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OFFICERS

Jan Schneider
President

R & J Jewelry & Loan
San Jose, CA
Phone: (408) 295-3610
jewelryjan@att.net

Stan Lukowicz, III
President-Elect

Loyalty Pawn
1708 Broadway
Sacramento, CA 95818
Phone: 916-919-2331
stanjr@loyaltypawn.com

Scott Tiemann
Secretary

Central Mega Pawn
11031 S. Central Avenue
Ontario, CA 91762
Phone: 909-627-9622
centralloan@gmail.com

Michael Herda
Treasurer

Atlas Loan & Jewelry
16522 Bellflower Blvd.
Bellflower, CA 90706
Phone: 562-263-7296
atlaspawn@aol.com

Pat Rogers
Immediate Past President

Perris Pawn & Hemet Pawn
Perris, CA 92570
Phone: (951) 443-1716
pat@perrispawn.com

STAFF

Kimberly Andosca
Executive Director
CAPA

One Capitol Mall, Suite 800
Sacramento, CA 95814
Phone: (916) 669-5322
Fax: (916) 444-7462
kandosca@amgroup.us

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Directors

Israel Adato
Express Financial Services
San Diego, CA
Phone: 619-428-8003
israeladato@yahoo.com

Moris Adato
Cashco Jewelry & Loan
San Diego, CA
Phone: 619-264-7296
morisg@me.com

Leon Alchian, Jr.
Majestic Jewelry & Loan Co
Fresno, CA
Phone: 559-266-1138
lajr11@aol.com

Omar Anzar
Monte de Piedad
San Ysidro, CA
Phone: 619-428-3859
omar@montedepiedad.com

Curt Chapman
Westminster Jewelry & Loan
Westminster
Phone: 714-893-0556
cchapmancurty@aol.com

Tony DeMarco
Western Loan & Jewelry
Los Angeles, CA
Phone: 323-268-4120
westernloan@aol.com

Stephen Foster
*Fresno Coin Gallery Jewelry
& Loan Inc.*
Fresno, CA
Phone: 559-222-2646
fresnocoin@aol.com

Adam Grossi
Antioch Coin and Jewelry
Antioch, CA
Phone: 925-777-1492
elsobrantegold@gmail.com

Michael Klass
Platinum Jewelry & Loan
Lancaster, CA
Phone: 310-365-5450
mk@pjloan.com

David Lisso
AJ's Superpawn
Pomona, CA
Phone: 909-622-0334
nfmalice@gmail.com

Dan Lukowicz
Capital City Loan & Jewelry
Sacramento, CA
Phone: 916-334-7296
dan@capitalcityloan.com

Angel Manzano
R&J Jewelry and Loan
San Jose, CA
Phone: 408-295-3610
pawnfather@gmail.com

Keven Pedersen
Salinas Pawn
Salinas, CA
Phone: 831-422-5626
slnpwn@aol.com

Sam Shocket
King's Jewelry & Loan
Los Angeles, CA
Phone: 213-383-5555
sam@kingspawn.com

Dan Stansell
Beverly Loan Company
Beverly Hills, CA
Phone: 310-275-2555
Dan.stansell@beverlyloan.com

Vito Wise
Granters Jewelry & Loan Co
El Cerrito, CA
Phone: 510-525-9144
granterspawnsnshop@gmail.com

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DRC Techno	J-Smart	89.40%	\$22,499
Arotek/GII	QChKAdC	88.90%	\$7,700
DRC Techno	D-Secure+	85.90%	\$11,999
DRC Techno	J Detect 9000	85.40%	\$9,999
Gemometrics	GemPen	84.90%	\$2,300
DRC Techno	J.Mini	84.40%	\$6,499
Massive Tech Lab	G-certain	82.40%	\$9,999
Massive Tech Lab	J-Certain	80.40%	\$13,999
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A Great Year for CAPA

It's that time of year. Your CAPA Board of Directors had a very productive meeting in January. That was followed up by our annual walk the halls where we met with over thirty legislators and "pitched" our bills for this session. We were met with extremely positive responses from everyone we spoke to, and there are good reasons for that.

- 1) We have an AMAZING lobbyist in Bill Duplissea. He is an absolute rock star in Sacramento and his representation assures a warm welcome for us when we go calling upon our elected officials.
- 2) Our past and current board members and our family of CAPA members at large have done an incredible job of engaging at their community levels and enhancing the image of our industry.

The January board meeting was also where your board chose new committee chairs and committee members and set work plans and goals for 2020. I'm excited to see all that will be accomplished by this great, hard working group this year. Be sure to read all the committee updates in this issue.

