

The Private Money Lending Industry Is Alive and Well

There are real estate borrowers who seek out financing from institutional lenders such as banks, life insurance companies, credit unions, and GSE's such as Fanny Mae and Freddy Mac. Those lenders have regulatory requirements and usually have strict underwriting guidelines to follow in order to complete a loan transaction.

An alternative industry referred to as "private money", or sometimes as "hard money", exists for those borrowers whose transactions may not meet the strict guidelines. The industry includes borrowers and mortgage brokers who seek out sources to fund their loan transactions. Usually the source of that funding is capital from private individuals who have money to invest and are seeking yields higher than are available in traditional investments. Current annualized yields for trust deed investors range from 8% to 12%, with expected monthly payments of interest, with a return of capital at maturity.

There is a body of regulatory compliance necessary to assist investors in making an appropriate decision relating to the disclosure of material facts, risks, and the appropriateness of an investment. One disclosure in particular is contained in Business and Professions Code 10232.5.

Prior to 1998 the only required disclosure that mortgage brokers gave to prospective investors was referred to as a Lender Purchaser Disclosure Statement which was a 3 page miscellaneous form that was confusing and incomplete. I hired a legislative advocate, and approached then Senator Kopp about co-sponsoring a bill to require much more thorough disclosures. The bill was carried by Senator Kopp as SB 1554. The bill was passed and it greatly enhanced the required disclosures made by mortgage brokers to prospective trust deed investors.

I then created an addendum to the Lender Purchaser Disclosure Statement which is to be submitted to prospective investors. The addendum outlined the required items submitted to assist investors in making an informed decision whether to invest. The items are contained in Addendum A*. All investors should require the loan broker who brings them a prospective loan to include those items.

*See Article 4.1 Addendum A

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