

Collector's Ink

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PRESIDENT'S MESSAGE | CINDY YAKLIN



I have undoubtedly struggled to find the words to address the membership and drafting this first article for the association as your incoming President has been a true challenge. This past year has been like no other we have experienced. As business owners, we have been faced

with regulation and increasing oversight, the impact of dealing with a global pandemic, social justice unrest and the most contentious presidential election we have experienced in recent history. The recession we faced in 2009 pales in comparison with the issues we have faced in 2020. Throughout all of this, our resolve has never been stronger and relationships we have built within our association have been invaluable. Over the past year we have relied on members within CAC to navigate the uncharted waters of PPP funding, continual health and safety orders issued in our counties or by the Governor, increased legislation that governs how

business owners need to deal with COVID-19 within the workplace, and how to effectively transition our staff to work remotely. We have found ways to persevere and I am proud that you have entrusted me to lead our association over the next year.

I would like to take the opportunity to thank the Board of Governors and members of CAC for their continued support, and I also want to give special thanks to Shawn Suhr for his outstanding leadership as CAC President during the 2020 Pandemic. His direct involvement in testifying with the Los Angeles City Council during a period of time when they were considering placing a ban on all collection activity was a significant contribution.

As we emerge from the pandemic, I am encouraged that we have an organization with incredible leaders from our industry and it gives me the courage to face the challenges sure to come in 2021. We will be navigating the California Debt Collection Licensing Act with the licensure of all collection agencies that attempt to collect from California consumers, the new CFPB rules, and working to amend the Credit Services Act of 1984 through our continued work on AB 699 which will add additional compliance regulations to the credit repair companies that continue to prey on unsuspecting consumers. These are all enormous hurdles we have to overcome within the next year and my goal is to continue to keep all members informed through the process by providing regular updates from me and others among the CAC Board, Committees and Staff. We will keep you updated, call you to action when we need you to support our efforts, and will provide you the resources you need to continue to succeed in our industry.

If you have not already done so, please renew your membership as soon as possible and rest assured that we are doing all we can to protect and grow the collection industry in California. Please take the time to review the updates within this newsletter as we ramp-up both legally and legislatively to deal with the ever-changing environment. Here's to a successful 2021 - Happy New Year!

REGISTER FOR CAC'S WEBINAR! SMARTER RISK MANAGEMENT FOR 2021 FEBRUARY 10, 11:00 AM - 12:00 PM

Description: As new regulations compound and risks escalate, industry veteran Katie Zugsay, Esq. provides practical, strategic, and specific ways agencies can manage the risks ahead without increasing costs.

Learning Objectives: This presentation will identify some new risks looking forward, suggest ways you can help protect your agency and your clients from 2021 risks - without paying for it. For the risks you can't avoid, you'll learn easy ways to find the money you need that most agencies don't know about, and may already be available in your and your vendors' current insurance policies.

REGISTER TODAY!



LEGISLATIVE ADVOCATE UPDATE | CLIFF BERG

We are done with the 2019 Legislative Session, which adjourned at the end of August. The Governor had until the end of September to sign or veto legislation.

We went down to the wire as to whether the Governor would sign or veto SB 908, the “Debt Collection Licensing Act” as we approached the deadline for the Governor to sign or veto bills on his desk. CAC had worked all year to craft a licensing law based on best practices that contained reasonable requirements, enforcement, and did not create undue burdens on our members.

State Senator Bob Wieckowski had introduced an onerous, unworkable licensing bill in 2019 - SB 750 (Wieckowski), which CAC opposed. The Senate agreed with CAC that his bill was not ready for a hearing. After discussions in the fall of 2019, the Senator’s office said that they would work with CAC on writing a bill that worked for industry. Given that California has two thirds Democratic supermajorities, 35 other states have licensing laws, and the debt buyers support licensing we agreed to try to work with him. It was a long and hard process of negotiating and give and take but at the end, thanks especially to our legal counsel Tom Griffin, Legislative Chair Cindy Yaklin and debt buyers counsel David Reid, we were able to address all of our concerns and wound-up supporting SB 908.

Another major incentive to work out, SB 908 was the on again off again proposal of the Governor’s to greatly expand DBO oversight of all financial providers, including collection agencies. The DBO would become the Department of Financial Protection and Innovation. His original proposal came out in January as part of the budget, seemed to fade as the Legislature pushed back on concerns about major policy issues being considered as part of the budget rather than committee process, and opposition from many providers who were already holding state licenses and

saw his proposal as creating additional onerous requirements and liability. He however reworked his proposal and used the summer budget negotiations to revive the proposal. By then, SB 908 looked much better than being under the general provisions of the Governor’s expansion because it was more specific, less vague, and clearer in its requirements. The Governor’s proposal was amended into AB 1864 (Limon) in the last days of the Session in August.