Our financial reports showed that CAPA is in good shape and the membership numbers are strong. The participation of all of you, our members, has put us in that position. We must continue to support our association and



CAPA President, Jan Schneider, with some of her family at the Assemblyman Evan Low event in San Jose. Yes! That's Alec Baldwin!

our industry so that we remain strong and able to face the challenges we will inevitably confront in the future.

Our next board meeting is in conjunction with our CAPA Spring Conference May 2-3, 2020 in Redwood City. Don't miss this great opportunity to connect with your fellow pawn brokers, CAPA vendors and our lobbyist and attorneys. There will be a pawn tour and the chance for new educational offerings. It's impossible not to benefit from these conferences and you won't want to miss this one. You will return to your business armed with fresh knowledge and ideas.

Hope to see you all in May!

Jan Schneider ■

Fundraiser at Loyalty Pawn, Sacramento, for Assemblymember Blanca Rubio





Bill Duplissea
www.cline-duplissea.com

Capitol Report

As we get ready for all the 2020 bills to be heard in policy committees, CAPA is in pretty good shape. We have two bills running. Although this is twice as many bills as most groups would run at the same time,

our team is strong enough and well prepared enough to pull it off. Our two bills are described below.

AB 1978 (Gipson)

In 2017 CAPA and all five Members of the State Board of Equalization sponsored and supported a change in the Revenue and Taxation Code that would allow under very narrow circumstances, a pawn borrower to be able to redeem a pawned item past the statutory end of the loan from a pawnbroker. The law automatically transfers title to pawned property if the loan defaults after the end of the loan term. This bill would extend the sunset in the 2017 AB 327 (adopted as a budget item) until January 1, 2027. This bill will be heard in the Assembly Revenue and Taxation Committee in the next couple of weeks. I do not contemplate any issues but last minute unforeseen issues is what Sacramento is famous for.

Our second bill is a bit more high profile and has garnered some attention already.

AB 1969 (Rubio)

Existing law has required every secondhand dealer and pawnbroker and coin dealer to report daily their secondhand tangible personal property transactions to a database housed at Cal-DOJ. This database is called the California Pawn and Secondhand Dealer System or CAPSS system. The CAPSS system makes all the information that is reported available to all law enforcement agencies in California. The provisions of the authorizing statutes for the CAPSS system require that this information not be disseminated to any person or agency that is not California law enforcement. There is personal as well as property information contained in the report generated by a licensed secondhand dealer that is sent to the CAPSS system. Customers or pledgors must provide certain personal information such as name, address, and a thumb print. Several forms of ID are acceptable for the report. A US passport, a driver's license issued by any State or Canada, an ID card issued by any State, and ID card issued by the

United States, a passport from another country when accompanied by another item of identification AND a Matricula Consular issued by another country. Assemblyman Kevin DeLeon passed AB 99 in 2009 that allowed the Matricula Consular to be acceptable ID for a pawn loan in California.

Regrettably, California has been the subject of increased ICE raids since 2016. Anecdotal information that California pawnbrokers' CAPSS reports are being used by ICE to find subjects of interest is undeniable. There appears to be a specific linkage between those pawn and secondhand customers that have used the Matricula Consular as their preferred form of required ID and those selectively identified by ICE. We believe that the Department of Justice has adhered to its mission to keep this data base a closed law enforcement data base. Unfortunately, with 500 plus local law enforcement agencies in the State being able to access this information, we believe that one or more of them is making the legal use of the Matricula Consular known to ICE.

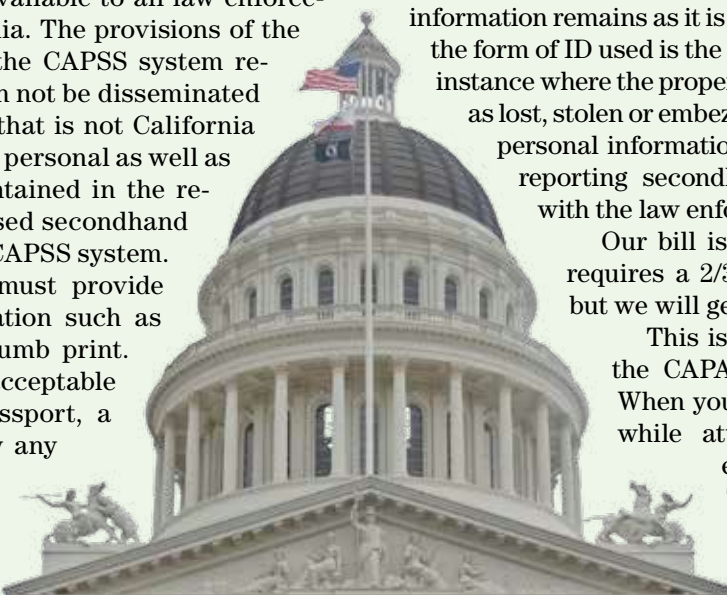
Since law enforcement may truly need the personal information that licensed secondhand dealers provide in specific circumstances, this proposal makes no attempt to deprive legitimate law enforcement agencies from acquiring the information. Under the provisions of this measure, licensed secondhand dealers will obtain and retain all the same information. When a customer that uses a Matricula Consular as a form of identification; only the property description and not the personal data will be transmitted to the CAPSS system.

