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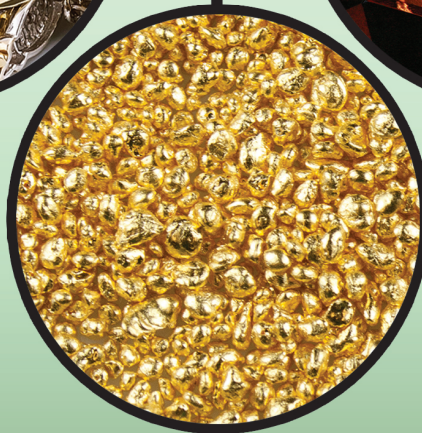
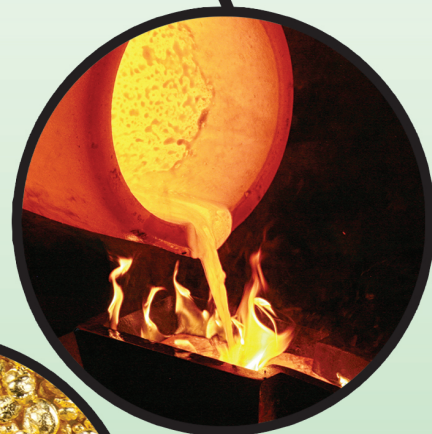
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Jan Schneider

The CAPA Spring Conference

If you haven't already registered for the CAPA Spring Conference, don't wait any longer! There is no greater membership benefit than meeting your fellow California Pawnbrokers face to face and having the opportunity

to exchange knowledge and ideas.

We have a great line up of vendors and seminars, all geared toward today's pawn shop operations. Your CAPA Board of Directors will all be present for you to meet and tell us how we are doing in running YOUR association.

You'll hear the latest updates on our "Item Only" bill, SB1317 authored by Senator Bradford. Our legal representatives will talk about our lawsuit against the City of San Jose addressing licensing requirements and the post credit training for local law enforcement agencies sponsored by CAPA taking place in several jurisdictions. Get all your questions answered by the experts.

Plan on staying all day on Sunday. The roundtable

discussions at the end of the day are not to be missed. Last year at the October CAPA Convention in Rancho Mirage, we talked for over 90 minutes with an equal number of Boardmembers and CAPA members contributing to the conversation. One attendee said that alone was worth the time and money to attend.

And please plan to attend the Celebration of Life on Saturday night for our beloved late lobbyist, Bill Duplissea. Bill was an irreplaceable member of our CAPA family. He led us to more legislative victories than any CLS-DA/CAPA advocate in our history. And he was a dear friend to all of us who truly loved us and our industry. Due to COVID, this is the only celebration being held honoring Bill. It is the highest compliment to CAPA that Bill's family have entrusted this important event to us.

I look forward to seeing you in Redwood City April 30th – May 1st.

Jan Schneider

CAPA President ■



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Tony DeMarco

CAPA Bill Will Protect Customer Information

Privacy protection has been a highly discussed topic for several years now. The state legislature has passed several massive

Privacy Bills that protect personal information of customers and clients. Our bill this year, SB 1317 Bradford, will finally achieve our goal of masking our customers' financial and personal information from databases we are required to report to. What does this mean to you? Not a whole lot. Your software company will make the appropriate changes to your daily upload and make your system compliant (if we are successful with our bill). What does it mean to our clients? A lot! We will cease to share "their" information with the DOJ CAPSS system. Thereby removing risk their information will be stolen or somehow compromised. As I mentioned last time, this is a sellable change to our operation. We

can honestly state to our clients that we do not share, with any party, their personal or financial information. We could exclusively state: "Strictly Confidential Transactions." The only circumstance where we would share a customer's information was if an item was alleged to be lost, stolen or embezzled by law enforcement. Remember, we still have to collect and save all the same information on every client we make loans to or purchase from, the only difference would be we now only report the item.

And with every legislative cycle, CAPA needs the support of every member. Through membership, support at convention, Defense Fund, PAC, and local support at local fundraisers, we must continue to be a strong, connected state association. Please stay engaged and as always, reach out to me with any questions or concerns.

