

# BANKING FINANCE



*An Advertising Supplement to the Orange County Business Journal • April 27, 2015*



# RUTAN

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## RUTAN & TUCKER, LLP

### Pardon Our Partition

#### *Financing Commercial Real Estate Held by Tenancies-In-Common*

by Bob Hagle, Partner, & Sarah Kruszona, Associate, Rutan & Tucker

#### **W**hat are Tenancies-in-Common?

A tenancy-in-common (a "TIC") is not an entity, but rather a form of ownership where two or more parties, as co-tenants, own direct, undivided interests in real property. Although in some ways the relationship among co-tenants in a TIC is similar to that of limited partners in a limited partnership or among members of a limited liability company, a key distinction is this direct ownership interest in the underlying real property by the TIC investors rather than by the partnership or limited liability company. The TIC structure is utilized by TIC investors to facilitate tax deferral available through so-called "1031 Exchanges," which provide for federal capital gains tax deferral on the sale of certain investment property when an investor uses the sale's proceeds to purchase a "like-kind" investment property.

Even though each co-tenant only owns a percentage interest in the property, each is entitled to possession of, and profits derived from, the entire property, no matter how small the ownership interest. The right to possession, along with the other rights and obligations of each co-tenant, are subject to the rights and obligations of the other co-tenants. Like a general partnership, a formal written agreement is not required for a TIC. Nonetheless, when forming a TIC, most real estate investors enter into a written agreement to, among other things, (i) memorialize the rights and obligations of each party, (ii) assist in documenting compliance with Internal Revenue Code requirements for a 1031 Exchange, and (iii) facilitate the financing of real property.

#### **Lender Concerns and Possible Solutions**

The TIC structure may create several underwriting concerns or hurdles for lenders seeking to provide financing secured by the real property. If properly addressed, none is insurmountable.

#### **Over-Valuation**

TIC investors sometimes may be willing to overpay for an interest in real property if the economic advantage in deferring capital gains tax through a 1031 Exchange outweighs the purchase price premium, or where the investor may be up against the deadline to identify replacement property to qualify for the 1031 Exchange. Obviously overpayment, left unchecked, could lead to an overvaluation and over-leveraging of the real property. Lenders typically mitigate this risk by requiring an independent appraisal of the property as a condition to financing and sizing of the loan.

#### **Multiple Bankruptcy Filings**

Because TICs by their very nature involve multiple property owners encumbering their interests in the property, the resulting potential bankruptcy risk is compounded and, if realized, subjects the lender to the automatic stay, potential restructuring of its debt and other undesirable consequences. The risk of bankruptcy filings arising from unrelated business interests of co-tenants may be mitigated by structuring the TIC so that each co-tenant is a special purpose entity ("SPE") with its TIC interest being its sole asset (and with each SPE entity owned solely by the respective investor, resulting in the SPE being treated for tax purposes as a "pass-through" entity). The single member SPE structure will not jeopardize the investors' 1031 Exchanges and the SPE ownership helps avoid the investment property becoming infected by an investor's unrelated reversal of fortune.

#### **Partition**

Finally, one of the more concerning aspects of a TIC, at least from a lender's perspective, is a co-tenant's right to partition. Partition is the right to have property divided into separately owned parcels according to each co-tenant's percentage interest. Partition typically is initiated by one or more co-tenants filing an action after becoming dissatisfied with some aspect of the TIC arrangement. Practically speaking, a physical partition of real property can be

complicated, or in some cases impossible. When physical partition of the property is impractical, courts will order the sale of the entire property and divide the proceeds among the co-tenants. Either result is problematic for a lender.

If a TIC property is partitioned into multiple parcels, any mortgage on the property prior to partition survives and encumbers the partitioned parcels. However, while a lender would retain its lien on each parcel, the parcels would no longer be operated in a unified fashion by common management (which could negatively affect project performance), undercutting the lender's assumptions when underwriting the loan. Likewise, having its collateral being subject to a court-ordered sale could frustrate the lender's expected return and increases the risk of disruption of the operating asset's performance during the pendency of the legal proceedings. These potential adverse consequences arising from the right of partition may be mitigated in both the TIC agreement amongst the co-tenants and the loan documents between the lender and co-tenants as co-borrowers.

With respect to the TIC agreement, although the right to partition generally exists as a matter of law, co-tenants may waive that right. Waiver of partition typically will be respected by courts if waived on a limited basis. (If the waiver is open-ended, its enforceability may be attacked as an invalid "restraint on alienation", i.e., contrary to a general public policy against prohibiting owners of real property from freely transferring their interest.) Lenders may require that a TIC Agreement contain a provision explicitly waiving each co-tenant's right to partition for so long as a loan secured by an interest in the property remains outstanding (or words to that effect).

