



## CLIENT ALERT: California Consent Orders

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Mortgage companies doing business in California have been hit with hefty fines recently for a variety of compliance issues as the state appears to be stepping up enforcement. One of the most common issues we have seen recently is an increase in consent orders and penalties resulting from improper calculation of per diem interest on loans originated in California. The state has cited numerous companies for incorrectly calculating per diem interest charged to borrowers, alleging that companies overcharged borrower's per diem interest in regards to the disbursement of loan proceeds at funding.

Similarly, the state of California has imposed penalties for collecting appraisal fees from borrowers in excess of the amounts shown in appraisal fee invoices and not issuing refunds to borrowers for the difference.

California has also been focused recently on the commingling of escrow and operating cash. The state requires that all deposits held for borrower escrows and servicing payments be separated from a company's operating cash. In some cases, the state has penalized companies for putting a cushion in the escrow cash account by stating operating cash is being commingled with escrow cash. There have also been issues with California escrow cash being held in the same escrow cash accounts as other states, as well as failures to properly reconcile escrow accounts on a monthly and weekly basis. Although we have not seen anything in the guidance to indicate this is an issue, we have been made aware of the state requesting escrow reconciliations for other states. The timeliness and frequency of escrow reconciliations has also been an issue and has varied by examiner.

In addition to penalties assessed by the state of California, there are often other expenses incurred directly by companies as a result of findings, including refunds to borrowers of overpaid interest, legal expenses, and the costs associated with tying up internal human resources. In some instances, as part of the DBO review, the state has required companies to hire an independent accountant, such as Richey May, to perform independent reviews for a period of time at the company's expense.

We recommend that companies perform a proactive internal review of their compliance with California regulatory requirements. If you need any assistance, please reach out to your Richey May contact or email us at [info@richeymay.com](mailto:info@richeymay.com) with any questions or for further information on this topic.

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