



## CBA Sponsored Legislation for 2004

California Bankers Association will be sponsoring three bills to benefit the banking industry. One measure has been introduced and a bill number has been assigned, the two remaining issues are in the process of introduction and will have bill numbers assigned as soon as they come into print. The purpose and effect of all three measures is summarized below.

### Unauthorized Use of Lender's Name: SB 1150(Burton)

Today, when a California consumer purchases a home, refinances a home loan, or obtains a home equity loan, it is becoming increasingly common for the consumer to become inundated with solicitations for products and services including insurance, home improvement loans, home equity lines of credit and loan refinance offers from third parties. Often, these solicitations prominently display the name or logo of the consumer's original lender or state that the solicitation is made based on "information obtained from your lender" even though the third parties generating the solicitations may have no relationship or connection to the lender whose name or logo is being utilized. The information may also include consumer financial information regarding the loan or refinance obtained without the knowledge or consent of the lender from a public record or other information source. These solicitations also often imply that deadlines have been exceeded or are about to be exceeded, giving an even further sense of urgency to the communication, with an overall purpose to confuse or mislead the consumer about the source and use of the information obtained without the knowledge or consent of the lender.

This measure will require third parties that use a lender's name, trademark, borrower's name or loan information in a solicitation without the consent or authorization of the lender to provide a disclosure in the solicitation that the information was not provided by the original lender nor was the solicitation sponsored by or affiliated with the original lender. In addition, the measure would prevent the unauthorized use of the lender's name or logo by a third party in an advertisement or solicitation if it would cause confusion to the consumer or mislead the consumer. Statutory remedies for the original lender include injunctive relief and recovery of actual damages.

The measure is narrowly drafted to assure that comparison advertising and other valid marketing devices are exempted from the provisions. Similar measures have been adopted or are currently pending in several states.

**Bank Truncation: Extension of Commercial Code Section 4406 Sunset :  
(Senate Banking Committee)**

Existing law permits bank truncation of negotiable instruments such as checks or other items. In addition, existing law provides a statutory minimum disclosure requirement for bank account statements that are sent to bank customers on a periodic (ie, monthly or quarterly) basis. Current law states that for purposes of meeting its adequate disclosure requirement, a financial institution's account statement is sufficient if it describes each item by item number, amount and date of payment. In addition, current law requires that if the financial institution does not return the items to the customer, the financial institution must provide a telephone number in the statement of account delivered to the customer that the customer may call to request an item or a legible copy of an item. Current law governing what the account statement must contain for sufficient disclosure is scheduled to sunset on January 1, 2005, this measure extends that sunset date to January 1, 2010.

**Notice of Delinquent Assessments: Water Districts and Local Agencies:  
(Poochigian)**

Under existing law, local agencies and public water districts that provide water to real property may collect on delinquent assessment for unpaid water services by foreclosure and sale of the real property to which the services were provided. There is no requirement in existing law for these entities to provide advance written notice to a lender or other entity with an interest in the real property prior to the collection action, even though such action may affect a lender's prior secured interest in the property. Private water companies do have a prior notice requirement in existing law.

This measure seeks to impose a requirement on water districts and water agencies to provide notice to the lender and anyone else with a recorded interest in the property that the local agency or water district seeks to collect on the unpaid obligation through sale of the real property. The advance notice must be sent by certified mail at least 45 days prior to taking action to enforce the delinquent assessment. Notice to the parties with an interest in the property will assist in a more efficient and less expensive means by which the water district or agency may be paid without adversely affected the procedural due process rights of the lender with a prior recorded interest in the real property which is the subject of the collection efforts.