With respect to the loan documents, the loan agreement may include a covenant that a co-tenant (each of which shall be a co-borrower) will not commence an action of partition and, to give lenders a remedy should a co-tenant violate this covenant, may further provide that the filing of an action for partition is an event of default. Further, if the loan is a limited or non-recourse loan with an indemnity from responsible parties for so-called "bad boy" acts, lenders may seek to include, as an additional lender indemnified claim, any losses from a violation of the covenant not to seek partition.

#### **Conclusion**

With some advanced planning and early involvement of lender's counsel, issues presented by tenancies-in-common need not be deal-killers to a real property-secured loan.

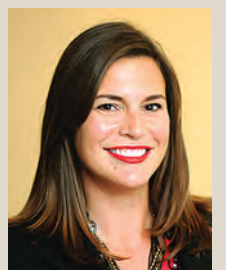
#### **Bob Hagle**

Bob Hagle is Co-Chair of the Banking and Finance Group at Rutan & Tucker and is a partner in the firm's Real Estate Section. Mr. Hagle has extensive experience representing lenders and borrowers in a broad range of finance transactions, including asset-based, real estate, receivables financing, mezzanine financings, loan workouts and debt restructurings. Mr. Hagle also has substantial experience in bankruptcy reorganizations, out-of-court workouts and debtor/creditor rights and remedies. He can be reached at 714.662.4621 or bhagle@rutan.com.



#### **Sarah Kruszona**

Sarah Kruszona is an Associate in the firm's Real Estate Section, where her practice includes representing lenders, borrowers and developers in many aspects of real estate transactions, including real estate secured financings, sales and acquisitions, title review and due diligence analysis. She can be reached at 714.641.3467 or skruszona@rutan.com.





# “It works for helping shape up my expansion plans.”

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—Zoey Van Jones, Owner of Zoey Van Jones Brow Studio

Every day, small business owners across the country work hard to make their entrepreneurial visions a reality. For Zoey Van Jones of Zoey Van Jones Brow Studio,\* that meant making sure her expansion plans worked as hard as she did. Helping business owners like Zoey is why we created Wells Fargo Works. It's our commitment to small businesses everywhere. By delivering a wide range of products, resources, and guidance, we help businesses take the next step toward their goals. Welcome to Wells Fargo Works. Let's make it work for you.

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Together we'll go far



\*Wells Fargo awarded Zoey Van Jones \$25,000 to help with her expansion plans.

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## Sunwest Bank Shares Expertise in Senior Housing

*Bank Participates in New Investment Focused Networking Sessions at NIC 2015 Forum*

**A**fter a competitive vetting process, Sunwest Bank was selected to participate in a new networking opportunity, "Capital Connections" at the NIC 2015 Capital & Business Strategies Forum in San Diego, California. The event, which was held from March 31 to April 2, brought together small- to mid-sized operators and capital providers in the seniors housing and post-acute care sectors.



Kyle Legrand, Relationship Manager, Sunwest Bank, speaks at "Capital Connections"

Sunwest Bank was one of 37 capital providers that presented its financing options being offered to capital seekers. Capital providers selected underwent a review process, successfully demonstrating their recent and ongoing transaction activity in three distinct financing areas, including development and turnaround financing, mortgages and business loans, and equity, leases and partnerships. The companies that were selected to participate are among the top 10 to 15 capital providers in each of the financing areas.

During the event, Kyle Legrand, relationship manager at Sunwest Bank, spoke on business loans, particularly as it relates to the Bank's seniors housing loan portfolio. Sunwest Bank is active in the seniors housing industry, with 70 percent of its seniors housing business in the assisted living and memory care sector. The Bank also provides financing in the independent living and skilled nursing arenas.

"We are excited to be able to share our specialized lending solutions for this unique industry," said Legrand. "Our seniors housing team has the experience in the field and expertise to understand the financial needs for these types of businesses."

Sunwest Bank has a variety of clients in the seniors housing sector across the Western United States, ranging from operators with one facility to operators with over ten facilities.

For more information about Sunwest Bank's seniors housing lending offerings, visit [sunwestbank.com](http://sunwestbank.com) or call 714.730.4481.

