

Lend360 Presentation Summary: Legal Challenges to Bank/Fintech Partnerships

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On October 9, Partner Catherine Brennan was joined by co-presenters Michael Day, Rick Eckman, Scott Pearson and Brian Knight to present at Lend360, an annual event that focuses exclusively on the unique needs of online lending providers. The session focused on the issues surrounding the concept that a loan that is valid when made remains valid complicate a bank partner program. The panel discussed the ways in which banks and their non-bank partners can address this concern, including structuring their programs so that the bank retains an ongoing economic interest in the loan and does not sell the whole loan to a non-bank.

The panel noted that a recurring theme in many of true lender cases is "predominate economic interest." They discussed that this concept originated in a few small lending statutes, but that courts predisposed towards consumers have judicially constructed this doctrine as well.

They also discussed items to be aware of to avoid falling into the true lender trap, including the need to insure the bank has control over loan underwriting, the bank funds the loan, and the bank is named as the lender in all borrower-facing documentation.

Catherine primarily assists investors in the consumer financial services and alternative business funding sectors. She engages in credit due diligence on behalf of investors in Fintech firms, bank partnership platforms, small business lenders, merchant cash advance companies, consumer finance companies, title loan companies and payday lenders.

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