If the property reported gets a "hit" on the CAPSS system, the appropriate law enforcement agency will contact the reporting secondhand dealer directly and be furnished the personal information that was omitted on the CAPSS report. The obligation to capture and retain all the required information remains as it is in current law. However, when the form of ID used is the Matricula Consular, and in the instance where the property information has come back as lost, stolen or embezzled on the CAPSS system, the personal information that has been retained by a reporting secondhand dealer shall be shared with the law enforcement agency.

Our bill is an Urgency measure, which requires a 2/3rds vote. It will be difficult, but we will get it done.

This is an ambitious year for us but the CAPA Team is the best in town. When you see your Board of Directors while attending the Spring Conference...give them a big CAPA THANK YOU!!!!!!

Bill Duplissea ■





Tony DeMarco

Protecting our clients

The Department of Justice in California has many unique databases created to securely house important data as specified in statute. One such system is our CAPSS database, which allows us to upload to DOJ

information about items purchased and pawned, and the information about those individuals who made these transactions. It is important to note, that the intent of our legislation was to convert the ancient paper reports into digital, searchable, reports for local California State law enforcement jurisdictions. The idea, as most of you remember, was to have one “server” or bucket of information that we upload to and that Law Enforcement could search. All California transactions would be searchable and readily available to LE. What a concept!

So, why is our customers’ data now being seen by 3rd party data mining companies contracted by other States or Non-Calif. jurisdictions? How are our law-abiding customers’ information, statistically 99.9% of them, being sliced and diced in criminal databases? Have our customers “opted in” to this out of state search without a search warrant? Are our customers being treated like criminals?

When we would turn in paper, only our local department had access to every name, address, DL #, Financial info.

Seldom was this information shared to other jurisdictions. CAPSS changed all of this it seems. Today, we upload our customers’ pawn information, and as I sit here writing this report, I really don’t know where the information is going. I do know that jurisdictions in Las Vegas, Wyoming, New York and Arizona have contacted CAPA members to place holds on items. All claim to be using Leads Online (the private, for profit, data mining company from Texas). When examining these Leads reports, the information is exactly what is uploaded to CAPSS.

So the question is: Are we okay with this? Will the fact that all of our customers private information be on a private server, forever, hurt our future reputation? Our future earnings? While you are thinking about this, ask yourself a question. Does OfferUp, 5Mile, Mercari, Facebook, LetGo freely share their clients’ profiles with contracted data mining sites? Certainly not. I hope I made the Board’s decision for this year’s legislative agenda, as laid out in Bill Duplissee’s article, a bit clearer. We are not trying to hide our clients from LE, we are trying to protect them from LE.

Tony DeMarco ■

CAPA Legislative Day January 2020



COMMITTEE ROUNDUP

CAPA COMPLIANCE COMMITTEE

Your CAPA Compliance Committee has been tasked with the following by President Schneider:

Goal - Create a list of no more than ten gray areas that are frequent questions from members either on the CAPA members' forum or called in to Kim's office

The committee will then work up solutions/answers for the members that would be presented to the full board for discussion and approval.

Once approved, these would become "CAPA Best Practices"

We have some very tricky questions to consider. And we are wrestling with them for all of you!

Tony DeMarco, committee member and CAPA compliance-guru, says:

The primary concentrations should be on Replacement Loans, Electronic notice, and Mobile Pawn.

Scott Tiemann, committee member and the source of many of CAPA's greatest ideas, says:

This is the best committee ever!

We hope our efforts will help all CAPA members make better informed choices when it comes to some of the less settled areas of law that govern our profession. Please make it a point to attend the May conference where we will be discussing these points and more.

Dan Stansell,
Compliance Committee Chair ■

Save the Dates

- **October 22, 2020** | Board Meeting – *Rancho Mirage*
- **October 23-25, 2020** | CAPA Annual Convention and Exposition – *Rancho Mirage*



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CORONAVIRUS NOTICE

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Brett D. Beyler, Mastagni Holstedt, A.P.C.

This letter is intended to address how to respond to potential employment issues arising from the 2019 Coronavirus (“COVID-19”) and some suggested steps on how to limit the impact of the Coronavirus in the workplace.