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## Sunwest Bank and National MS Society Help Build Local Community

**I**n October 2014, the Sunwest Bank Charitable Foundation provided the Pacific South Coast Chapter of the National Multiple Sclerosis (MS) Society with a \$20,000 grant to provide immediate, emergency assistance, including home repairs and modifications for accessibility, to several local citizens affected by MS.

Since the grant was put into place, the National MS Society has identified several Orange County, California, residents who would benefit from the grant. One of those identified is Pat, a 65 year-old woman. Diagnosed with relapsing remitting MS in 1977, Pat made her living as a computer programmer until 1989 when her MS symptoms of slurred speech, double vision and vertigo eventually forced her to stop working. Over the next few years, Pat made attempts to rejoin the workforce, but her increasing pain, injuries sustained due to falls, and her loss of the ability to drive forced her to go on permanent disability.

Through the aide of the Department of Housing and Urban Development (HUD) housing and its Section 8 program, Pat was able to purchase a mobile home. After living in her home for almost 20 years, the home is in desperate need of repairs. As a result of the National MS Society and Sunwest Bank, Pat has finally secured the necessary funds to conduct critical repairs to fix a large hole in her roof.

"Without the help of the National MS Society and Sunwest Bank I wouldn't have been able to complete the repairs on my home," said Pat. "While I've been able to find solutions for other home repairs, such as the City's rebate program for my appliances, it's been difficult to find help with this particular repair."

In an effort to prevent further water damage in Pat's home, roof repairs began on March 31.

"The Sunwest Bank Charitable Foundation is dedicated to serving the communities in which we operate, and our work with the National MS Society is a perfect example of that," said Chris Walsh, President and CEO of Sunwest

Bank. "We're proud to be a part of this great mission to improve our surrounding communities."

Karen Hooper, executive vice president, National MS Society, Pacific South Coast Chapter, added, "We are so proud to be partnering with Sunwest Bank to make assistance like this possible for Pat and many others in our community. We are here to make a difference in the lives of people with MS."

To learn more about the Pacific South Coast Chapter of the National MS Society, call 1.800.344.4867 or visit: [www.MSpacific.org](http://www.MSpacific.org).

For more information about the Sunwest Bank Charitable Foundation, visit: [www.sunwestbankfoundation.org](http://www.sunwestbankfoundation.org).

### About Sunwest Bank

An established community bank, Sunwest Bank has offices in California, Arizona, Washington and Idaho. Sunwest Bank offers a wide range of financial products to individuals, professionals, homeowner associations, and small- to mid-sized businesses. The Bank's solution-driven, relationship-based approach to banking provides accessibility to decision makers and enhances value through strong partnerships with our clients. For more information about Sunwest Bank, visit [www.SunwestBank.com](http://www.SunwestBank.com) or call 800.330.9890.



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# Asset Rich, but Cash Poor?

*The Solution Might be Financed Life Insurance*

by Jeff Verdon, Managing Partner, Jeffrey M. Verdon Law Group LLP

**P**aul and Shirley, ages 62 and 60, live very simply. They both drive ten-year-old vehicles, clip coupons, and do their own handiwork around the house because hiring a handyman is “too darn expensive.” Close friends call them frugal, but Paul and Shirley jokingly say they are just “cash poor.” No one would ever guess that Paul’s real estate investment portfolio of apartments and mobile home parks has exploded in value since the Great Recession, raising the couple’s net worth to almost \$30M. Paul and Shirley live on a budget because their investments in real estate are illiquid, making them asset rich, but cash poor, indeed.

When Paul and Shirley met with us to review their outdated estate planning documents, they expressed deep concern over the death tax. Their primary fear was their children being forced to sell “golden” real estate because their estate would have insufficient cash to cover death taxes.

As an estate planning lawyer representing affluent families and successful business owners for more than 30 years, this is a common conundrum faced by many wealthy families. Most have no plan to make cash available to pay death taxes, and heirs often have to sell off assets to raise funds, usually resulting in deeply discounted “fire sale” prices.

Paul and Shirley want their kids to benefit from income generating investment properties long-term, rather than having to make hard choices to sell them off, so I suggested they purchase a last to die life insurance policy. Last to die life insurance policies provide benefits to heirs only after the last surviving spouse dies. Although the couple saw the wisdom of setting up such a sinking fund to pay



Jeff Verdon

for death taxes, they couldn’t afford its large premium payments. I told the couple that most of my clients don’t mind getting life insurance, they just hate paying for it.

“So,” I suggested, “Why don’t you finance your premiums?”

They both looked at each other and then me, and said in unison, “What is that?”

