

Expert:

MARC STEWART METZGAR

t) 888 456-4888 x1073

c) 303 929-7617

e) marc.metzgar@graniteloan.com

w) www.graniteloan.com; www.gcaa-llc.com

Education & Bona Fides:

Graduate: *Juris Doctorate (JD)*: Loyola Law School, Los Angeles - 1979

Undergraduate: *Bachelor of Arts (BA-English)*: University of California, Los Angeles - 1976

FDIC: Federal Deposit Insurance Corporation (FDIC): RAC Contractor; Risk Analysis;
& Asset Management

Expert Witness: Court Qualified Expert

Licensed: General Contractor

Expert Qualifications - Overview:

Mr. Metzgar is a recognized forensic analyst as well as court qualified expert in:

Industry Standards and Best Practices for Construction Lending Products and Lenders.

In his 30+ year career he has analyzed and overseen the conversion, revitalization, development, and management of real estate assets throughout the United States. He has managed all aspects of development including but not limited to; asset identification, capital assembly, investment structure, short and long term financing, legal analysis, operations, design, permits, construction and divestiture. He worked with inner cities redevelopment agencies to rehabilitate depressed city sectors. He was part of the team that redeveloped an eight acre downtown mixed-use high rise project in the City of Los Angeles' critical core area. He was involved in extensive redevelopment planning and the complex political issues that typically impact urban development projects of this magnitude. As a developer and licensed general contractor Mr. Metzgar has financed and developed industrial, commercial, office and residential projects.

Mr. Metzgar went on to become one of the original founders and senior most executives of the Granite Companies specializing in the quality control and risk management of institutional lenders construction programs, as well as, governmental agencies oversight of failed banks' construction assets. Granite provides cost effective real estate solutions for organizations not traditionally staffed or technologically capitalized to handle the broad based real estate problems of today's marketplace. Granite is an ongoing National Quality Control Service Company that specializes in real property: inspections; fund control disbursement and management; construction product and program development; servicing and customer support; seminars and training; problem construction workout and turnaround services; 203K loan management; and, sophisticated forensic analysis and recommendations associated with partially completed real estate assets (www.graniteloan.com). On an ongoing basis, Mr. Metzgar assists the FDIC in its analysis and disposition of failed institutions.

In his expert capacity Mr. Metzgar is:

- articulate;
- uniquely capable of reducing complicated issues into understandable and digestible concepts for the lay person.
- innovative in his forensic analysis and recommendations;
- efficient and cost effective;

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- an excellent writer;
- unflappable in deposition and while giving testimony;

Expert Qualifications in Detail:

Based upon his direct experience spanning three decades Mr. Metzgar is qualified as *An Expert and Forensic Analyst in the Generally Accepted Industry Standards and Best Practices* as regards:

1. Lender Liability:

Expert as to the requisite Duties of Care that must be exercised by construction lenders or other parties in interest including:

1. Loan Origination.
2. Loan Documentation & Construction Loan Agreements.
3. Loan Administration, Practices & Procedures.
4. Loan Funds Control & Disbursement (*including* Interest Reserves & Retainage).
5. Lender Compliance with: Const. Loan Agreement; Internal Policies, Procedures & Guidelines; the Law; Generally Accepted Industry Standards; Loan Conversion & Modification.
6. Mechanic's Lien Law Compliance.
7. Proper Inspection of Asset.
8. Contractor Qualification & Licensing.
9. Construction Best Practices.
10. Project Review.
11. Funds Misappropriation, Mismanagement and Fraud.
12. Forensic Review of Distressed Assets & Broken Projects.
13. Permits & Entitlements.
14. Wrongful: Default; Foreclosure; Loan Modification or Conversion.
15. Special Tax Improvement Districts.
16. Receiverships.

2. Loss Share & TARP Funds:

Expert in determining if the asset and parties in interest have acted in accordance with the fiduciary guidelines and requirements for beneficiaries of TARP Funds and/or pursuant to Loss Share guidelines.

3. Loan Participations:

Expert in the fiduciary responsibilities and requirements for asset management of participant obligations.

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4. Directors & Officers (D&O):

Expert in D&O liability analysis and claims.

Representative Litigation Experience:

Of note; Mr. Metzgar's expertise, he is not a full time professional expert witness. He testifies in only those cases where his expertise will be of benefit to counsel.

Mr. Metzgar has successfully represented some of the nation's largest lenders, insurers as well as the FDIC in support of complex litigation matters. The following is illustrative of his experience:

- *La Jolla Loans v. Wells Fargo Bank (Superior Court of California, County of San Diego):* Provided key expert analysis and testimony on behalf of defendant resulting in bank's successful defense. Defendant Bank was sued for restitution and damages by a hard-money construction lender for negotiating, on behalf of the developer/contractor, checks made out to other parties. Mr. Metzgar's research and testimony provided the indisputable support that the plaintiff's actions were so wanton and grossly negligent an event such as check fraud was foreseeable. The jury found for client defendant Wells Fargo Bank., determining they had no obligation to plaintiff for damages or check fraud (even those under the UCC Code). Moreover, client defendant was awarded attorneys fees.
- *Borel v. Hamrol (Superior Court of California, County of San Francisco):* Provided key expert analysis in defense of lender liability counterclaims made by defendant Hamrol against plaintiff Borel. Borel Bank foreclosed on defendant's defaulted commercial construction loan obligation and pursued its rights under personal guarantees made by developer/builder Hamrol. In response, defendant Hamrol made twelve counterclaims against Borel under various lender liability allegations. Mr. Metzgar's extensive forensic research supported myriad examples of malfeasance on behalf of defendant. This resulted in a dismissal of all counterclaims and summary judgment against Hamrol of all Borel claims save the amount of damages.
- *Regulatory:* Mr. Metzgar also analyzed and managed, on behalf of the responsible regulatory bodies, the construction portfolios of some of the nation's largest failed construction lending banks.

Additional representative detail available upon request.

Recent Publications:

Mining for Opportunities in Distressed Commercial Assets: Scotsman Guide-Commercial Edition, May 2011.

A New Paradigm for Distressed Construction Assets: MortgageOrb.com, February 7, 2011;

also published in Construction Lending News, Volume 34, 2011.

California's Mechanics' Lien Law: Construction Lending News.

Florida's Mechanics' Lien Law: Construction Lending News.

Texas' Mechanics' Lien Law: Construction Lending News.

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Emerging Claims & Defenses in Construction Lender Liability Cases: July, 2011

Presentations & Seminars:

Lender Liability – Proactively Mitigating Losses in Commercial Assets.

Fifty State Mechanic’s Lien Law – Compliance and the Risks Associated with Non-Compliance.

The Risks of Reliance upon Title Date Downs for Construction Funding.

Modular v Manufactured Products – Identification & Risk Management.