

# LENDERS UPDATE™

## ALT & ASSOCIATES NEWSLETTER

A COMPLIMENTARY SERVICE TO THE MORTGAGE LENDING INDUSTRY

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April 20, 2015

## **CA BRE LICENSEES: ARE YOU A BROKER OR A LENDER?**

On April 16, the California Bureau of Real Estate (“BRE”) published its Winter Quarterly Bulletin (“winter” apparently went a little long this year). We feel that this Bulletin is always a wise read for licensees. This issue contains an article entitled “*Correspondent Lending: Brokering or Lending?*” The answer to this question can have some serious, and perhaps little thought of, consequences.

The article states, that for purposes of California law, the determination is made by answering two questions:

1. **Who disburses the loan funds?** According to the BRE, the following constitutes brokering:
  - If the lender, not the real estate broker, is the original source of funds.

- If the real estate broker is drawing funds from a credit line from the lender who is going to buy the loan. (Comment: as we have discussed before, this also may not be a true warehouse line).
  - If the real estate broker is relying on the lender for an advance commitment of loan funds or for the purchase of the loan at closing.
2. **Who has the final decision to lend?** If the lender, not the licensee, makes the decision to grant the loan, then the real estate broker is brokering not lending. (Comment; this may be a tricky question and the article provides no guidance in making this determination.)

The consequences if the BRE determines you are a broker:

1. Your actions could be considered table funding which is generally not allowed by California law as it applies to BRE licensees.
2. As a broker, you are required to provide a Mortgage Loan Disclosure Statement. This also could affect your status and duties for TILA and RESPA purposes, if state law determines your classification to be that of a broker (think, GFE, QM, Loan Compensation Rule).

To our mind, the article certainly broadens the scope of this issue and the scrutiny of the licensee's conduct.

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