Financing insurance works like this: instead of writing large annual premium payments to an insurance company, Paul and Shirley would take out a loan to finance the insurance policy and then pay their lender the loan’s annual interest. When they both die, if the loan is not yet repaid, the insurance company would write two checks: one to their lender to repay the loan and one to the beneficiary of the policy. The difference in outlay between conventional premium payments versus financed life insurance premiums can be a discount of as much as 65% or more. This keeps funds in portfolios or businesses, where the return on investment will likely far exceed the cost of annual interest on an insurance premium loan.

Paul and Shirley left my office chuckling about being frugal in their asset rich, but cash poor lives... if their friends only knew. Still, such frugality just saved their estate tons of money, and their kids will never experience the heartache of having to sell lucrative, income-generating assets their parents worked so hard to acquire. No hard choices here for anyone.

If you currently have an estate in excess of \$5M (if single) or \$10M (if married) and have not purchased a life insurance policy to pay your projected death taxes, you may be a candidate for a premium financed life insurance program. Contact the law firm if you would like a complimentary phone consultation about this or any related subject.

For more information, contact Jeff Verdon at 949.333.8150 or [jeff@jmvlaw.com](mailto:jeff@jmvlaw.com).

## Learn, Connect Grow



Join us for a day of business insights, networking, and professional and personal growth.

- WHEN:** Friday, May 15, 2015
- TIME:** 7:30 a.m. – 1:15 p.m., includes breakfast and lunch, and complimentary headshots offered throughout the event.
- WHERE:** Irvine Marriott  
18000 Von Karman Avenue, Irvine, CA 92612
- THEME:** REPUTATION RULES!
- REGISTER:** [comerica.com/WBS](http://comerica.com/WBS)  
\$175 per person through May 1st (then \$200)  
\$1,600 per table of 10



### STRONG, SMART AND BOLD LUNCHEON

#### A Conversation with Jeanie Buss

Jeanie Buss enters her second season as President after 15 seasons as Executive Vice President of Business Operations, and is now responsible for running all aspects of the Los Angeles Lakers organization.

### BREAKFAST KEYNOTE

#### Bad for the Brand: How Your Personal Brand Affects Your Success

Jonathan Fitzgarrald is a nationally-recognized business strategist who coaches service professionals and firms on reputation management.



Jonathan Fitzgarrald

### MORNING PANEL

#### Who Are You? Building and Sustaining a Professional Reputation

Scharrell Talley Jackson is Chief Financial Officer/Chief Administrative Officer at Squar, Milner, Peterson, Miranda & Williamson, LLP, and will lead a panel discussion with women leaders Michelle Jordan and Dr. Heather Backstrom.



Scharrell Talley Jackson



Michelle Jordan



Dr. Heather Backstrom

### MORNING SESSION

#### Maximize Your Social: Strategically Leveraging Social Media

Neal Schaffer is a global social media speaker, author, consultant, and educator, and the founder of the Social Tools Summit conference as well as the Maximize Social Business blog.



Neal Schaffer

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Rutan & Tucker's Banking and Finance Group is comprised of attorneys with specialized knowledge and expertise in structuring, documenting and negotiating financial transactions. Attorneys in the group have broad-based transactional experience in representing both borrowers and lenders in a variety of secured and unsecured real and personal property loan transactions.

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## Obtaining Bank Financing with the Help of a CPA Firm

by Jodi Ristrom, CPA, Partner, HMWC CPAs & Business Advisors

**B**usinesses can greatly increase the chances of successful funding by being prepared to meet the expectations of your banker and knowing how the process works. The financial expertise of HMWC CPAs & Business Advisors can make the difference in securing financing for your business.



**Financial Statements** - Your financial statements, when accurate, provide a testimony over the years as to your ability to manage the business. Cash flow can be evaluated so that the banker can analyze your ability to repay debt. Collateral reported on the balance sheet, along with footnote disclosures, UCC filings and other documents provide the banker with key information. It is important to select a CPA firm that understands your business and can prepare financial statements meeting the highest quality standards.

**Cash Flow Projections** - Work with your CPA to project the cash flow that your company may experience under a variety of scenarios, such as when purchases increase or revenues increase dramatically. You will then have a better idea of your needs for outside financing. This can be critical in preventing a "cash flow crunch" that hinders your ability to meet financial obligations.

**Type of Financing** - Your CPA can help to determine whether your business needs an operating line of credit, a loan or lease to finance fixed assets. Sometimes this isn't too clear to the business owner, who may only see that there isn't enough internal cash flow to satisfy needs. An accountant can perform an analysis to compare costs of different financing options and your ability to repay each in a timely manner.