Tony DeMarco ■

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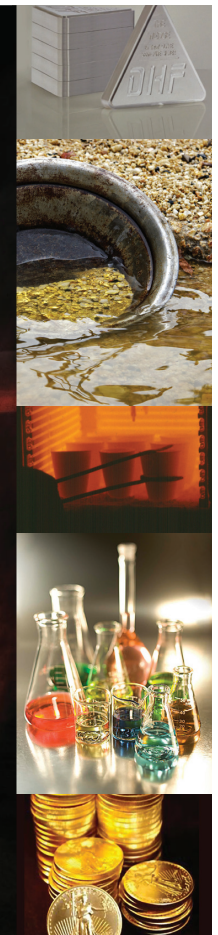


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Alberto Torrico



Cathleen Gagliani

Capitol Report

early were Assemblymembers Shirley Weber who was appointed by the Governor to the position of Secretary of State, Rob Bonta appointed as the new Attorney General, and Ed Chau who was appointed to a state judgeship. To date, the 7 Assemblymembers who will not be seeking re-election in 2022 are Frank Bigelow, Bill Quirk, Jordan Cunningham, former Republican leader Chad Mayes, Jose Medina, Patrick O'Donnell, and Tom Daly.

In addition, at least 9 Assemblymembers will be departing early as they have opted to run for other political offices in 2022. They are Assemblymembers Christina Garcia, Adam Gray, Kevin Mullin and Rudy Salas who are running for Congress, Marc Levine who is running for Insurance Commissioner, Janet Nguyen and Kelly Seyarto who are running for the State Senate, Richard Bloom who is running for the LA Board of Supervisors, and Jim Cooper who is running for Sacramento County Sheriff.

Adding to the attrition in the Assembly is the fact that at last count, 10 incumbents will be competing for 5 Assembly seats. Unless some decide to move and campaign in a neighboring district, up to 5 additional Assemblymembers could be defeated on election day.

One thing is certain – now more than ever - our Pawnbroker members need to engage with their local Legislators and candidates for office.

Relaxation of COVID Restrictions

As Covid 19 cases continue to fall globally, the NFL isn't alone in suspending Covid protocols. The Governor and lawmakers are now revisiting the need to continue the State's emergency orders. Most recently, the California Department of Public Health lifted the statewide mask mandates for both vaccinated and unvaccinated individuals, with the exception that masks will still be required in high transmission settings such as healthcare settings, long term care facilities, airports, and other public transit facilities. California lifted its mask mandate for schools and child-care facilities on March 12. However, local health departments and businesses can still choose to implement more stringent requirements.

California's Covid declaration of emergency passed its 2-year mark on March 4th. While some lawmakers argue the emergency is behind us, others caution that ending the declaration could also hinder the State's ability to ensure enough hospital capacity and healthcare staffing in the event of another surge in cases. As recently as December of last year, ICU beds in California and throughout the country were at capacity and hospitals were seeing a spike in nurses and doctors testing positive. In December and January, the Biden Administration deployed 1800 military doctors, nurses, paramedics and other health-care personnel to overwhelmed medical centers and activated over 14,000 National Guard members in 49 states to support clinical

Re-Districting

Following marathon meetings and map drawing sessions of the Re-Districting Commission, the game of musical chairs in the Legislature has begun.

Re-shaping California's puzzle of districts shifted from legislative powerbrokers to an independent Re-districting Commission during the Schwarzenegger era, taking away the Legislature's ability to protect incumbents. Early versions of the newly redrawn maps had a record number of 43 Legislators drawn into districts with another incumbent. Now that the dust has settled and the maps have been finalized, 7 Senate districts, and 9 Assembly districts have more than one incumbent, forcing sitting legislators to move and campaign in new districts, retire early from public life, or step aside until some future date in order to avoid a contentious election battle with a colleague.

For example, In Southern California, Senators Connie Leyva and Susan Rubio were drawn into the same district, in the Central Valley Senators Anna Caballero and Melissa Hurtado were potentially pitted against each other, and Shannon Grove and Andreas Borges were faced with the prospect of running against each other in newly carved seats.