The Current Situation

As of January 27, 2020, the Centers for Disease Control and Prevention (“CDC”) issued a Level 3 health travel notice recommending that people avoid all travel to China. For more information on the CDC notice, go to: <https://wwwnc.cdc.gov/travel/notices/warning/novel-coronavirus-china>.

On January 30, 2020, the World Health Organization (“WHO”) declared the COVID-19 outbreak a “public health emergency of international concern.” After WHO’s global health emergency declaration, the U.S. Department of State (“USDOS”) issued a Level 4 travel advisory regarding any travel to China. For more information on the USDOS notice, go to: <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/china-travel-advisory.html>.

On January 31, 2020, the U.S. Department of Health and Human Services (“USDHHS”) declared a public health emergency in the United States and implemented the following:

- Any U.S. citizen returning to the U.S. who has been in the Hubei province of mainland China in the previous 14 days will be subject to up to 14 days of mandatory quarantine.
- Any U.S. citizen returning to the U.S. who has been in any other part of mainland China within the previous

14 days will undergo proactive entry health screening at a select number of ports of entry and up to 14 days of monitored self-quarantine to ensure they have not contracted the virus and do not pose a public health risk.

On January 31, the President Donald Trump signed a presidential proclamation, suspending the entry into the United States of foreign nationals, other than immediate family of U.S. citizens and permanent residents, who have traveled in China within the last 14 days.

What is COVID-19?

COVID-19 is a respiratory illness that can spread from person to person. The virus that causes COVID-19 is a novel coronavirus that was first identified during an investigation into an outbreak in Wuhan, China. It is currently believed that this virus most likely originally emerged from an animal source but now seems to be spreading person-to-person.

For confirmed COVID-19 infections, reported illnesses have ranged from people with little to no symptoms to people being severely ill and dying. Symptoms can include fever, cough, and shortness of breath. The CDC believes at this time that symptoms of the Coronavirus may appear in as few as two or as long as fourteen days after exposure.

The National Institute of Health has just begun a clinical trial to evaluate experimental treatment for COVID-19. This treatment is being developed by Gilead Sciences, an American biotechnology drug company. However, to date, there is no solid data to indi-

cate that this experimental treatment can improve clinical outcomes.

There is currently no vaccine to protect against COVID-19. A vaccine for COVID-19 is currently estimated to be more than one year away from being made widely available. There is currently no known specific antiviral treatment for COVID-19. However, people with COVID-19 should seek medical care to contain the further spread of COVID-19 and to help relieve symptoms.

How does COVID-19 spread?

According to the CDC, little is known about how COVID-19 spreads. Most often, spread from person-to-person happens from close contacts (about six feet). Person-to-person spread occurs mainly via respiratory droplets produced when an infected person coughs or sneezes, similar to how influenza and other respiratory pathogens spread. These droplets can land in the mouths or noses of people who are nearby or can be inhaled into the lungs. It is currently unclear if a person can contract Coronavirus by touching a surface or object that has the virus on it and then touching their own mouth, nose, or possibly their eyes.

Typically, as with most respiratory viruses, people are thought to be most contagious when they are most symptomatic (the sickest). With COVID-19 there have been reports of spread from an infected patient who had no symptoms to a close contact. There is much more to learn about the transmissibility, severity, and other features associated with the COVID-19 and investigations are ongoing. (<https://www.nejm>.

org/doi/full/10.1056/NEJMc2001468)

How does COVID-19 compare to Seasonal Influenza?

Seasonal Influenza

- Vaccine Available
- Treatments Available
- Existing Medical Infrastructure
- Mortality Rate <1%

COVID-19

- No Vaccine Currently Available
- No Treatments Available
- No Existing Medical Infrastructure
- Mortality Rate approx. 2%

How to identify whether you have been infected with COVID-19?

Current estimates predict 40-70% of the world's population is likely to become infected this year by COVID-19. Therefore, it is not a question of "if" COVID-19 spreads to the U.S.A., but "when".

The following symptoms may appear 2-14 days after exposure to COVID-19:

- Fever
- Cough
- Shortness of breath

For more information on COVID-19 symptoms, go to: <https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html>.

What Actions can Employers take to Prevent the Transmission of COVID-19?

- As discussed above, the United States is imposing a 14-day mandatory quarantine on individuals who have traveled to Hubei province, and 14 days of monitored self-quarantine for individuals returning from other parts of mainland China. The director of the CDC stated that people in mandatory self-quarantine "will be monitored by the local health departments in a self-monitoring situation in their home."
- Currently, there is no COVID-19 vaccine available, so the CDC is recommending standard precautions, such as: washing hands with soap and water for at least 20 seconds; avoiding close contact with sick people; staying at home when you are sick; and disinfecting frequently touched objects and surfaces.
- Employers should prepare for the possibility that some employees may have to stay home in the event of school closures or childcare concerns.

