

## **CALIFORNIA COURT OF APPEAL CLARIFIES LENDER'S RIGHT TO ASSIGN LOANS TO NON-LICENSED LENDERS**

*The Financial Code Allowed Assignment to "Institutional Investors," But Did Not Prohibit Assignment to Non-Licensees. Court Clarified Right of Licensee to Do So*

By Tom McCurnin

Montgomery v. GCFS, Inc., 237 Cal. App. 4th 724 (2015)

Assignee of consumer debt brought action against borrower for payment on the debt. Borrower cross-complained against assignee, prior owners of the debt, and their alleged principals for violations of the Finance Lenders Law. The borrower claimed that any assignment must be to a licensed finance lender. The California Court of Appeals, in a reported decision, held that a licensed finance lender was not required to restrict assignments to only licensed lenders.

California Financial Code § 22340(a) provides permission for a licensee to sell obligations to an institutional investor. The Financial Code is silent as to whether a licensee is prohibited from selling debt to a non-licensed entity. I have taken the position in the past that this might be a problem, because transfers to non-licensees are not specifically authorized. But I was not convinced that it was *per se* illegal to transfer loans to non-licensees.

The California Court of Appeal has come to the rescue and held that Section 22340(a) of the Financial Code does not prohibit a finance lender from selling loans to a party other than an institutional investor or another finance lender. The basis of the ruling was the free transferability of debt and the fact that usury laws were not offended by the transfer.

### **What are the takeaways here?**

- First, for those ultra conservative practitioners who felt that the best course of action was to only assign to licensees and not risk censure by the Department of Oversight, your worries are over. You are now free to sell and assign loans to any person, firm or corporation.

- Second, the Court correctly noted that only the original lender needs to be licensed for the usury exemption to remain applicable to the contract following assignment. Subsequent assignees take the debt as they find it. If the original lender was exempt because it was licensed under the Finance Lenders Law, the loan remains exempt following assignment.

Licensed finance lenders in the State of California are now free to assign their deals to unlicensed persons.

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