During the last redistricting cycle, more than 30 Assemblymembers were facing term limits in 2012. While only 6 members of the Legislature are facing term limits in 2022, at least 30 legislators who were sworn in after the 2020 election cycle will not be returning. Many are retiring early, have been drawn out of their districts, or are running for higher office.

At least 9 members of the 40 member Senate will be departing in 2022. Senators facing term limits are Patricia Bates, Bob Hertzberg, Ben Hueso, Jim Nielsen, Richard Pan, Bob Wieckowski. Senators Connie Leyva and Andreas Borgeas who were drawn into districts with another incumbent are not seeking re-election, and Sydney Kamlager is running for a Congressional seat.

In the Assembly, at least 23 of the 80 lawmakers who were sworn into office in December 2020 won't be returning. We've already seen the early departures of 7 Assemblymembers - Jim Frazier, Autumn Burke, Lorena Gonzalez who will assume the role of executive secretary-treasurer for the California Labor Federation, and David Chiu who left to become San Francisco's city attorney. Also leaving

care, testing and vaccination efforts. Under California's emergency declaration, retired and inactive nurses were allowed to return to the workforce quickly with an abbreviated license application. Furthermore, the State's declaration allowed for an expansion of responsibilities for pharmacists, technicians and EMS workers, and an expedited process for establishing testing and vaccination programs. Should the emergency declaration be lifted, Legislators will need to contemplate placing specific emergency orders into statute in order to meet the needs of an unpredictable future.

Item Only

Pawnbrokers have been concerned for years over the fact that "personal identifying information" of customers is stored within the Department of Justice's "California Pawn and Secondhand-dealer System" (CAPPS). Over the past several years, there have been many high-profile data breaches in the public and private sector. Accordingly, the potential for the personal information of pawn customers to be leaked, creates a heightened risk of identity theft. Because these individuals have limited financial resources, they are often left with little or no recourse in the event their personal or financial information is compromised.

This year CAPA has introduced SB 1317 authored by Senator Steve Bradford, which is aimed at protecting pawn customers from identity theft and protecting these

same customers from potential profiling by law enforcement and third-party vendors that have access to customers identifying information.

Pawnbrokers are essentially the "financial safety net" for the "unbanked population" of individuals who may not otherwise have credit, savings, or money to pay for an unexpected expense such as a car repair or medical emergency. According to data released by the Fair Isaac Corporation in September of 2019, at least 9 million households in the United States are "unbanked" and consumers with credit scores below 650 made up approximately 28% of the United States population. Unbanked individuals are already at a higher risk of becoming victims of violent crime because they must often carry large amounts of cash on their person, or hide cash within their homes, making them easy targets for criminals. Reducing the risk of exposure of "personally identifiable information" (PII) during secondhand/pawn transactions is critical for protecting vulnerable communities from theft and predatory schemes.

Pursuant to SB 1317, pawnbrokers will continue to collect and record the serial numbers for all items used as collateral as well as the personal information of the customer. Similar to AB 1969 (Rubio) in 2020, however, only descriptions of the property, including serial numbers, would be entered into the CAPPS system thereby protecting the personal information of customers. ■

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— Jan Schneider, CAPA President

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Brett D. Beyler

Associate, Mastagni Holstedt, A.P.C.

Under California law, a pawnbroker can use any “tangible personal property” as collateral for a loan. (See Cal. Bus. & Prof. Code § 21626.) This definition of “tangible personal property” includes automobiles.

A pawnbroker is not required to obtain an occupational license to pawn on automobiles, even in the event of a fore-

closure on that collateral, so long as the pawnbroker does not retail the foreclosed vehicle. If a pawnbroker forecloses on the automobile-collateral, they will want to use an auction house. If the pawnbroker tries to sell the foreclosed automobile-collateral themselves, then they will need to get additional licensing including, but not limited to, occupation licensing, as well as additional insurances.

As a practical matter, unless the pawnbroker has a large warehouse for storage, the pawnbroker will likely need to



store the collateral-automobiles at an off-site location. NOTE: California Business & Professions Code § 21642(b)(1) states “[t]he license *shall* designate all locations where property of the business may be stored at locations not designated on the license only with the written consent of the local licensing authority.” Therefore, before doing any transactions with any collateral stored off-premises (including, but not limited to, automobiles), make sure your license/permit complies with Section 21642.