Meanwhile, SB 908 was moving with the agreed upon language, but the bill had to survive the last night of session, when it appeared, the Assembly was taking it hostage as the Senate and Assembly squabbled over various proposals. Once we navigated literally the last few minutes before the Legislature closed down, we got the bill out in the nick of time with dozens of other bills winding up dead when the clock struck midnight.

The big challenge then became convincing the Governor to sign SB 908 along with the Governor’s own DBO expansion proposal in AB 1864 (Limon). The Governor’s proposal greatly expanded DBO’s oversight of all financial providers, including collection agencies, with broad and vague provisions empowering the Department to enforce UDAP provisions, registration requirements and unknown regulatory requirements. Without the Governor’s signature on SB 908, we would have fallen under the regulatory regime of AB 1864. A number of people in the Administration were concerned that the two were somehow duplicative or in conflict. We were able to convince the Governor that they were complimentary not in conflict and he signed both in a joint press conference about protecting consumers from predatory financial services.

Now we are working on implementation of the newly signed law. Briefly, SB 908 enacts the “Debt Collection Licensing Act” which is

effective January 1, 2022. It requires the licensure of persons who engages in debt collection in this state. Applicants for licensure must submit to a background check and provide information as specified, then go through the Nationwide Multistate Licensing System and Registry. It gives the Commissioner oversight similar to those in other Financial Code licensing laws including investigation and examination authority. It requires certain reporting and a surety bond of at least \$25,000. Because AB 1864 takes effect January 1, 2021 and SB 908 January 1, 2022 we wanted to clarify that the new registration requirements in 1864 and other provisions would not be enforced on debt collectors subject to SB 908. We have had good conversations with the Department to that effect. We are also clarifying the process under SB 908 and have been told applications for licensure are planned for fall of 2021. We will keep you posted.

The Legislature has been in recess since the end of August. It returns to begin the new legislative session on Monday, December 7. Members elected in the November election will be sworn in, leadership elected and rules adopted, they will then recess until January. Bill introduction begins immediately on Dec. 7.

We expect 2021 to be busy year. Democrats increased their super majority in the State Senate picking up two more seats, so they now control the Senate 31 to 9. They have held their super majority in the State Assembly 60 to 19 (1 being registered as an Independent). Many new members will be sworn in and a number of familiar names are gone due to term limits. Senators Bill Monning (D-Carmel), Cathleen Galgiani (D-Stockton), Hannah-Beth Jackson (D-Santa Barbara), Jim Beall (D-San Jose), Mike Morrell (R-Rancho Cucamonga) and Jerry Hill (D-San Mateo) were all termed out of the Senate. Senators Ling-Ling Chang (R-Diamond Bar) and John Moorlach (R-Costa Mesa) were both defeated for reelection and replaced with Democrats.

We continue to work with Assemblyman Grayson (D-Concord) on pursuing our bill - AB 699, from last session to reign in abuses by the credit repair industry and are working on a new version. We look forward to working with you next year and wish you happy holidays.

EXECUTIVE DIRECTOR | KIM ANDOSCA

THANK YOU for your membership in the California Association of Collectors! And it's once again time to build our PAC fund for 2021.

As you read the updates from your CAC leadership, please consider adding your additional support to the imperative CAC PAC fund.

A pledge of \$500 will go a long way to win decisively for our industry. Here's where the money will go:

- **First priority:** The Legislature is in a major state of change. Members are leaving and new Members have been elected ... a record number in California. Before California passed term limits, that was not the case. A small interest group like CAC must move quickly to educate new Members on our industry, and probably defuse long-held incorrect impressions of the collection industry. Your contributions assure we will meet them even before they arrive in Sacramento early next year.
- **Second priority:** A small group like ours needs to have the leadership of both Houses know us and our issues. We do not have the capacity to be a major player with the Legislators, so we are left to be known by those Legislators who can influence others to help us. This means the Leadership of both Houses as well as Committee Chairs and Vice Chairs.

These are real, tangible benefits that will help each and every collection agency in California!

By providing just \$500 to CAC's PAC Fund you will become an integral part of the history-making team that continues to protect the California Collection Industry.

We are asking you and all of your colleagues in the industry to write a check for \$500 (or any amount you can provide) to the CAC PAC Fund. You know where the money will go and what it will do. Now, it's up to you.

Contributions in any amount may also be made by credit card [HERE](#).

Thank you for your generous help!