**Business Plan** - The bank needs to know key facts about your personal character, capacity, capital and collateral. They also need to know why you want the money, what you will do with it and how you will repay it. Accountants who have prepared business plans will know when one is needed and what should be included.

*Jodi Ristrom is partner-in-charge of Business Assurance Services at HMWC CPAs & Business Advisors in Tustin. Ph. 714.505.9000, [www.hmwc CPA.com](http://www.hmwc CPA.com).*

### Jodi Ristrom

Jodi Ristrom, CPA, is partner-in-charge of HMWC CPAs & Business Advisors' Business Assurance Services department. The department's services include financial statement audits and reviews; evaluation and design of internal accounting systems; and review and evaluation of internal financial controls. Jodi works with clients in a variety of industries, including manufacturing, construction, service, and has a specialty in employee benefit audits and private foundations. She has been a CPA since 1996 and has extensive experience in public accounting, as well as over eight years as an accountant in private and publicly-held businesses. Jodi earned her B.A. degree in Business Administration with an emphasis in Accounting from California State University, Fullerton. Jodi is a member of the American Institute of Certified Public Accountants and California Society of Accountants. She is a member of Western Pension Benefits Association. She is active in the community including the Advisory Committee of the Tustin Community Foundation, Tustin Chamber of Commerce, the audit committee for the Blind Children's Learning Center, and Toastmasters International.



### About HMWC CPAs & Business Advisors

Since 1968, HMWC CPAs & Business Advisors has specialized in serving the financial and tax needs of privately-held businesses and their owners throughout Southern California. The depth and breadth of our experience – which includes such ancillary services as business consulting, business valuation, employee benefits and human resources services, estate planning and computer consulting – make us a valuable member of our clients' management team. At HMWC CPAs & Business Advisors, we are more than accountants, we are trusted business advisors. As a member of Integra International, we have both a national and international presence, which provides us with the resources to consult on a variety of multi-state and global tax and business issues. At the local level, the firm has a highly talented partner and manager group whose involvement on each account helps ensure that our client receives the necessary attention and personal service needed to effectively manage their business. At HMWC CPAs & Business Advisors, our mission is to provide our clients, regardless of size, with a level of service and quality that is unparalleled in the industry.



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RAISE YOUR EXPECTATIONS.

# Doing Good Is Good Business: How Tiny Seeds Grow to Trees

by Melissa Pollard, Vice President, Middle Market Banking, Comerica Bank

**A**t Comerica Bank, we embrace our critical role in the communities we serve and acknowledge that our success is intertwined with theirs. From our vantage point as a relationship bank with more than 165 years of history, we have been privileged to work with many of our business clients from their early days to thriving success.

Involvement is a key component of the Comerica Promise – *we will raise your expectations of what a bank can be* – and one of our core values that reflects Comerica’s commitment to the success of the communities we serve. Our corporate

*“The Comerica Promise – we will raise your expectations of what a bank can be.”*

social responsibility includes improving the lives of individuals, groups and the communities in which we do business through volunteerism, building and managing relationships, and

forming strategic partnerships. In fact, in 2014, Comerica Bank employees gave more than 74,000 hours, or an equivalent of \$1.6 million worth of service to our communities; 12,433 of those hours were in California.

Comerica prides itself on building deep and enduring relationships, and two local nonprofits demonstrate how we change words to deeds.

### Helping a nonprofit launch: THINK Together

In the fall of 2006, THINK Together’s founder Randy Barth was trying to cobble together funding to launch his vision. A new California Department of Education grant program provided an opportunity to expand educational outreach to underserved schools, and Randy conceived a nonprofit that would provide academic support programs to California school districts, with a target of opening 120 locations in February 2007. While Randy reached out to a number of banks, only Comerica approved the lending he needed to bring his vision to reality. Today, THINK Together is ranked second on the Nonprofits list in the OCBJ’s Annual Book of Lists, and Comerica is still its bank. A newly published book *THINK Together: How YOU can play a role in improving education in America* tells the story of the company’s founding and suggests solutions for public education based on Randy’s experience. We’re happy to have helped THINK Together bring alive its mission to provide educational excellence and equity for all kids.