Under the Business & Professions Code, the only documentation that is *required* is a pawnbroker loan ticket. However, best practices would discourage such limited amount of documentation when it comes of pawn-automobile transactions. In preparing this article, I spoke with industry leaders with substantial experience in the pawn-automobile industry. These industry leaders advised pawnbrokers entering automobile pawn transactions to take the following steps before consummating the loan transaction:

First, run a KSR report on the collateral. A KSR report is essentially a background check on the automobile. This report will advise the pawnbroker of any liens against the collateral or unpaid tickets. If unpaid tickets are outstanding at the time of the loan and the pawnbroker is forced to foreclose on the collateral, the cost to satisfy those tickets comes out of the automobile sale proceeds. These reports will also identify the title possessor.

Second, obtain a release of liability. This form is now available online.

Third, take possession of the vehicle title. This will be necessary to sell the vehicle if the pawnbroker needs to foreclose on the loan. Moreover, it demonstrates that no other lien holders exist. Lastly, it ensures the person before the pawnbroker is the true owner.

Fourth, Require the customer add the pawnbroker as an additional insured and Require the insurance be maintained (and provide proof) for the duration of loan. That way, if anything happens to the collateral during the life of the loan, the vehicle is covered.

Fifth, order new title through the DMV listing the pawnbroker as a lien

holder.

Sixth, in addition to the pawn ticket, gather the following DMV documents and incorporate as part of the loan ticket at the time of the transaction:

- DMV Form 135: Bill of Sale (signed, but not dated by the customer)
- DMV Form 138: Notice of Transfer
- DMV Form 256: Statement of Facts
- DMV Form 166: Lien Satisfied/Title Holder Release (must be notarized)
- DMV Form 101: Statement of Record Ownership/Error or Erasure (if a mistake is made in the pawn transaction, this form allows for corrections to be made without

needing the customer to come back in and sign)

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SB 1317 FACTSHEET

SUMMARY

Pawnbrokers in California are heavily regulated. The current statutory and regulatory framework protects consumers who avail themselves of pawn loans, and also helps law enforcement identify stolen items. SB 1317 is aimed at protecting pawn customers from identity theft, and also to protect these same customers from potential profiling by law enforcement and third-party vendors that have access to customers identifying information.

BACKGROUND

Pawnbrokers provide a valuable source of short-term credit to individuals who may not otherwise have credit, savings, or money to pay for an unexpected expense such as a car repair or medical emergency. According to data released by the Fair Isaac Corporation in September of 2019, at least 9 million households in the United States are “unbanked”, and consumers with credit scores below 650 made up approximately 28% of the United States population. Pawnbrokers are essentially the “financial safety net” for this population, as everyone who seeks a pawn loan can borrow money regardless of creditworthiness.

For every pawn loan, the serial number of the item used as collateral as well as detailed personal information for the customer is entered in the Department of Justice’s California Pawn and Secondhand-dealer System (CAPPS). Over the past several years, there have been many high-profile data breaches in the public and private sector. Accordingly, the potential for the personal information of pawn customers to be leaked, creates a heightened risk of identity theft. Because these individuals have limited financial resources, they are often left with little or no recourse in the event their personal or financial information is compromised. Unbanked individuals are already at a higher risk of becoming victims of violent crime because they must often carry large amounts of cash on their person, or

hide cash within their homes, making them easy targets for criminals. Reducing the risk of exposure of “personally identifiable information (PII)” during secondhand/pawn transactions is critical for protecting vulnerable communities from theft and predatory schemes.

SOLUTION

Pursuant to SB 1317, pawnbrokers will continue to collect and record the serial numbers for all items used as collateral as well as the personal information of the customer. Similar to AB 1969 (Rubio) in 2020, however, only

descriptions of the property, including serial numbers, would be entered into the CAPPS system thereby protecting the personal information of customers.

