may become unenforceable if:

- No borrower communication for 3+ years.
- No monthly statements or required transfer notices.
- IRS Form 1099-C issued (suggesting loan forgiveness).

Foreclosure Barrier

- Before foreclosing or threatening to foreclose, lenders must certify under oath that no "unlawful practices" ever occurred — even by prior servicers.
- Failure to certify = loss of right to foreclose.

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California Mortgage Association v. Bonta (E.D. Cal. 2025)

Claims by Plaintiffs

- AB 130 is unconstitutional because it:
  - **Impairs contracts** (U.S. Const. Art. I, § 10; Cal. Const. Art. I, § 9).
  - **Violates due process** by stripping foreclosure rights without notice or remedy.
  - **Denies equal protection** by targeting subordinate lienholders.
  - Is **preempted** by federal laws like **TILA** and **RESPA**.

Relief Sought:

- Injunction to block enforcement of § 2924.13.
- Declaration that the law is null, void, and unenforceable.

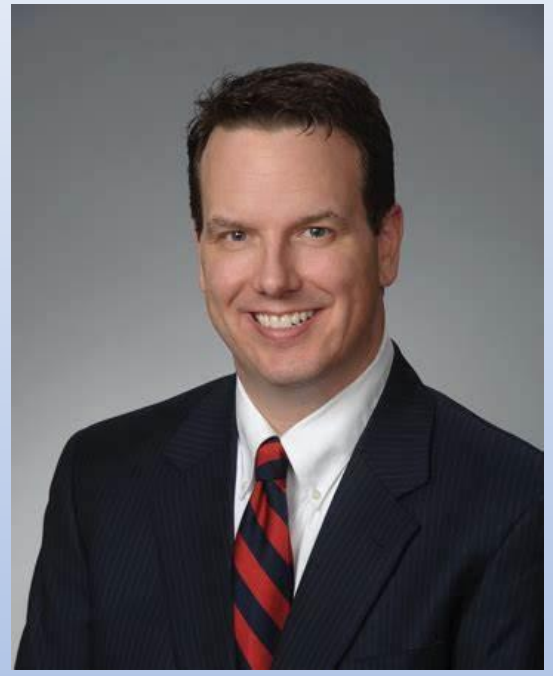
Article 13 LLC v. Ponce de Leon Fed. Bank & Van Dyke v. U.S. Bank, N.A.

Facts

- In 2022, New York enacted the Foreclosure Abuse Prevention Act (FAPA).
- FAPA *retroactively* restricts lenders to 6 year statute of limitations after default to foreclose and mandates one-action rule.
- Both cases are quiet title actions seeking to discharge mortgages, one brought by a borrower and one brought by a junior lien holder.
- Trial Courts held that Lender is estopped from asserting its mortgage is not time barred, applied retroactively.

Issues on Appeal

- The New York Court of Appeals to address whether application of FACA impairs an obligation of contract and violates the due process clause.



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