### Providing role models for success: Girls Inc. of Orange County

Comerica Bank’s Women’s Initiative was established in 2006, and one of its early accomplishments was the development of a half day event of education and networking for professional women called the Comerica Bank Women’s Business Symposium. In its second year, Comerica decided to add a nonprofit beneficiary to the event, and started researching organizations in Orange County. Girls Inc. of Orange County emerged as a natural partner to pair with the symposium. The Girls Inc. mission of “Inspiring all girls to be Strong, Smart and Bold <sup>SM</sup>” tied in perfectly to the Symposium focus on providing women in business with the resources they needed to excel and succeed, showcased by its tagline of “Learn, Connect & Grow.” To date, Comerica Bank and proceeds from its Women’s Business Symposiums have equaled \$225,000 donated to Girls Inc. of Orange County, and the 9<sup>th</sup> annual event will take place May 15, 2015. Additional support has included a Comerica Bank Day of Service at the Girls Inc. location in Costa Mesa for a beautification project, and holding Prom Dress Drives in Comerica banking centers.

*“In 2014, Comerica Bank employees gave more than 74,000 hours, or an equivalent of \$1.6 million worth of service to our communities.”*

Comerica Bank is proud to be part of the community, reinvesting and helping businesses, non-profits, individuals and families be successful. We strive to fulfill our promise each and every day.



If you’d like to attend the Comerica Bank Women’s Business Symposium, go to [www.comerica.com/wbs](http://www.comerica.com/wbs).

Melissa Pollard can be reached at 714.435.4406 or [mjpollard@comerica.com](mailto:mjpollard@comerica.com). For more about Comerica’s community involvement, visit us at [FB.com/ComericaCares](http://FB.com/ComericaCares).

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**Orange County Commercial Banking Center**  
19540 Jamboree Road, Suite 150, Irvine, CA 92612

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## Why Do Businesses Fail?

**B**usinesses fail for three reasons. The first is growth. Most businesses and business owners do not understand that growth has the ability to eat up all of your working capital. Sometimes business owners show a net income of \$1 million on their financial statements, yet they show negative \$25,000 in their checking account. Businesses have to manage growth, understand growth, and realize that once you grow past a certain percentage of your sales, you either need to have a rich uncle or aunt, or you need a banker to be involved in your partnership for working capital. Secondly, proper debt structure is important to the long term success of your company, whether it is growing or not growing. You cannot co-mingle personal debt with business debt. There should be a line of credit for short term working capital to assist with the timing differences of collecting your receivables and

are the kinds of insights that are needed to help business owners, entrepreneurs, CEOs and executives succeed.

Banks play an important role. Sometimes they are really the largest shareholder of a company. They invest into your company. That is part of the partnership that you need to have today, because the world has gotten more complex, and it has definitely gotten more competitive.

### A True Business Bank

CommerceWest Bank is a true business bank. Our target market of working with small to mid-sized businesses, their owners and key executives, remains unchanged.

*“Most business owners and entrepreneurs have a great understanding of how to grow their businesses, but when you show them their balance sheets or income statements and ask them about their cash flow, they typically don’t understand the concept. Business owners need to understand what their sources and uses of cash are. Not understanding these three things cause businesses to have issues or go out of business. If you can manage those three things, you will do really well.”*

paying your payables, trade discounts, etc. You also need long term working capital for infrastructure, inventory and tenant improvements. Third, is understanding cash flow. Most business owners and entrepreneurs have a great understanding of how to grow their businesses, but when you show them their balance sheets or income statements and ask them about their cash flow, they typically don’t understand the concept. Business owners need to understand what their sources and uses of cash are. Not understanding these three things cause businesses to have issues or go out of business. If you can manage those three things, you will do really well.

Small to middle market companies should be looking to work with a business bank, if they are looking for working capital or cash management needs. There are approximately 150 banks left in California. There are a lot of commercial real estate banks and larger banks that offer a multitude of products and services. However, business owners need to get in front of a commercial or business banker to really get value out of the relationship. They need to engage with bankers that really deal with businesses one-on-one, rather than people that deal with construction loans, mortgage loans, or retail services. Commercial bankers are harder and harder to find. A true commercial banker can fully understand your balance sheet and income statement, talk about your business model and assist you with the strategy and growth of your company.

It should be a partnership with your bank, not just a relationship. You need someone that wants to help you become more successful and avoid falling into one of three categories that will cause your business to fail. The ideal banking partner loves being involved in stories of startup companies that began with a vision in a garage and evolved into a \$5 million, \$20 million or even a \$1 billion company. A business partner should be someone that goes above and beyond. He or she spends the time to sit down with business owners to help them understand how to read cash flow, and explains why certain triggers or covenants are important. You need a business partner that can shed light on the facts and figures, saying, “Here is a certain growth rate. If you grow over 25%, you are going to need outside financing. But under 25% you will be fine and you will be able to use your own cash flow.” Those

Providing personally tailored, customized banking and financial solutions for each client is what sets us apart from the competition.