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SPECIAL NOTICE

Limited Tax Exclusion for Pawnbrokers Extended Through 2026

Until January 1, 2027, pawnbrokers may continue to exclude from tax those transactions in which a borrower buys back their pledged property if *all* of the following conditions are met:

- The buyback occurs within six (6) months of the date the borrower defaulted on the loan (the date title to the property vested with the pawnbroker).
- The borrower pays the remaining unpaid loan balance, including any charges and interest, as of the date the borrower defaulted, together with one of the following:
 - For loans of less than \$2,500, the borrower must pay the allowable charges and interest from the default date to the date the borrower buys back the pledged property.
 - For loans of \$2,500 or more, the borrower must pay charges and interest due based on the last monthly contractual interest rate from the date of default to the date the borrower buys back the pledged property.
- The borrower has proof, such as a receipt or similar document, that they originally paid sales tax on the item.

Background

[Assembly Bill 296](#) extends the sunset date for the exclusion from tax on certain transfers of property by pawnbrokers until January 1, 2027. Previously, the sunset date was January 1, 2022. The exclusion is set forth by Revenue and Taxation Code section 6010.15, which provides that when a pawnbroker transfers property back to the person that had pledged the property to the pawnbroker as security for a loan, that transfer is not taxable under certain conditions.

For more information

If you have additional questions regarding this notice, you may call our Customer Service Center at 1-800-400-7115 (CRS:711). Customer service representatives are available Monday through Friday from 8:00 a.m. to 5:00 p.m. (Pacific time), except state holidays.

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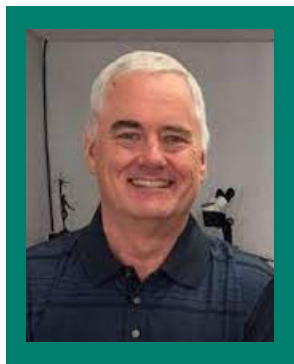
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WHAT IS A SDN ANYWAY AND WHY DOES IT MATTER TO ME?



David Griffiths
AML Gurus

As I write this, it has been twelve days since Russia attacked its neighbor, Ukraine. Unless you have been hiding under a rock, you are aware that the Western world is providing support in many ways including placing sanctions against Russian dignitaries, oligarchs, vessels, and organiza-

tions. The news headlines today are all about why we have not sanctioned Russian oil yet. So, what are “sanctions” and how do they apply to the precious metal industry?

Sanctions are effectively penalties imposed by a governing body on those who have either broken the law or threatened to break the law and are meant to be a deterrent against future abuses. Different agencies impose sanctions. The United Nations can impose sanctions as can individual countries. This is why you will hear about many of the larger Western aligned countries using this tool right now. The list of countries that the US has sanctioned in the last 20+ years is not a surprise to anyone. China, Libya, Cuba, Venezuela, Columbia, North Korea, and Iran are a few of those countries who have had sanctions imposed on them in varying degrees by the US.

In the US, “The Office of Foreign Assets Control (OFAC), a division of the Department of Treasury, administers and enforces economic and trade sanctions based on US policy and national security goals...”¹ Sanctions are not always as high profile as they have been the last few weeks, but they are not uncommon either. Each set of sanctions is a new set of stipulations that state the reason for the sanction, the type of sanction and duration as well as the conditions required for the sanction to be removed. Because of this, there is no one “law” that exists that encapsulates all the sanctions. You must go to the OFAC website to see the list. Actually, there are multiple lists, but the one that we are most likely to utilize is the Specifically Designated National (SDN) list.

The SDN list is updated on average 120 times a year. That is once every three days! Twenty-six updates have been done to this list since January 1, 2022. None of this is a secret, by the way. This is all public knowledge. The names of the individuals, banks, businesses, and even vessels that

are sanctioned are listed for all to see.² In addition, you can even get an e-mail each time the list is updated.³ In the case of the most recent barrage of new entries, the current list contains close to 35,000 names. (This is more than double the usual 12,000-15,000 names).

According to “Directive 2 under Executive Order 14024”⁴ put into place on February 24, 2022, the top paragraph on the second page of the document lists 17 different types of industries that are required to follow the sanctions order. ‘Dealers in precious metals, stones or jewels’ is listed as one of these industries. That means pawnbrokers. In addition to MSB’s, banks, credit card systems, and insurance companies, pawnbrokers are included. Did you get this memo in the mail? Of course not! Do you know what you are required to do, or more importantly not do?

