

# Calif. Banking Brief: All The Notable Legal Updates In Q1

By **Alex Grigorians** (April 2, 2024)

*In this Expert Analysis series, attorneys provide quarterly recaps discussing the biggest developments in California banking regulation and policymaking.*

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The first quarter of the year reliably brings an onslaught of new regulatory changes and financial and legal developments. In California, this is especially true.

For small businesses and entrepreneurs, many of whom are still reeling from the pandemic, S.B. 666 is among one of the most important new regulations, as policymakers are cracking down on small business lenders and financiers known for including burdensome "hidden" lending fees.

Plus, we have new developments toward online notarizations and a pro-consumer measure banning predatory listing agreements.



**Alex Grigorians**

## **S.B. 666 — Anti-Junk Fee Bill**

***Effective Date: Jan. 1***

One of the many unfortunate ramifications of the much-publicized banking collapses of 2023 is the scarcity of quality credit providers willing to provide market financial products and credit to California's small businesses.

As institutional, regional and other traditional banks are sharply decreasing their risk profiles in favor of more conservative financing arrangements with established businesses, many of California's small businesses and entrepreneurs have turned to online banks, private moneylenders and other alternative credit sources.

In turn, these small businesses and entrepreneurs are often met with exorbitant junk fees. These include ACH fees, deposit fees, transfer fees and other seemingly unnecessary — or unexplainable — fees being charged by alternative credit sources.

This practice could result in the exit of such borrowers from California, in favor of neighboring states offering deep tax or other incentives. Some advocates assert that minority-owned small businesses have been disproportionately harmed by the opaque junk fees charged by unscrupulous lenders.

In late 2023, in an effort to attract and keep more small businesses and entrepreneurs in California, Gov. Gavin Newsom signed into law S.B. 666. The bill applies narrowly to commercial financing transactions for small businesses, and is aimed at curbing unfair, deceptive and abusive fee practices in commercial financing.

Categories of fees prohibited by S.B. 666 include the following:

- Fees for delivering account statements;

- Fees for processing certain payments that are required by commercial contract, other than fees related to insufficient funds and similar traditional fees; and
- Unique fees that don't correspond to an actual undertaking or service by the lender, such as platform fees, change fees, due diligence fees, general monitoring fees and risk assessment fees, when taken in addition to traditional underwriting fees.

The bill also imposes stricter oversight and administrative requirements on private commercial lenders. While we have yet to see enforcement of S.B. 666, violations of the law could result in actual damages and statutory damages between \$500 and \$2,500, together with attorney fees and costs. Courts are allotted wide discretion to levy other penalties.

S.B. 666 exemplifies a growing trend toward stricter regulatory oversight over nonbank commercial finance practices, particularly those affecting small businesses. Notwithstanding, S.B. 666 was strongly lobbied against by California's private and regional banks — many of whom find themselves in an already precarious position with respect to cash reserves. This bill eviscerates a major source of fee-based income, which will further diminish their coffers.

### **S.B. 696 — California Remote Online Notarization Bill**

#### ***Effective Date: Jan. 1***

While the actual implementation may not occur until 2030, California has finally enacted a permanent remote notarization statute. California is the 44th state to enact such legislation. The bill is momentous for California notaries, and will go into effect in phases.

S.B. 696 will allow California to join the many other states that already allow notaries to perform online notarization services. However, before online notarization may begin, the California secretary of state must first certify and demonstrate that it has developed adequate technology to conduct online notarization — including necessary security and safety measures. The deadline is currently Jan. 1, 2030.

While many of the provisions of California's new law are similar to existing laws in other states, there are some new precedent-setting provisions for online notarization, including:

- Notaries with an existing commission must resign their current commission or reapply in order to perform online notarization;
- The notary public must retain an audiovisual recording on an encrypted storage device;
- The identity of a principal must be verified by evidence meeting the requirements adopted by the secretary of state; and
- All notarial acts must be kept in a "tangible sequential journal" and one or more electronic journals.

The Jan. 1, 2030, date is subject to change if the secretary of state determines additional time is needed to ensure the technology is safe and adequate for implementing the new statute.

## **A.B. 1345 — The Residential Exclusive Listing Agreements Act**

### ***Effective Date: Jan. 1***

A.B. 1345 makes it unlawful to enter into any exclusive listing agreement for residential property for a period longer than 24 months. Renewals of such listing agreements are limited to 12 months. In addition, the law prohibits the recording of such listing agreements with a county recorder's office.

Violations of the Residential Exclusive Listing Agreements Act can result in the listing agreement being voided entirely. Further, licensed real estate professionals may jeopardize their licenses and be subject to criminal punishment in some instances.

The sweeping bill imposes somewhat draconian duties on county recorders, and expands the scope of repercussions related to recording unrecordable documents or instruments.

### **Looking Ahead**

With junk fees on the way out, firms should alert their private lender and borrower clients of the move, and advise clients how to avoid and whether to pay.

As online notarization has taken a leap forward in California, practitioners should understand which states do and don't allow online notaries, so that they can advise their clients.

We're also seeing policy designed to be a boon for fair competition and equity in the real estate market — further protecting homeowners against certain long-term agreements.

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