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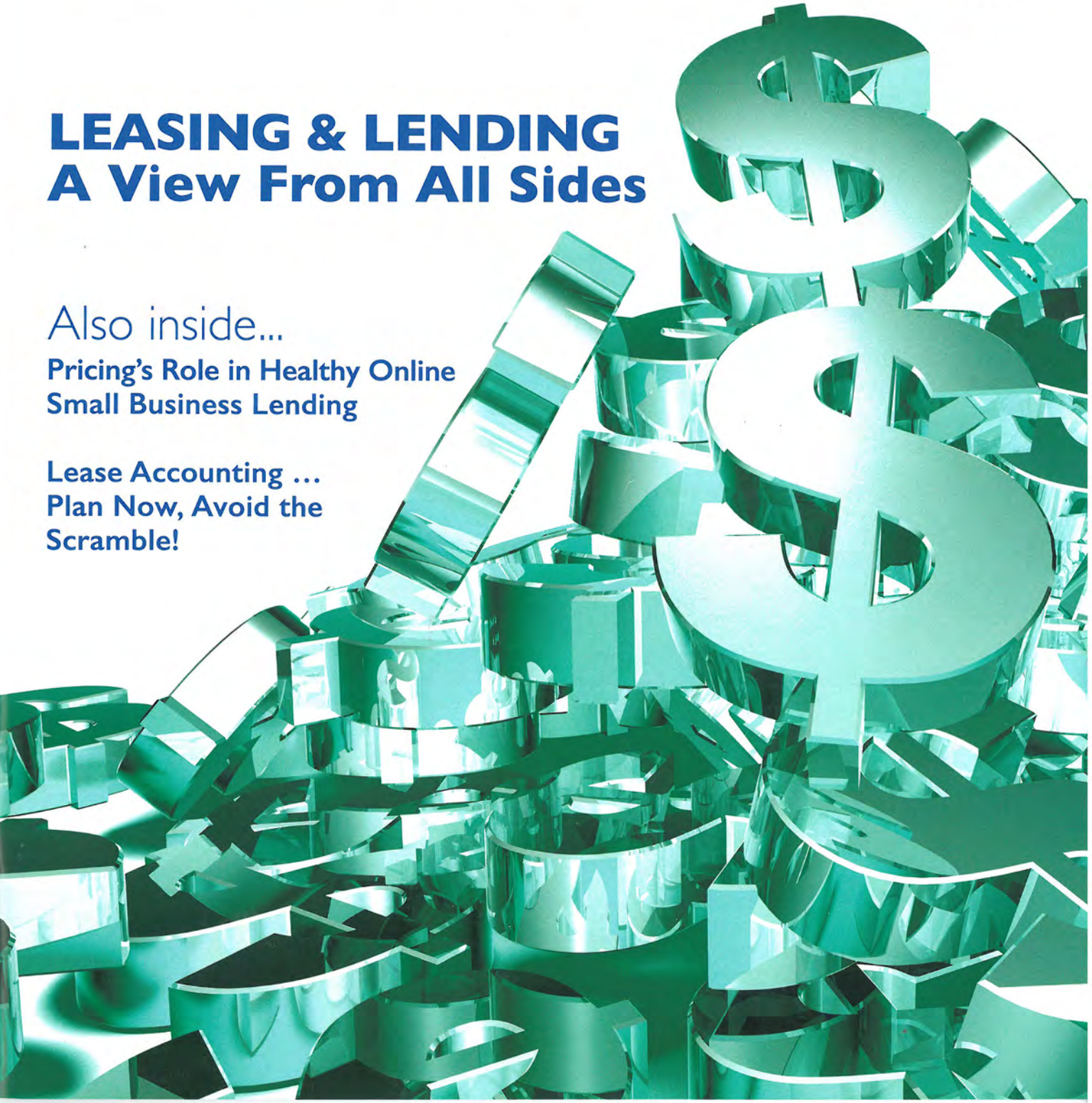
LEASING & LENDING
A View From All Sides



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Life Just Got a Whole Lot Richer For 'Unlicensed' Brokers in California

By Lisa E. Spiwak, Esq.

Attorney Lisa Spiwak notes that the signing into law of Senate Bill 197 in California will, in essence, open up volumes of new business for non-licensed brokers and small businesses searching for viable lending alternatives to the big banks.

On October 10, 2015 Governor Jerry Brown signed into law *Senate Bill 197* which now allows California State Lenders to pay referral fees to individuals and small businesses that do not have a state-issued broker's license. This is an absolute game changer because prior to this bill being approved, California Finance Lender's Law ("CFLL") prohibited the payment of these referral fees to any unlicensed individuals.