- You are required by Executive Order and subsequent orders of the Department of the Treasury to *not provide anyone on the SDN list with any financial assistance*. None. Zippo. Nada.
- You are required to check the list *before* you provide any funds to your customers. This is known as a “front-end” check. The whole idea is to NOT provide the funds so checking *after* you gave the money is not going to keep you out of trouble.
- To protect yourself as a business owner, you need to have proof that you have checked the list. This can be done manually (if you want to read through a 1706-page list of names), or you can utilize your proprietary software (better choice). Third party programs such as Leads Online and BWI Rapid provide courtesy checks, but these are “back-end” checks so are non-compliant. (As a CA pawnbroker you do not need to worry about back-end checks because CAPSS doesn’t provide them anyway.)
- Your system (manual or digital) must at a minimum be capable of checking the SDN list.
- If the system is capable of checking, you must either subscribe to the service (PawnMaster) or make actual use of the modules in place (SuperPawn, Bravo, PawnMate).
- If your system is NOT capable of checking, you have no other choice in CA but to perform a manual check of every single customer using the SDN search tool on the OFAC website.

- You must provide proof, through either reporting or capture of a screenshot or copying of a manual search, that your customer in question who was a “potential match” was cleared and by what criteria. This ‘proof’ should be retained for at least a year, so you always have a record to show any regulators.
- You need to train your staff so they know what to do regardless of which system you will be using to check names.

As I crisscross the country performing Anti-Money Laundering program reviews, this is the one piece that is most often neglected. In most cases, the checks are easy to perform if you have the right software, but you need to take this stuff seriously. The fines can be quite large if you end up providing cash to anyone on this list. In CA you don’t only have Russian names to worry about but all those Hispanic names, too.

Truist bank in NC just asked me to provide much greater detail for the SDN procedures in one of my customers programs. They are a very large bank and encompass most of the East Coast and some of the Gulf States. It is just a matter of time folks. If you are not doing SDN checks, you should be. I have provided links to each of my sources in the footnotes so you can see these are Federal requirements and not recommendations. Federal regulations carry Federal level fines and should be respected as such.

Here are step by step directions for SDN lookups for each of the major software programs in CA.

1. PawnMaster users

- a. Click on “police” on the top menu bar.
- b. Click on OFAC/SDN in the dropdown box that opens.
 - i. If it says you don’t have a module you either need to pay them for an extra module, or you must check the OFAC site manually
 - ii. If it provides you with the date of your last update, make sure it is no more than 30 days out. Check for updates frequently!
- c. Their SDN report is meaningless, so you must add info to it.
 - i. Reports>Customers>19
 - ii. Print the list and identify the last date each customer was in your store.
 - iii. Write the dates next to each name and KEEP THE LIST!
 - iv. Run the report each month, printing only if there are new names, and then you get to transfer all the dates from the old sheet to the new one. (They do NOT offer a date filter for this report sadly)

2. PawnMate users

- a. Click on the Compliance Tab
- b. Click on the SDN tab
- c. Input the dates you desire and run the report, printing if there are new names since the last time you ran the report

3. Bravo users

- a. Open the main Reports menu

b. Click on the SDN reportⁱ

- c. Input the dates you desire and run the report, printing if there are new names since the last time you ran the report

4. SuperPawn users

- a. Verify that the SDN feature is turned on. From the home screen look right where the version number is, and you will see an indicator that says SDN is on or off.
 - i. If it is off, you will have to call and have it turned on
- b. Verify that the SDN report is part of your daily close out reporting
- c. Remove any SDN reports that have data on them from the daily close out and retain them in a separate file for at least a year.

5. Manual search from the OFAC site

- a. Google “SDN Lookup”
- b. Click on SDN sanctions list search
- c. Type customers first and last name as requested and NOTHING else
- d. Change slider at bottom left to 85% (important) and click on search button
 - i. If no names are returned, print, and save for a few weeks to show you have a working system
 - ii. If names are returned, these are potential matches. Click on each one and clear them (check date of birth first always to save time). Once you have cleared them, print the page that shows all the different names and save this for a year. Indicate on the sheet why you cleared your customer (“date of birth mis-match” and some initials is good).

