

With over 30 years of experience in banking and real estate, Jay Hibert's market knowledge and transactional experience has allowed him to work in a consulting and expert witness capacity for many clients over the years. Still an ACTIVE lender in the industry, Jay has transacted hundreds of real estate and non-real estate loan negotiations in times of economic growth as well as downturns in the economy. His extensive credit background arms him with the understanding of how banks and other lenders operate internally, and he speaks with us this month about commercial real estate. Jay touches on how good investment deals can easily turn bad, how to ensure lending from a bank runs smoothly, and how being an active lender in the industry helps him in his role as an expert witness.



#### ABOUT JAMES B HIBERT

James (Jay) Hibert is an active lender with over 30 years of experience in Banking, Finance, and Real Estate Lending. Jay was in the commercial banking industry for 25 years. In 2009 he left the turbulent industry of banking to form his own company, Market Street Financial Solutions, a Commercial Real Estate lending company. Market Street Financial Solutions is a licensed California Finance Lender and Bureau of Real Estate Broker. The company provides services to banks, non-banks, and individuals in need of creative financing solutions.

Jay Hibert is a licensed Real Estate Broker through the California Bureau of Real Estate. CA BRE #01523075 and his company is a California Finance Lender and Broker licensed with the California Department of Business Oversight DBO# 4031920.

His Expert Witness Company, Market Street Consulting Group represents both defendants and plaintiffs in cases that pertain to commercial real estate, banking, and lending practices.

# COMMERCIAL REAL ESTATE LENDING

James B Hibert, Market Street Consulting Group

**Market Street Financial Solutions provides services to banks, non-banks, and individuals in need of creative financing solutions; which of these three types of clients poses the most challenges for you?**

The services that we provide vary based on the type of client that we are working with. Many times our biggest challenge comes when working with individuals. Most individuals we work with have not experienced a commercial real estate transaction before, and they are surprised by the complexity of the process. It is our job to educate our individual clients while we put together the best financing alternative available for them. Part of the process involves helping them understand that commercial loan products are completely different than a consumer mortgage, which is often times their only basis for comparison.

**What different aspects must banks consider, in comparison to non-banks and individuals, when dealing with creative financial solutions? In relation to this, how many aspects overlap for all clients, which non-banking institutions often forget to address?**

The reason we are successful providing the financing solutions that we do is because of our knowledge of the different lending sources. Most borrowers do not realise that there are multiple sources of funds that may be available. There are often

times when someone is declined for a loan at a commercial bank and they believe that there is no alternative available. That is where we come in.

We specialise in funding loans for individuals and companies when their primary bank has told them 'no'. It is here that we provide the relationship to a loan transaction that most non-bank providers do not. In other words, obtaining a loan from a non-bank institution can be an impersonal transaction because it is just that - a transaction. Non-bank lenders are not looking for the entire banking relationship therefore the interaction is not what people are used to. We bridge that gap and take care of the "heavy lifting" for our clients. We act as the intermediary with the non-bank finance company. We believe that if the numbers work there is a solution and it is our job to find it.

**With the unstable nature of the financial sector, how have you seen the real estate industry change?**

The nature of the real estate lending industry has not changed dramatically over the 30 years that the team at Market Street has been involved in lending. The fundamentals of a good loan request, presentation, underwriting, and ultimate loan decision have not changed. What has changed is the return to a consistent practice of sound underwriting. What that means is that basic credit guidelines have not changed, but the

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industry departed from them in varying ways for many years and now has returned after the experience of the worst economic depression we have seen in our lifetime. One of our biggest challenges is helping borrowers understand what it takes to obtain a loan when their only experience may have been obtaining a consumer mortgage in a time when requirements were minimal.

**What is a key piece of advice for those investing in real estate to ponder over, given the fluctuation of the economy?**

The best advice that I offer to my clients is to make sure that they do not over leverage themselves, that they study current market trends, and that they base investment decisions on present market conditions and not future speculation. In other words, a real estate investment needs to make sense now and not be based on the hope that a property's value is going to increase tomorrow.

**As an Expert Witness, what are common cases you are instructed on?**

If I had to name one common theme it would be 'Standard of Care': a borrower's expectation of what a bank or lender should be or should have provided. In most cases that I provide expert witness services there has been a clear misunderstanding of the bank's role and responsibility as a lender. Sometimes the bank

or lender does fall short on fulfilling its duties and sometimes a borrower has not performed at the level expected. My job is to educate my client, whether it is the lender or the borrower on what is expected in the industry; in other words, what the customary practice is supported by the lender's policies and procedures, and the written regulations of the various authorities such as the FDIC, the OCC, and the various state authorities.

**How could these cases be avoided?**

The vast majority of the cases that I have been involved with could have been avoided had the expectations been properly managed. In some cases that means clearer communication on the part of the lender - making sure to not "over promise and under deliver". Other times

it could be for the borrower to clearly define the purpose of their loan request. Obviously there is a lot more to share on this topic but miscommunication is the number one reason for the lawsuits I am involved with. Unfortunately, we do not have "20/20 hindsight" when making or requesting loans.