- Employers should ensure that common areas in the workplace, including computer keyboards used by more than one person, are kept clean and disinfected.
- Employers should inform employees that information regarding medical conditions is kept strictly confidential and they will not suffer retaliation for reporting that they are ill or if they need to take a family or medical leave.
- COVID-19 fomites can likely survive on surfaces for up to two hours. Experts agree that the majority of cases will transmit from person to person, not from surface contamination.
- Handwashing is currently the BEST defense against COVID-19. To reduce the likelihood of transmission by up to 60%, frequently wash your hands for at least 20-seconds with an alcohol-based soap and hot water.
- Avoid customary handshaking.
- Stay up-to-date on all required immunizations, including the flu shot. Although the flu shot will not protect you from COVID-19, it will help prevent the flu which has similar symptoms to this Coronavirus.
- Cover your nose and mouth when you sneeze/cough with a tissue or

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- into an elbow.
- After using a tissue, throw it waste receptacle and wash your hands with soap and hot water for at least 20-seconds.
- Avoid touching your eyes, nose, and mouth.
- Clean and disinfect surfaces.
- Avoid close contact with anyone with cold or flu-like symptoms.
- Encourage employees and co-workers to stay home if they feel sick. If you have flu-like symptoms, the CDC recommends that you stay home for at least 24 hours after your fever is gone,
- except to get medical care or for other necessities. (Your fever should be gone for 24 hours without the use of a fever-reducing medicine.) Immediately contact your healthcare provider if conditions and symptoms get worse.
- If working remotely is an option, encourage your employees to work remotely whenever possible.
- If prescribed antiviral medication, complete the entire treatment regimen.
- Use personal protective equipment whenever there is an expectation of possible exposure and maintain proper pro-

cedures to handle and clean equipment after such exposure.

- Stay up-to-date on information about the COVID-19 outbreak. This can be done by monitoring the following sources: Center for Systems Science and Engineering (“CSSE”) at John Hopkins Whiting School of Engineering Coronavirus COVID-19 Global Cases Tracker (<https://systems.jhu.edu/research/public-health/ncov/>), the CDC (<https://www.cdc.gov/coronavirus/2019-ncov/index.html>), and Live News Updates.


Issues that Employers Should Consider Regarding COVID-19

- Employers and employees should not prejudice employees of Asian descent because of fear of this new virus. Do not assume that someone of Asian descent is more likely to have COVID-19.
- Follow federal, state and local laws, as well as any agency policies and/or collective bargaining agreements provisions, covering family and medical leave entitlements, and confidentiality requirements.
- Review all applicable guidance from the Occupational Safety and Health Administration (“OSHA”), CDC and WHO. Although OSHA has not announced specific standards covering the COVID-19, it has issued a notice indicating that employers should be aware of general standards to which they may be subject under OSHA.
- Avoid asking employees questions about any known or suspected medical condition or medical history. In 2009, the Equal Employment Opportunity Commission (“EEOC”) released a notice titled “Pandemic Preparedness in the Workplace and the Americans with Disabilities Act,” which provides guidance. The Notice is available at: https://www.eeoc.gov/facts/pandemic_flu.html
- If applicable, refer to your agency’s pandemic or health protection policy for further guidance.

Conclusion

Information about the Coronavirus is constantly developing. Mastagni Holstedt, A.P.C. will continue to monitor employment and related issues regarding COVID-19 and will continue to keep you updated. ■

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AML PROGRAMS PART 1: WHY THE BIG DEAL?

Dave Griffiths, CBAP, The Consultants, LLC

In late August, 2019, one of our CAPA members posted on the forum that they were going through an IRS Title 31 Exam. This is the exam of, in this case, a precious metals dealers anti-money laundering (AML) program and is not to be confused with the more common (and greatly feared) Title 26 tax audit. This AML program has been a Federal requirement for precious metals dealers since January 1, 2006 but we will get back to that in a minute.

In the forum post, our member implied that things were not going well and that there was a fair amount of stress involved in the process. They also indicated that the IRS examin-

ers had shared that “pawnbrokers had been flying under the radar, but no longer.” I was in the middle of an Alaskan cruise and my phone blew up with dozens of calls in a 2-day span from members who needed reassurance that they were either okay or that they could be okay. Needless to say, when I got back from my vacation, I was a busy man. Three weeks later I was at the CAPA Long Beach event and was swamped on Sunday throughout the entire vendor time allotment setting up account after account. Many of the folks who set up accounts in September have been pawnbrokers for generations. Thank you, IRS.