Compliance with the SDN regulations is not difficult or time-consuming, although it can use a lot of paper if your software does not provide the search function. If your software charges you for an SDN module, be sure to stay on them to make sure the updates are frequent since you are paying for that service, and remember those updates are happening every three days on average. I stated this earlier, but it bears repeating; the updates need to be at least every 30 days minimum.

While we all hope that the conflict in Ukraine is over sooner rather than later, rest assured that the sanctions will be in place for years. Names will be added, and names will be removed. That is the nature of the program. Our job in the industry is to make sure we are checking to make sure we are not doing business with anyone on the list.

If you would like to discuss this in further detail, please reach out using the contact link on our web page (amlgurus.com) and either Dan or myself will get with you promptly. We would be happy to go over your procedures with you to make sure that all your bases are covered. ■

1. <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control>
2. <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>
3. http://service.govdelivery.com/service/subscribe.html?code=USTREAS_89
4. https://home.treasury.gov/system/files/126/correspondent_accounts_directive_2.pdf
- i. Bravo will be rolling out a major fix for their SDN reporting in the Spring 2022 update that will mimic these instructions.



CAPA 6TH ANNUAL SPRING CONFERENCE

APRIL 30 - MAY 1, 2022



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- Exhibit hall with vendors eager to make you the best deal including special private exhibit booths for our diamond and gem buyers.
- Up-to-the-minute information on the 2022 legislative effort toward "item only report", advice on how to handle MLA and Bankruptcy notices and much more!

SCHEDULE BASICS

Saturday, April 30, 2022:

Welcome Reception
Bill Duplissea Life Celebration

Sunday, May 3, 2022:

Breakfast and Lunch Provided
Education and Vendor Exhibits





6TH ANNUAL SPRING CONFERENCE

GRAND BAY HOTEL SAN FRANCISCO • REDWOOD CITY, CA

APRIL 30, 2022 – MAY 1, 2022
THE GRAND BAY HOTEL • 223 TWIN DOLPHIN DR, REDWOOD CITY, CA 94065

ATTENDEE REGISTRATION FORM

EARLY REGISTRATION PRICING AVAILABLE UNTIL APRIL 15, 2022

CONTACT INFORMATION (Information to be printed in the Conference Program)

Member Store/Company Name: _____ Contact Person: _____
Street Address: _____ City, State: _____ Zip: _____
Phone: _____ Fax: _____ Email: _____

FULL CONFERENCE

(Includes Welcome Reception, Breakfast & Lunch)

BADGES:

Attendee Name: _____

Email: _____

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Attendee Name: _____

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Dietary Restrictions Details: _____

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☐ I understand

☐ OPT-OUT

Questions or Concerns?

Call Evan at 916.669.5322 x117

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Attendee Member: \$225 \$ _____

Attendee Non-Member: \$295 \$ _____

Employee/Guest: \$ _____

\$205 ea. # Persons _____

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Refunds requested on or before April 15, 2022, must be submitted in writing to CAPA and a \$25 processing fee per registration will be assessed for each cancellation.

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California Pawnbrokers Association

One Capitol Mall, Suite 800

Sacramento, CA 95814

Fax: 916-444-7462

Email: ewise@amgroup.us

DEFENDING AGAINST LAWSUITS USING YOUR CAPA CONTRACT

Brett Beyler

Associate, Mastagni Holstedt, A.P.C.

In the last two years, we have seen a slight uptick in small claims legal actions brought by current and/or former customers of pawnbrokers. The issues vary but include stolen collateral following a break-in or theft, claims of damage to the collateral while in the pawnbroker's possession, or a customer died and now the heirs want the item back. Fortunately, your CAPA contract provides the pawnbroker several defenses.

Theft. In the CAPA contract, there is a section which states as follows:

LENDER'S LIABILITY CONCERNING LOSS OR DAMAGE TO PLEDGED PROPERTY: It is agreed and understood that Lender does not insure Pledged Property for the benefit of the Borrower and is not liable for loss or damage to the property resulting from burglary, theft, embezzlement, robbery, moths, fire,

water, typical wear and deterioration resulting from handling and storage, acts of God, public enemy (vis-à-vis, major riot, war or insurrection) and/or other causes beyond Lender's control...

