[Date]

The Honorable Governor Gavin Newsom

1021 O Street, Suite 9000

Sacramento, CA 95814

***Re: Letter in SUPPORT of Senate Bill 1146, Mortgages (An act to amend Section 1916.1 of the Civil Code, among others)***

Dear Governor Newsom,

My name is [Name], and I am a[n**]** [Insert Profession] who has been actively making or arranging loans primarily to small real estate investors in California. While I am a resident of [Insert State], I and others in my industry engage in significant real estate business in California. I am writing about SB 1146 and the immensely positive impacts it would have on my small business, other businesses involved in our industry, and the local housing market.

Real estate investors seek private lenders in these circumstances as most depository institutions are unable or unwilling to provide short-term financing options to real estate investors who may need to commit significant capital improving the property to make it inhabitable or otherwise increase the density of the property, typically requiring significant construction. Lenders and brokers in our industry are quite active in the state of California with many lenders and brokers headquartered in the state and more than 16,000 mortgage loan transactions by private lenders in 2023 totaling more than 5 billion dollars in loans provided to residents of the State.

Article XV of the California Constitution generally limits the interest rate for loans to 10% per annum. An exemption in the Constitution is given to any loan secured by real property which is **made or** **arranged** by a licensed California real estate broker; further codified and expanded upon under California Civil Code 1916.1. This constitutional and statutory exemption is critical, particularly in today’s high interest rate environment as private lenders take on significant risk when providing financing for construction loans. Lightning Docs, LLC a loan document system for private lenders, ran an analysis of 3987 private loans ($2.4BN of loans) in California from January 1, 2023 to March 31, 2024 with an average interest rate of 11.08%.

However, when the legislature amended this statute in 1985, they made an odd but unique distinction between arranging a **new loan** and modifying or forbearing an **existing** **loan**. Recently, a 9th Circuit ruling in the case of *In Re Moon* reviewed this statute. The case involved a loan which was arranged by a licensed real estate broker and therefore exempt from usury. The lender subsequently modified the loan and **reduced** the interest rate. The court determined that the modification which reduced the interest rate made the loan usurious.

The Court’s decision is based on Civil Code Section 1916.1 which states in pertinent part: “…Article XV of the California Constitution shall not apply to any loan or forbearance made or arranged by any person licensed as a real estate broker by the State of California, and secured, directly or collaterally, in whole or in part by liens on real property. For purposes of this section, a loan or **forbearance** is arranged by a person licensed as a real estate broker when the broker:...(1) acts for compensation or in expectation of compensation for soliciting, negotiating, or arranging the **loan** for another…(3) arranges or negotiates for another a **forbearance, extension, or refinancing of any loan** secured by real property in connection with a **past transaction** in which the broker had acted for compensation or in expectation of compensation for **selling, buying**, … of real property….”

The Court read the first subdivision as pertaining only to “loans” and thus not forbearances or extensions, and the only time a forbearance or extension would be exempt from, the purchase and sale broker has nothing to do with the financing of the property. Moreover, even if they did, it does not usury would be when it was arranged by a licensed broker who was involved in the **purchase or sale of the property**. As a preliminary matter it doesn’t make any sense to require the original broker to the purchase or sale to be involved as that person may have retired, deceased or otherwise unable or unwilling to be involved.

We believe the intent of the legislature was to create a usury exemption for any loan, extension, or forbearance which is arranged by a licensed real estate broker. Unfortunately the existing language has proven to be ambiguous. Accordingly, we agree that the simple amendment to the statute through Senate Bill 1146 would match with the California Constitution and the actual intent of the legislature.

The effect of these court rulings has sent shockwaves through the community. Until and unless Civil Code 1916.1 is modified, lenders are unfortunately in a position where they are no longer able to modify their loans without risking making them usurious. Mortgage lenders should be encouraged to modify and otherwise forbear on loan obligations as the alternative would be to foreclose on their borrowers which is a lose-lose for the borrower and the lender which cannot reasonably be the intent of the legislature.

The goal of SB 1146 is to fix the language of the statute to ensure it fulfils its original intention – to allow a loan to continue to enjoy its exemption from the usury limits even after its maturity date has been extended, a payment forbearance given, or has been otherwise modified, provided a licensed real estate broker assists in arranging the transaction.

I urge you to **support and sign** Senate Bill 1146. This bill passed through the consent calendar and has virtually unanimous support.

Thank you for your consideration, and please feel free to contact me if you would like to discuss this issue further.

Sincerely,

[Name]

[Address]

[City, State and Zip]

[Phone Number]

[Email Address]