We are proud to announce that CommerceWest Bank has been ranked the 32<sup>nd</sup> Highest Performing Bank in the Nation for 2014 by Banker’s Caddy and designated as a 2013, 2014 and 2015 “Super Premier” performing Bank by the Findley Report.

In 2014, the Bank delivered on a strategic year-over-year growth plan. To achieve our goal, we took an offensive approach by bringing in new client relationships and enhancing our existing client experience. We had solid loan growth of 22%, with a strong credit culture of zero non-performing assets and zero loans past due. While many banks diversified their business lines to grow revenue, CommerceWest Bank continued to execute on our proven business model.

We plan to continue to execute our company-wide growth strategy in 2015, which stays true to our unique business model and fortress balance sheet approach. Every year we set new goals — new heights to achieve — and each year we are getting closer and closer to every business owner experiencing “Bank on The Difference”.

This is a company that is built to last. Together with the determination of our team and the support of our clients, CommerceWest Bank is more committed than ever to achieving greater results in 2015!

### Ivo A. Tjan

Mr. Ivo A. Tjan is the Chairman, President and CEO of CommerceWest Bank, a full service commercial bank with a unique vision of focusing exclusively on the business community. Contact Mr. Tjan at 949.251.6959 or [itjan@cwbc.com](mailto:itjan@cwbc.com).



### About CommerceWest Bank

CommerceWest Bank will create a complete banking experience for each client, catering to businesses and their specific banking needs, while accommodating our clients and providing them high-quality, low stress and personally tailored

banking and financial services.

Please visit [www.cwbc.com](http://www.cwbc.com) to learn more about the bank. “BANK ON THE DIFFERENCE”.



*Bank on The Difference*

# SOLID SECURE STRONG

CommerceWest Bank's Recent Recognition & Achievements:

- Ranked as the **32nd HIGHEST-PERFORMING BANK IN THE NATION** by Bankers Caddy
- Recognized as a 2013, 2014, **2015 "SUPER PREMIER" PERFORMING BANK** by the Findley Report
- **5 STAR RATED BANK** by Bauer Financial
- **5 STAR SAFETY & SOUNDNESS RATING** by Bankrate.com
- **COMMUNITY INVOLVEMENT** supporting these charitable organizations:

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Second Harvest Food Bank | TACA | Boys and Girls Club | Laura's House | Infinite Hero |  
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Pretend City | Orangewood Children's Foundation & Many More



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## The Five Myths You Can't Afford to Believe About Data Breaches

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## Decoding the Five Myths about Security and Data Breaches

**S**ecurity and data breaches don't favor one organization or industry over another, and are taking place every day. Companies should consider the "how" of a breach (as opposed to the "who") to evaluate their exposure to a similar event. Retail operations remain a target to hackers due to the volume of information in their systems, including credit card information, confidential information for loyalty programs, and employee data. The victims of these attacks are an organization's most valued assets: their employees and customers.

Until recently, many thought data risk was trivial compared to other threats such as theft, slip and falls and workplace violence. But with data compromise occurring at much greater frequency, it's one risk you don't want to underestimate. Reputational harm stemming from a poorly managed data breach can be catastrophic.

### Five myths you can't afford to believe

**1. Data theft is not a problem for me - my company is too small.** Data privacy is a concern for organizations of any size. Rogue employees, data thieves, and unscrupulous business associates are looking for opportunities to take advantage of any weakness or mistake. Additionally, human error by negligent or careless staff account for a surprising number of data breaches around the country.

**2. We can afford to self-insure the risk.** As the economy continues to recover, companies are still closely watching discretionary spending, including on certain lines of insurance coverage. Many organizations wrongly believe that if something happens to their data, they can afford to cover the costs. According to a recent Ponemon Institute study, the average cost for a small breach of 1,000 records could easily exceed \$200,000 — a sum that many companies cannot easily absorb. Remember: the majority of funds to respond to a breach need to be liquid. Breach vendors typically look for payment before or at the time service is rendered, and payment for postage is required when the letter is mailed, not thirty days later.

**3. Coverage is expensive and hard to get.** This perception was true five years ago, but is not true today. Competition, claims experience, and a larger pool of buyers have made network security and privacy liability coverage more cost effective and easier to obtain. Even with the recent proliferation of retail breaches, the market remains relatively stable. Some carriers, however, are more cautious when reviewing risks with a large volume of credit card data.