By the plain language of this contract provision, if anything happens to the collateral (stolen, damaged, destroyed, etc.) the pawnbroker is not liable.

Limitation of Damages.

Now, if the particular claim falls outside of the above referenced limitation of liability, the CAPA contract also limits the pawnbroker's liability with a liquidated damages clause. The liquidated damages clause states as follows:

If the Lender is found liable to the Borrower, as liquidated damages, the Lender shall not be liable for more than two-times the amount loaned.

The liquidated damages eliminate the need to get an expert appraisal, argue over retail value, and family heritage. Instead, it provides a simple equation: $[(\text{loan amount}) \times (2) = (\text{liquidated damages total})]$. It also bears mentioning that the broad language used in the limitation of liability clause makes it rare and/or unlikely that a claim would survive, in any event.

Small Claims Court.

In California, an attorney cannot represent you in small claims court. Depending on your perspective, that could be a good or bad thing.

On the positive side, that means your client will be (most likely) clueless on how to craft a cogent legal argument. Most often, they ramble about how the collateral has deep, emotional significance to them and their family – ALL IRRELEVANT.

On the negative side, the pawnbroker will need to appear to defend themselves too. So, how does the pawnbroker clearly and concisely make the best case and win? Hire an attorney to draft your legal argument and prepare you before the hearing.

Conclusion. If you get served with a lawsuit, do not wait. Give us a call so we can help.

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CAPA's Legislative Team shows Senator Roth around Loyalty Pawn in Sacramento.

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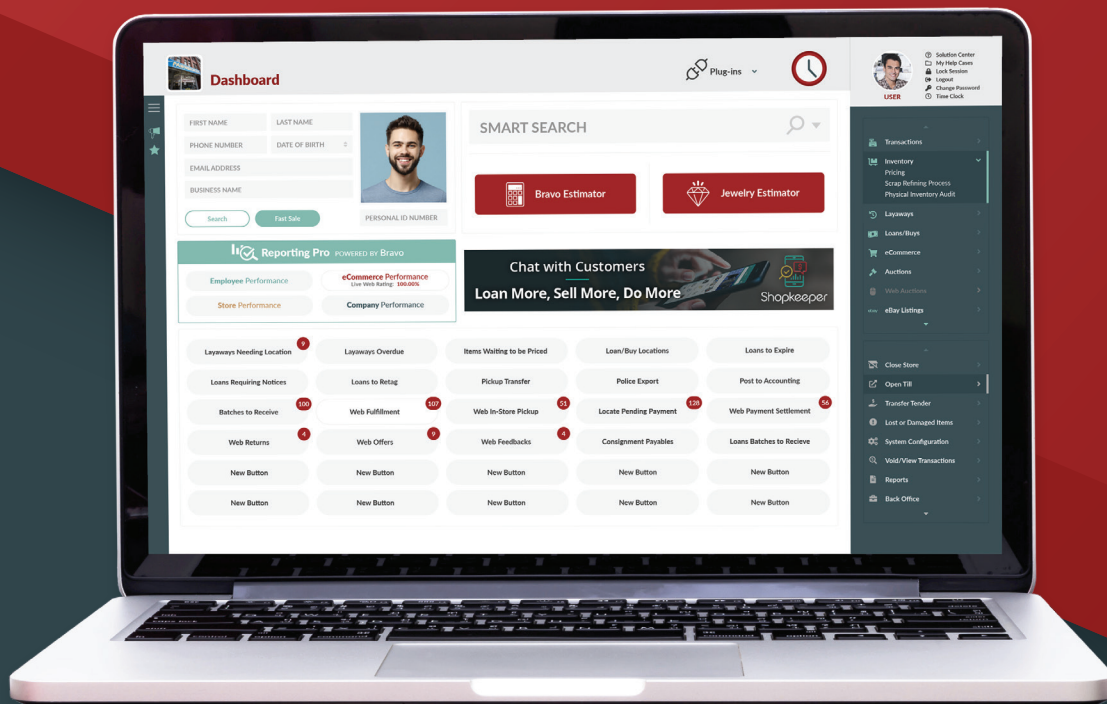
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