So why bother you with the details? Let me summarize. The IRS is now taking a serious look at pawnshops. Banks never stopped looking at pawnshops even after we were told that Operation Chokepoint was in the rear-view mirror (enter “de-risking”). Lose your bank account and you have immediate pain and frustration. You must take your eyes off running a business and focus your efforts on garnering another account. The new bank? They will likely ask to see your AML program. What they want to see, is an active (read ‘well-used’) AML program that has been around for a while. Think about it. If you had that

program, you would probably still have the old bank account. They will tolerate a brand-new AML program, but you will likely be put under a microscope anyway because having an AML program is not the important part. Incorporating the program into the culture of your business is what they need to see.

In large part, you will need to create the illusion early on that you place a very high value on compliance while you are still trying to get the hang of it. It's much like driving a car when you first got your license, you wanted everyone to know you had it, but you still needed practice to get better. Did you get better by driving once a year? Nope. Same reason why those pawnbrokers who purchase an AML program and then take it out once a year (if that) for the obligatory independent review, look like beginners. When a bank regulator or IRS examiner starts asking you questions about your program you should already have a working knowledge of it. This is the wrong time to try to fake it. Everyone knows what is going on and you just look, and feel, silly trying to save your backside from whatever punishment is likely to be doled out.

Title 31 audits are real. I know because I sit in on them helping represent my customers. They are happening in California with a much greater frequency than ever before and according to the examiners I deal with will continue to do so. Bank de-risking is real and is never going away. CA pawnbrokers need to be very aware of this and get out in front of it. Title 31 exams for those with active programs usually go well. Those that have inactive or non-existent programs usually pay a price for their inaction.

Functioning AML programs have 4 key components. These are known as the 4 pillars. An AML program missing one or more of these pillars is much like a Rolex watch with a phony movement...worthless. Those 4 pillars are:

1. A written program based on the dealer's risk assessment that puts policies, procedures, and controls in place to eliminate the possibility of money laundering, terrorist financing, and other illicit activities.
2. The designation of a compliance officer to be in charge of the implementation and updating of the program and the training of the staff.
3. The ongoing education and training of specific staff (all who handle sales and pawn, plus owners and managers) at least once a year and usually within 30 days of hire.
4. An annual independent review of the program to make sure that it is working and effective.

Those who treat this as anything less than a priority stand to pay the penalties that go along with postponing the inevitable. Many of us wait until one of our friends goes through something before we jump on the bandwagon. In fact, I would say that the vast majority of us tend to react to others pain and we use that as the stimulus to get us moving. Perhaps that is the difference between leaders and followers. Call it what you want, but once you get a letter from either the bank or the IRS, if you do not already have an AML program in place, it is too late. PERIOD. ■

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Beware... OF ADA NON-COMPLIANCE

Brett D. Beyler, Mastagni Holstedt, A.P.C.

The ADA is a federal civil rights law. It guarantees “equal opportunity for individuals with disabilities. The ADA defines a disability as a physical or mental impairment that substantially limits one or more “major life activities.”

The ADA covers five major categories: Title I (Employment (“reasonable accommodation”)), Title II (Public Entities), Title III (Public Accommodations (“Duty to remove barriers to access”)), Title IV (Telecommunications), and Title V (Prohibition on Retaliation).

Since its passage in the early 1990s, the ADA has become a subject of frequent litigation abuse. This is especially true in California. For example, since the ADA’s passage in 1991, over 12,000 Title III lawsuits have been filed in the United States. California accounts for 40% of all Title III ADA lawsuits. Indeed, since 2004, more than 8,000 ADA lawsuits (Title I-V) have been filed in California alone.

A most concerning trend in California is the “hit and run” ADA plaintiffs. These are litigants where one ADA plaintiff will drive around searching for possible ADA violations to bring legal action against the owner and/or tenant of the non-conforming property. In California, it is not uncommon for one ADA plaintiff to have filed more than 30 cases. There is at least one documented incident where a single ADA plaintiff filed more than 1,000 ADA cases.

Legal Requirements under the ADA:

New buildings. All public accommodations (includes businesses open to the public) which were built post-1992 must make all “modifications” and/or “alterations” to be fully compliant with ADA guidelines.

A most concerning trend in California is the “hit and run” ADA plaintiffs. These are litigants where one ADA plaintiff will drive around searching for possible ADA violations to bring legal action against the owner and/or tenant of the non-conforming property

Older buildings. No “grandfather clause.” Buildings are deemed to “discriminate” against disabled persons if

they fail to remove “barriers.”

The duty is triggered **IF** removal is deemed “readily achievable.” The term “readily achievable” is defined as “easily accomplishable” and able to be carried out without much difficulty *or* expense.” Factors are used to determine “readily achievable” which include: the cost of the action, the size, type, and financial state of your business.

