



CALIFORNIA
BANKERS
ASSOCIATION

**Project Hail Mary:
Spacey Adventures at
the Capitol and the Courts**

Bank Counsel Seminar / Sept. 24, 2025

Agenda

- Introductions
- 2025 Legislation (30 minutes) – *Jason Lane, Vanessa Lugo and Chris Shultz*
- Legal (20 minutes) – *Rob McWhorter*
- Q&A (10 minutes) - *All*

Key Legislative Dates

- Sept. 13 - Last day to pass bills + adjournment
- Oct. 13 - Governor's signature/veto deadline
- Jan. 1, 2026 – Most new laws take effect

Anti-Trust

AB 325 (Aguiar Curry)

- Clarifies that using a common pricing algorithm to further a price-fixing conspiracy violates the Cartwright Act.
- If signed, takes effect January 1, 2026.

Trust Beneficiaries

AB 565 (Dixon)

- “Virtual representation” allows a competent adult to represent and bind trust beneficiaries or other individuals who lack the legal capacity to represent themselves.
- Co-sponsored with California Lawyers Association Trust and Estates section.
- Signed. Takes effect January 1, 2026.

Data Breach

SB 446 (Hurtado)

- Modifies California's existing data breach disclosure law to establish specific time frames for consumer notifications (30 days) and Attorney General notifications (45 days).
- Permits delay to accommodate law enforcement or determine scope and restore system integrity.
- If signed, takes effect January 1, 2026.

Unclaimed Property

SB 822 (Becker)

- Adds digital financial assets to Unclaimed Property Law.
- If signed, takes effect January 1, 2026.

Auto Lending

SB 766 (Allen)

- Three day right of cancellation for cars <\$50K.
- Updates law regarding misrepresentations and disclosures; prohibits add-ons that do not benefit consumer.
- If signed, takes effect October 1, 2026 to allow time to update forms and software.

UDAAP / Consumer Financial Protection

SB 825 (Limón)

- Allows California DFPI to enforce UDAAP independently of federal CFPB for incumbent state licenses.
- If signed, takes effect January 1, 2026.

Mortgage Lending

AB 238 (Harabedian)

- Authorizes a borrower who is experiencing financial hardship due to the Los Angeles wildfire disaster to apply to request forbearance.
- Relief could be extended to 12 months.
- Investor exemption.
- Signed. Took effect Sept. 22, 2025.

Mortgage Lending

AB 493 (Harabedian)

- Requires a financial institution to pay interest of at least 2% per annum on amounts received from insurance proceeds following property damage or loss.
- Signed. Took effect August 29, 2025.

Mortgage Lending

SB 681 (Wahab) AB 130 (Budget Trailer Bill)

- SB 681, a comprehensive 100-page housing bill, included a provision to prohibit lenders from initiating judicial or non-judicial foreclosure if the lender has forgiven all or part of a loan.
- Restriction applies to all secondary mortgages.
- SB 681 was inserted into a budget trailer bill AB 130 (Section 2).
- Signed. Took effect June 30, 2025.

Debt Collection

AB 747 (Kalra)

- Seeks to modernize service of process issues, including date/time/GPS stamped photographs.
- Problems:
 - Allows motions to vacate at any time (no diligence requirement).
 - Retroactive elimination of evidentiary presumption.
 - Allows motion to vacate default judgement at any time for lack of proper service.
- If signed, takes effect January 1, 2027.

2026 Preview

Coming back in 2026: Elder Financial Abuse

- **AB 83 (Pacheco)** authorizes depository institutions to notify a third party and authorizes a bank to hold suspicious transactions.
- **AB 871 (Stefani)** requires a financial institution to provide annual training to mandated reporters.
- **AB 909 (Schiavo)** requires banks to reimburse senior accountholders for induced fraud transactions, expands definition of coerced debt to include induced fraud.
- **These bills DID NOT become law, but the issue will return in 2026.**

2026 Preview

Coming back in 2026: Interchange

AB 1065 (Ortega) requires that the calculation of interchange fees not take into account state and local taxes and fees.

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

2026 Preview

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 issue will return in 2026.

Thank you!



Jason Lane
jlane@calbankers.com
916.438.4420

Vanessa Lugo
vlugo@calbankers.com
916.438.4402



Chris Shultz
cshultz@calbankers.com
916.438.4411



Next

- 2025 Legislation (30 minutes)
- Legal (20 minutes) – *Rob McWhorter*
- Q&A (10 minutes) - *All*

Court Decisions in 2025 and Beyond

- **Impactful Court Decisions in 2025**
- **On the Legal Radar to Watch into the Rest of 2025 and in 2026**

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.

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.

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

- **Facts**

- Studco received email from Olympic, a supplier, to redirect wire transfers to new account at 1st Advantage Federal Credit Union (new routing number and account number).
- Email was a scam originating from east Africa.
- Studco made \$550,000 payments to the new account.
- Scammers ran off with money.
- Studco paid Olympic “a second time” and sued credit union.

- **District Court**

- Ruled in favor of Studco.
- Credit union had monitoring system:
 - the system generated hundreds to thousands of warnings related to mismatched names on a daily basis;
 - Credit union did not notify anyone when a warning was generated;
 - no one at credit union reviewed the reports as a matter of course.
- Found credit union negligent in failing to detect the misdescription of the account.
- Found Liability under UCC § 4A-207 (equivalent to California Commercial Code § 11207)
- Found common law bailment by credit union.

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 limited to transfer to chattel (a physical thing). A general deposit is not bailment. Wire transfer merely alter bank balances and not a good.
 - ✓ UCC § 4A-407 controls over common law.
 - ✓ No duty of care owed to Studco by credit union, as bailee.
 - ✓ Found Studco negligent by failing to exercise reasonable care before transfer.

- **UCC § 4A-207**

- The beneficiary bank -- the bank that receives the funds transfer from the sending bank – is not liable under UCC § 4A-207 unless it has actual knowledge of the misdescription of the funds at the time the funds were transferred.
 - Actual knowledge DOES NOT mean “knowledge that could have been obtained with due diligence.”
 - The beneficiary bank has no duty to determine whether there is a conflict between an account number and name of beneficiary.

On the Legal Radar to Watch into the Rest of 2025 and in 2026

Kivett v. Flagstar Bank, FSB

- **2014-2017:** Flagstar collected money from borrowers to pay real property taxes and insurance as security for home loans and did **not** pay 2 percent interest per year as required under Civil Code § 2924.8(a).
- After 2017, Flagstar complied with Civil Code section 2924.8 for all loans it subservices for third party investors, but it does not pay or credit interest on escrow on loans for which it **owns** the mortgage servicing rights. *Flagstar does not plan to pay interest.*
- **Why? Federal Preemption**

Kivett v. Flagstar Bank, FSB

- **Legal Issue:** Does the National Bank Act (NBA) preempt California's escrow-interest statute under § 2954.8(a)?
- **Analysis:**
 - *Lusnak v. Bank of America*, 883 F.3d 1185 (2018): NBA does not preempt § 2954.8; must pay 2% interest.
 - *Cantero v. Bank of America* 602 U.S. ___ (2024): Courts make a “nuanced comparative analysis” with a practical assessment of the nature and degree of the interference caused by a state law.
 - Flagstar: significantly interferes; compliance burdens; lack of uniformity.
 - Plaintiffs: modest requirement; consumer protection; preemption would erode state regulatory power.

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.

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.



Robert S. McWhorter
Buchalter, APC
rmcwhorter@buchalter.com
916.899.1099

Buchalter