Not allowing a referral fee to be paid to unlicensed brokers has been very detrimental to both brokers and small business in California because most of the referrers in California are not in fact licensed. They are unlicensed because the cost of obtaining and maintaining a license in California is not only high, but also quite burdensome. Some of the requirements for a broker's license in California include:

- A non-refundable application fee of $200
- An investigation fee of $100
- A fingerprint fee ranging from $20 to $86
- A clean record from any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds
- The filing of an annual report for each license
- A surety bond of $25,000
- A minimum net worth of $25,000
- A submitted business plan that is consistent with the business of a finance lender
- Each office must maintain a license

Specifically, *Senate Bill 197* adds Section 22602 to the Financial Code. The Financial Code authorizes a licensed finance lender to now compensate an unlicensed person in connection with the referral of a loan. CFLL defines a "finance lender" as any person who is engaged in the business of making consumer or commercial loans. The law defines a "commercial loan" as a loan of a principal amount of $5,000 or more, or any loan under an open-end credit program, whether secured by either real or personal property, and the proceeds of which are intended by the borrower for use primarily for purposes other than personal, family or household.

Lisa E. Spiwak, Esq.
Partner
Spiwak & Iezza, LLP

It is important to know that there are requirements to qualify for the referral fee under this Bill. The basic requirements are as follows:

- The referral by the unlicensed person leads to the consummation of a commercial loan between the licensee and the prospective borrower referred by the unlicensed person.
- The loan contract provides for an annual percentage rate that does not exceed 36%.
- That prior to approval of the loan, the licensee obtains documentation from the prospective borrower documenting the borrower's commercial status. Acceptable forms of such documents include a seller's permit, a business license, articles of incorpo-

ration, income tax returns showing business income, or bank account statements showing business income.

- That prior to the approval of the loan, the licensee also performs underwriting and obtains documents to ensure that the prospective borrower will have sufficient monthly gross revenue with which to repay the loan pursuant to the loan terms, and does not make a loan if it determines through its underwriting that the prospective borrower's total monthly expenses, including debt service payments on the loan for which the prospective borrower is being considered, will exceed the prospective borrower's monthly gross revenue.
- The licensee maintains records of all compensation paid to unlicensed persons in connection with the referral of borrowers for a period of at least four years.
- The licensee annually submits information requested by the commissioner regarding payment of compensation in the report required by law.
- A licensee that is a financial lender must provide a prospective borrower, who has been referred by an unlicensed person, with a written statement revealing the referral fee etc. at the time the licensee receives an application for a commercial loan. The prospective borrower must acknowledge receipt of the statement in writing.

In addition to being a fantastic aid in the generation of revenue for unlicensed brokers, *Senate Bill 197* will drastically increase access to affordable capital for small business owners. The reason for this is because "word-of-mouth" is one of the key marketing strategies for reaching small business owners and referral fees for brokers encourage that "word-of mouth" by motivating brokers to get out into the market place to pitch various lending products to small businesses. This is particularly true in the minority communities where these business owners typically have the greatest difficulty obtaining financing. It becomes a synergistic relationship wherein the more a broker can get these "hard to procure" loans for business owners, the more the business owners recommend the broker and the more business the broker procures.

Historically, CFLL licensees who made commercial loans were at a competitive disadvantage relative to their direct competitors who were not required to hold CFLL licenses. This direct competitor included merchant advance companies and companies that partner with banks. The intention of the authors of the Bill, Senator Marty Block and co-sponsors *CAMEO* and *Opportunity Fund*, was to help responsible lending products become more competitive with other predatory financing options. *CAMEO* (California Association for Micro Enterprise Opportunity) is an organization whose mission is to grow a healthy, vibrant, thriving environment for all entrepreneurs and start-up businesses by creating economic opportunity for entrepreneurs. *Opportunity Fund* is a nonprofit lender and California's leading microfinance provider. The Bill received unanimous support from the Senate Banking and Financial Institutions Committee and full senate. It is believed that *Senate Bill 197* will level the playing field for California lenders and also help create greater access to capital for small businesses.

Heidi Pickman, a spokesperson for *CAMEO*, states that CFLL licensees will now be much more competitive in the marketplace because "if an organization is not required to hold a CFLL license, then it is not regulated and can pay referral fees to non-brokers, whereas those required to hold a CFLL license could not do that and thus non-brokers were less likely to refer to those holding a CFLL license." She goes on to state that with the passage of *Senate Bill 197*, "more entities are likely to refer to the CFLL lenders now that CFLL lenders can pay referral fees."

In conclusion, the signing into law of *Senate Bill 197* will open up volumes of new business for CFLL lenders, for non-licensed brokers and for small businesses searching for viable lending alternatives to the traditional big banks. This Bill is truly a game changer for the leasing industry in California!

Newsline and the author welcome all feedback on the contents of this article.

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