

California Senator Introduces Bill to Make Commercial Brokers Fiduciaries of Borrowers

March 30, 2023 | [Eric D. Mulligan](#)

Last month, California Senator Steve Glazer introduced a bill that could fundamentally change commercial finance brokering in the state. Senate bill 869 would expand the licensing requirement for brokers of commercial loans by defining a new term, "commercial broker," and require anyone who meets that definition to be licensed. The bill would also provide that a commercial broker is the borrower's fiduciary. This duty would require a commercial broker to "exercise the utmost honesty, absolute candor, integrity, and unselfishness toward the borrower," to place the borrower's economic interest ahead of the broker's own economic interest, not to compete with the borrower, and to act at all times in the borrower's best interests, to the exclusion of all other interests. This duty would exist regardless of whom else the broker might be serving as agent in the loan transaction.

The term "commercial broker" in the bill includes any person who is involved in commercial financing and engaged in the business of performing any of the following acts in connection with commercial loans made by a commercial finance lender:

- Transmitting confidential data about a prospective borrower to a commercial finance lender with the expectation of compensation, in connection with making a referral.
- Making a referral to a commercial finance lender under an agreement with the commercial finance lender that a prospective borrower referred by the person to the commercial finance lender meets certain criteria involving confidential data.
- Participating in any loan negotiation between a commercial finance lender and prospective borrower.
- Counseling, advising, or making recommendations to a prospective borrower about a loan based on the prospective borrower's confidential data.
- Participating in the preparation of any loan documents, including loan applications, other than providing a prospective borrower blank copies of loan documents. Transmitting information that is not confidential data to a commercial finance lender at the request of a prospective borrower is not, by itself, participation in the preparation of loan documents.

- Communicating to a prospective borrower a commercial finance lender's loan approval decisions.
- Charging a fee to a prospective borrower for any services related to a prospective borrower's application for a loan from a commercial finance lender.

The bill defines the term "commercial financing" very broadly. In addition to closed-end and open-end loans, the definition also includes accounts receivable purchase transactions (including factoring), asset-based lending, and leases. The bill does not define the term "confidential data," and the term does not otherwise have a definition in any California statute.

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7037 Ridge Road, Suite 300, Hanover, Maryland 21076
410.684.3200

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