GENERAL COUNSEL | TOM GRIFFIN

Entity Check-Up, Tax Issues and Capitol Happenings

Entity Check-up

Now that 2021 is here, it is a good practice annually, to ensure that your business entity is in good health. Business owners should assess and, if necessary, address, among other matters, the following:

- Have the annual shareholders' and directors' meetings minutes been completed and signed?
- Is the Statement of Information filed with the Secretary of State up to date? This should be done annually and more frequently if there has been a change of address, a change in the officers or directors, or a change in the agent for service of process.
- Are the applicable business licenses up to date?
- Have the necessary on-site inspections occurred (or been waived or postponed) and have the related permits been obtained?
- Are the insurance policies up to date? With the challenging current business climate, do the policies need to be updated or changed?
- Have you obtained and circulated the annual notices that need to be distributed to your employees?
- Does your employee manual need to be updated?
- Are your quarterly and annual tax filings up to date?

Keeping the above updated is good practice. Additionally, maintaining the corporate formalities will aid significantly in keeping the liability protection offered by the entity. The failure to maintain the formalities may lead to personal liability for the business owners.

Tax Issues

Disclaimer: This author is not a tax attorney and is not offering tax advice. Instead, this author seeks only to highlight a couple of issues that readers are encouraged to address, if applicable, with their tax professionals.

In 1978, California voters passed Proposition 13 to limit real property taxes and to prevent homeowners from being forced from their homes due to the costs of rising property taxes. In 1986, California voters passed Proposition 58 which served to prevent a reassessment when real property is transferred from parent to child. In 2020, California voters passed Proposition 19 which will limit Proposition 58's restriction on reassessment only to the transfer of the residential property of a parent to child as long as the child intends to live in that residential property.

Proposition 19's changes, which are significant, become effective February 15, 2021.

If your family has a cabin, rental property or other real property that may be passed to the next generation, you are strongly encouraged to seek the advice of a tax professional and an estate planning lawyer to consider your options.

Capitol Happenings

In the two-year legislative session that concluded in August of 2020, CAC sponsored AB-699 (Grayson) aimed at updating the California's existing Credit Service Act ("Act") that describes the conduct of credit repair agencies. AB 699 sought to bring the Act into the new century and to require greater disclosure to consumers.

Due to the pandemic, the Legislature limited the bills that it would consider before the end of the session, and AB 699 did not make the cut.

CAC will introduce the bill again and, with the next incarnation, the bill will require licensing by the likes of Lexington Law.



KEY EMPLOYMENT LAW CHANGES IN 2021 | JAMIE M. BOSSUAT, ESQ.

California employment laws are always changing, but employers in 2021 will face some significant changes and challenges ranging from COVID-19 safety and notification requirements, to expansion of the California Family Rights Act. This article addresses a few key changes that employers should prepare for.

COVID-19 Requirements

Cal/OSHA and OSHA have begun citing employers for COVID-19 safety violations. They have issued a total of more than \$2.5 million in penalties through the end of October. To prevent citations and penalties, employers should have a written Injury and Illness Prevention Plan in place and should have a specific COVID-19 safety plan in place that employees have been trained on and that complies with both state and local guidelines.

Also, California law now has very strict notification requirements for a COVID-19 exposure in the workplace. Employers must provide written notice to all employees who may have been exposed within one business day. This notice must also include notice of COVID-19 related benefits and the company's anti-discrimination, anti-harassment, and anti-retaliation policies and the company's disinfection protocols and safety plan. Due to the short-time frame for providing notice it is recommended that employers consult counsel and have a plan in place to respond to a COVID-19 exposure and have draft notices ready to be distributed quickly.

California Family Rights Act Expansion

California has significantly expanded the California Family Rights Act, which provides employees the opportunity to take up to 12 weeks of job-protected leave for their own serious health condition, the serious health condition of a family member, or a birth or

foster or adoption placement. The law, which previously only applied to employers with 50 or more employees now applies to all employers with more than 5 employees. The definition of "family member" has also expanded. All employers must update their employee handbooks to reflect this change and should familiarize themselves with the requirements of the CFRA so that they are prepared to implement the new law at the beginning of the year.

Sexual Harassment Training

All employees must have completed a compliant sexual harassment training by January 1, 2021. Supervisory employees must receive 2 hours of training and non-supervisory employees must receive 1 hour of training.

Minimum Wage Increase

Also, employers should keep in mind that the minimum wage increases each year in California. For 2021, the minimum wage will be \$13.00 per hour for employers with 25 employees or less and \$14.00 per hour for employers with 26 employees or more. This also increases the salary threshold for exempt employees who fall under the professional, administrative, or executive exemptions. The salary minimums will be \$54,080 for employers with 25 employees or less and \$58,240 for employers with 26 employees or more.

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