**Your experience allows you to be aware of how banks and lenders operate internally; can you explain some key things those who are unaware of their processes are often dismiss? How can being aware of such things enable your clients to avoid litigation?**

One of the biggest issues that lenders have is how they document and process loans. Lenders operate based on internal policies and procedures that are published and followed. In addition, lenders are regulated



by various authorities based on the type of entity they are. The first thing I do when I am assigned to a case is review how well the lender has adhered to the policies it has put in place, and the policies established by the regulators overseeing its activities. Many times litigation can be avoided if a lender is diligent in monitoring its systems and management of its lending department and employees.

**Can you explain the approach you believe to be ideal when clients may be involved in litigation regarding real estate?**

The best protection that a borrower has is to work with a lender that truly has the expertise necessary given the loan request. Borrowers may not

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necessarily be a match for the first bank employee they see when they enter the branch, or even for their long-time personal banker. When dealing with a real estate transaction, seek out an expert based on the person's transactional experience and track record helping similar clients.

**What other changes are you expecting to witness in the next few years?**

I do not believe that we will see any substantial change over the next several years when it comes to the issues that cause litigation between lenders and borrowers. There are many

reasons for this, but primarily it is because people are involved on both sides. Mistakes are made and no matter how well institutions try to establish systems and policies and procedures, the human element exists. Lending is not a science, it is an art that includes systematic analysis and implementation, but it also involves exceptions to rules based on a myriad of variables that change from transaction to transaction.

**Why is being an active lender in the industry helpful to your expert witness work? And conversely, how does your expert work help you as a lender?**

As an active commercial real estate lender I am able to stay current on industry customs and practices as well changes in federal and state policies, and regulations that affect lending. Conversely, I am exposed regularly to the issues that result in litigation between lenders, borrowers, and title companies. Many times I think that I have experienced most of the pitfalls that can occur, and then I am a part of another case where I am able to learn even more which allows me to continue to sharpen my skills as a lender. In addition, my active participation as a lender is the most important differentiator for me versus other expert witnesses that I oppose. The vast majority of experts that

I oppose do not have current lending experience and in most cases have not been a part of a loan transaction for many years.

**You are experienced in trial testimony. What is it like to be on the “hot seat” during a trial?**

I enjoy the experience of trial testimony every time I am called as a witness. It is the time where I am finally able to take the many hours of preparation for a case and present my opinions to the court. When a jury is involved it is an even better experience because one of my strengths is the ability to present information that most find to be boring (at best) in a way that keeps their attention and helps them see why my opinions are a valuable part of the evidence. Some attorneys can be challenging during questioning, but my background and training allows me to think ahead and plan for their approach. I welcome the opportunity to testify when it comes!

**Do you see your business being affected if the economy takes a turn the way it did in 2008?**

Unfortunately, there is always going to be disagreements and sometimes outright breaches in relationships that occur on both sides. I believe certain cases may increase due to an economic downturn, but even in better economic times, people tend to take part in activities

that cause litigation in this and all aspects of business.

**Is there anything else you would like to add?**

Owning and investing in real estate is still the goal of many people. Many have won, many have lost. I speak from personal experience when I say that hindsight is 20/20 and I have been on the wrong side of a few deals myself. It doesn't mean that I will ever stop believing in the industry. It's what I know and it is what I have a passion for. Let me backtrack and tell you a little known story about how Market Street got its name. Most people assume that we have an office on Market Street. This is not the case. Our name, Market Street Financial Solutions, was created because of a bad personal investment that was made in 2006 on what was thought to be a great property located on Market Street. We lost a lot of money on that deal and it was not a great situation. When we founded our company a few years later we decided to use the name Market Street as a way of turning a bad investment into a good investment. Now, years later here we are. I like having the reminder that even the best deals can take a turn, and that even those with extensive experience in real estate can get into a bad situation. **LM**

## KEY AREAS OF EXPERTISE

- Lending Policies, Custom and Practice/Lender Liability
- Broker Standards of Care and Fiduciary Responsibility
- Loan Underwriting and Credit Administration
- Loan Process and Bank Loan Restructure/Workout Process
- Note Valuations/Collateral Review
- Litigation and Discovery Consulting
- Banking Operations/Administration
- Specialty Niche in SBA Real Estate Lending
- Construction RE Lending & Administration
- Expert reports adherent to Federal Rule 26
- Loan Syndication/Secondary Market Loan Sales
- Title Insurance Cases
- Experienced in trial and deposition testimony

## FIRM PROFILE

At Market Street Financial Solutions we are dedicated to providing the best service possible in our industry. Our hands-on approach to every transaction has gained us the loyalty of our clients, providing repeat business and a reputation for getting deals done.



## CONTACT

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