The DOJ lists 21 action items that are *usually* deemed “readily achievable” such as: handicap accessible parking spaces, ramps, repositioning shelves, widening doors, and rearranging toilet partitions.

If you are able to prove the removal is not “readily achievable”, the analysis then looks to see if public accommodation can be made to make the facility fully and equally available through alternative readily achievable means.

Remedies under the ADA for an ADA plaintiff include: injunctive relief, attorneys’ fees and litigation costs, and/or damages for governmental enforcement (not for private litigants).

In addition to the ADA, which is a federal statute, California has two additional statutes that mirror the ADA and add upon the ADA statute. Frequently in ADA litigation, an ADA plaintiff will file both under the ADA and the state equivalent.

a. Unruh Civil Rights Act (Cal. Civ. Code § 51, et seq.)

Unruh builds upon the ADA statute. A violation of the ADA is deemed a violation of Unruh. Up to three times the amount of actual damages, but in no case less than \$4,000 minimum statutory damages for each offense. (*See Hubbard v. Twin Oaks Health and Rehabilitation Center* – plaintiff awarded \$60,000 (or, \$4,000 x 15 visits). Provides for attorneys fees and litigation costs.

b. The Disabled Persons Act (Cal. Civ. Code § 54, et seq.)

Like Unruh, the Disabled Persons Act (“DPA”) also builds upon the ADA statute by making a violation of the ADA an automatic violation of the DPA. It allows for a minimum statutory damage of \$1000 per offense.

COMMON PROBLEMS FOR BUSINESSES

Frequent ADA litigation issues (including the state ADA equivalent) for business owners include, but are not limited to, the following: signage,

adequate loading zone, or ADA parking spaces. The ADA requires at least one ADA compliant parking space if parking 1-25 slots. If more than 25, the number of ADA compliant parking spaces increases.

Additional ADA litigation areas include the following:

- Lack of access into the building
 - Slope too steep; lack of ramp and/or grab bar
 - Lack of clearance space for wheelchairs
 - Lack of signs to accessible doors
- Doors as barriers
 - Five pounds of pressure
 - Too much of a lip
 - Space to navigate wheel chairs
- Lack of access within the building
 - Counters/surfaces too high
 - Appliances too high
 - Space to navigate wheel chairs
- Public bathrooms
 - Adequate signage
 - Stall with enough space for wheelchair

- Grab bars (not present and/or wrong height)
- Mirrors, sinks, toilet, dryer too high

DEFENDING AGAINST ADA, UNRUH, AND DPA

Hire a CASp inspection expert to inspect your business premises and determine if you have any ADA violations. It is critical that the inspector you hire to perform this inspection is CASp certified.

If the CASp inspection reveals any violations or potential violations, remedy them immediately. Not only is remedying any actual or potential ADA violation the best measure to avoid costly ADA litigation, there are often tax breaks for businesses seeking to make ADA renovations.

Lastly, if you receive notice of an ADA lawsuit, retain an attorney immediately. For example, SB 29 provides 15-day grace period for minor technical violations. ■

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— Jan Schneider, CAPA President

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THE MLA: DEBUNKING THE MYTHS OR WHAT DO I REALLY HAVE TO DO?

David E. Mastagni, Mastagni Holstedt, A.P.C.

This is another installment in a series of articles meant to keep members from making the same mistakes that have proven costly to their competitors. This article will deal with the Military Lending Act.

When pawnbrokers got lumped into this Act, or more correctly, stopped getting excluded from it, there was a great deal of confusion and misinformation surrounding the topic. Some of that has lingered to this day and we are now three years past the dreaded date of implementation. The goal is to identify what the law really requires of you and what it does not.

Myth #1. Every customer's name must be run against the Department of Defense's MLA database or you are not compliant. BUSTED!

The law states in 32 CFR 232.5(a), "No restriction on method for covered-borrower check. A creditor is permitted to apply its own method to assess whether a consumer is a covered borrower". You will not get in trouble for NOT running every customer through that database.

Myth #2. You cannot renew a covered-borrower's loan more than three times. BUSTED!

The law states clearly in 32 CFR 232.8(a), "For the purposes of this paragraph (regarding renewals), the term "creditor" means a person engaged in the business of extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions". Unless you are doing payday loans, this section does not apply to you. HOWEVER, the purpose of this Act is to not foster the cycle of debt. What is frowned upon is providing a new loan the proceeds of which are used to pay renewals. This does happen frequently, and you want to make sure to minimize the occurrence with covered borrowers.

Misconception #1. Believing that your software is computing any interest rate correctly without checking it is okay. WRONG!

