



California Corporate & Securities Law

Usury Exemption Bites Back

Posted In [Broker-Dealers](#), [Finance Lenders](#)

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Last week, I wrote about the oft overlooked California Finance Lenders (CFL) law. In general, that law provides that anyone engaged in the business of making consumer or commercial loans must obtain a license from the Department of Corporations (unless an exemption is available).

CFL licensees do enjoy one benefit. They constitute a class of “exempt persons” for purposes of California’s constitutional usury limitations. Cal. Fin. Code § 22002.

Usually, an exemption is a good thing. In *Moore v. Hill*, however, the CFL exemption proved to be a bad thing. The case involved a claim that the CFL licensee had borrowed at usurious interest rates. Thus, the issue was not whether the loans made by the licensee were exempt, but whether the licensee’s *obligations* were exempt.

Article XV, § 1 of the California Constitution provides in relevant part:

“However, none of the above restrictions shall apply to any obligations of, loans made by, or forbearances of, any building and loan association . . . , or to any. . . industrial loan companies . . . , or any credit union[] . . . or any duly licensed pawnbroker or personal property broker, or any loans made or arranged by any person licensed as a real estate broker . . . , or any bank . . . , or any other class of persons authorized by statute”
(emphasis added)

The plaintiff claimed that the phrase “any obligations of, loans made by, or forbearances of” relates solely to “any building and loan association,” not to the other enumerated classes. The Court of Appeal disagreed – holding that both obligations of, and loans by, CFL licensees were exempt. The Court reached this conclusion largely based on the interpretation of the grammar and structure of Article XV, § 1 of the Constitution.

The Court of Appeal also repeatedly referred to the Legislature and legislative intent in its analysis. California’s constitutional limitation on usury dates back to 1934. However, it was not until 1979 that the voters approved an amendment to Article XV authorizing the Legislature to create classes of exempt persons. Prior to that time, exemptions could only be created by amending the Constitution. Given today’s low interest

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rates, it is interesting to read the arguments in the [official ballot pamphlet](#) for the need to allow higher interest rates.

The court's holding will likely also affect California licensed securities broker-dealers. Section 25211.5 of the California Corporations Code provides that a broker-dealer acting pursuant to a certificate then in effect and which is issued pursuant Corporations Code Section 25211 is exempt from the usury provisions of the California Constitution. Section 25211.5, like Financial Code Section 22002, provides that it creates a class of persons pursuant to Article XV, § 1 of the California Constitution.

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