**4. Our general liability policy will cover us.** General liability insurance covers bodily injury and property damage as well as advertising injury and personal injury. The courts have consistently stated that data is not property because it is intangible. The perils associated with advertising injury and personal injury are very specific. While a properly worded lawsuit could trigger coverage, the main expenses from a data privacy event are the breach response and notification related costs. There is little chance of these costs being covered under a general liability policy.

**5. We have vendors who handle our sensitive information and credit card transactions; if they have a breach, it's their problem not ours.** This is not generally true. The data owner (the person or entity collecting the data) is ultimately responsible for what happens to that data. Thus, a breach at a trusted business vendor could still lead to your obligation to provide notification and a decision whether to offer credit monitoring. Your contracts may require indemnification by your vendor, but if the breach is large enough, indemnification might not be enough to cover the costs or your vendor could file for bankruptcy. More importantly, do you want critical correspondence to customers and/or employees handled by someone other than you?

It is essential for organizations to adopt policies and procedures addressing information security, along with a concrete, comprehensive plan for incident response. Consider these questions to create "peace of mind":

- ▶ **Plan** – What will you do if a potential issue is identified?
- ▶ **Educate** – Have you adequately educated your employees about their responsibility to protect private information?
- ▶ **Access** – Have you implemented standard procedures for access to and use of private data? Is access to data limited to a "need to know" basis?
- ▶ **Contracts** – Do you have procedures for managing your contracts with third parties? Do they address indemnification and insurance?
- ▶ **Encrypt** – Do you follow encryption standards? Do you restrict and/or encrypt data that is stored on mobile devices, including thumb drives and backup tapes? What about data at rest?
- ▶ **Online** – Do you have a written policy regarding the dissemination of personal information on public and social media sites?
- ▶ **Financial impact** – Do you have adequate reserves or an appropriate insurance policy to manage the financial impact of a breach?
- ▶ **Monitor** – How often do you monitor networks, websites, and databases to detect potential issues?

Readiness is the crucial step. Organizations can't afford to figure things out after a breach occurs. It's much more cost effective to have a ready-to-use incident response plan, an on-call forensics expert, and a privacy attorney on retainer. Then, when a potential issue is identified, your organization can act to mitigate the effects of a breach, deter any potential litigation, and respond to inquiries from regulators. Employers should also look for insurance partners who can help them identify financial risks and develop customized solutions to better protect their organization.

### Ben Alvarado

Ben Alvarado is executive vice president and president of Wells Fargo's Southern California Community Bank. He oversees approximately 3,800 financial professionals at 234 banking stores and manages more than \$34.1 billion in deposits and \$11.3 billion in loans.

A 24-year banking veteran, he assumed his current role in December of 2014. Prior to being named president for the Southern California Region, he ran the Orange County-Inland Community Bank. He also has served in various positions at the company, including retail bank district manager for the Pasadena and South Bay markets; commercial loan officer; sales development coach; banking store manager; personal banking officer, and bank teller. As one of the top ranking executives in the bank, he also sits on the Management Committee, which provides oversight on operations, practices and to lines of business.

Alvarado earned his bachelor's degree at California State University, Long Beach, and an MBA from Pepperdine University. Alvarado is active in the community and serves on the board of directors for Orange County United Way; the advisory board for Miller Children's & Women's Hospital Long Beach; Memorial Medical Center Foundation; the board of directors for Bundles of Books in Los Alamitos; the alumni board for La Salle High School in Pasadena and is the current president of Wells Fargo's Latin Connection team member networking group.

Alvarado resides in Rossmore with his wife and two children.





2015 Family Owned Business Awards Keynote Speaker, Greg MacGillivray, Producer & Director



*Greg MacGillivray is a giant-screen documentary filmmaker who has produced and directed many of the most successful films shown in IMAX® theatres, including the box office hit, Everest, and the Academy Award®-nominated films, The Living Sea and Dolphins. With 37 giant-screen films to his credit, MacGillivray has shot more 70mm film than anyone in cinema history—more than two million feet. He is the first documentary filmmaker to reach the \$1 billion benchmark in worldwide ticket sales.*

The Sixteenth Annual Orange County Business Journal



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**DEADLINE MAY 29, 2015**

**Luncheon & Awards Program**

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 12:00 p.m. - 2:00 p.m.  
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**Tickets\* \$125  
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Price includes parking. Tickets are non-refundable. Ticket price\* includes a 1-year subscription to the Orange County Business Journal (\*\$30 allocated to the subscription). New subscribers only. Current subscribers may gift the subscription to a colleague.

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