You are on the hook for anything that your software does. Just because they might have a big name in the industry does not mean they are calculating your interest and fees correctly. You MUST confirm since you are the one who gets to pay any fines, not your software. Check the fine print in your agreement! Most major software products provide a setup module for you to tweak and adjust settings to meet your needs. One of these programs is sent to you with the "prorate daily" box unchecked in the MAPR section. **THIS IS A PROBLEM!** This box being unchecked will allow you to charge a covered borrower 36% regardless of the loan term! Not 36% MAPR, just 36%. Every single customer that I set up across the country that uses this software has to go in and check the box. If I am doing that

now, three years after the regulations passed, that means these stores have been doing these loans for three years and charging too much interest which is placing them in harm's way. I guarantee the software isn't going to pay the fine even though they have been told they are doing it wrong. Check your software to make sure you are charging a daily rate of interest. 36% MAPR = .10% interest per day. $(36/365=.10)$

Misconception #2. If I just ask all my customers about their military status, I am fine right? WRONG!

In the Fall 2019 CAPA newsletter, starting on page 16 is a fantastic article written by David Mastagni that details the importance of understanding your CAPA ticket, its benefits and its limitations. If you have not already done so, go back and read that article. At the very least you need to get a signature under penalty of perjury qualifying a customer's status as they have indicated on their ticket. The article goes into great detail and will answer any questions you may have here.

Misconception #3. I'm not near a base so I don't have to do anything. WRONG!

At no point in the loan business are you allowed to just do nothing. By extending credit you are at risk. By counting on folks to always tell the truth you are at risk. You are pawnbrokers remember? Do all your customers tell you the truth? Then why do you think they are here?

More often than not, dependents will be the ones getting the loans. While active military are prone to being "on" or near a base, reserve and guard personnel are not. If reserve and guard personnel are called up to active duty, it won't be them getting the loans because they will be somewhere else. It will be those pesky dependents that you have no way of easily identifying their military status. By the way, that is why you need the SSN if you are running names. To be a true dependent, you must be listed on an individual's tax return and they use an SSN to track that.

Misconception #4. All I have to do is just give them the loan ticket and I'm good to go. WRONG!

32 CFR 232.6 talks at length about providing disclosures to actual covered borrowers. Not unlike a car loan or home loan that requires multiple signatures on paperwork, there is also a verbal disclosure that goes along with the process. The sections of this that pertain fully here are 232.8(d)(1) and (2) which state, "The creditor shall provide the information required by paragraphs (a)(1) and (3) of this section in writing in a form the covered borrower can keep. The creditor also shall orally provide the information required by paragraphs (a)(1) and (3) of this section."

Burrell printing has a form (11-5560) that gets you off the

hook. It is a two part form that has the federally approved MAPR statement printed on it along with places to memorialize the loan date, the related pawn transaction number and the borrowers signature under a statement that reads, "I acknowledge receiving this Military Annual Percentage Rate Disclosure, both orally and in writing, along with the related pawn contract." Stapling a copy to each copy of the pawn contract will provide proof to all that your obligation was met. Consider how you will prove that you provided an oral disclosure without something similar to Burrell's form. If this is left to a 'he said, she said' battle, the customer will always win.

Finally, when you do run the MLA database check, by all means print out the verification certificate. If you save these digitally, then make sure you back up the copy! You cannot go back and do these after the fact. There is no 'lookback' feature, so you have to be prepared. Also, all pawn tickets and verification certificates need to be kept for a minimum of 5 years after the final disposition of the loan (redemption or default) not 5 years from the date the loan was written. So, in CA, that would be 5 years, 4 months, and 11 days unless you have longer loan terms.

The bottom line here is that while there is nothing in the law that states you MUST provide these loans, you are required to do your due diligence to cover your backside. The penalties for non-compliance here are steep. Having the ability to show that you have policies and procedures in place, along with good tracking and record keeping will protect you as much as you can be protected. ■

A Pawnbroker to the End Herbert "Hillie" Blumenthal (1917-2020)

I just wanted to let anyone who knew my Dad, Herbert "Hillie" Blumenthal, know that he passed away on March 9th at the age of 102. He started Eagle Jewelry in San Francisco in 1938. His brothers and brother-in-law all had shops on 3rd Street in San Francisco. He retired at 99 years old after a heart attack but continued giving advice for the store until he was 101.



He went through 18 Presidents, saw 5 cents become worth \$17, wars and depression. He was friendly with a number of celebrities that performed in San Francisco like: Merv Griffin and family, Harry James and Bobby Darin, as well as sport legends like the DiMaggio Brothers and players from the Giants and Forty Niners in the 50's and 60's. He was active in the Northern California Pawnbrokers Association and was the estate appraiser of Jewelry for the City of San Francisco. So he had an active, incredible life.

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Frank Blumenthal of Eagle Jewelry

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