



**The NY Disclosure Laws  
Are Effective on August 1, 2023  
*Will You Be Ready? Let Us Help!***

**Wednesday, July 12, 2023  
1:00pm – 3:00pm EST**

**ELFA**

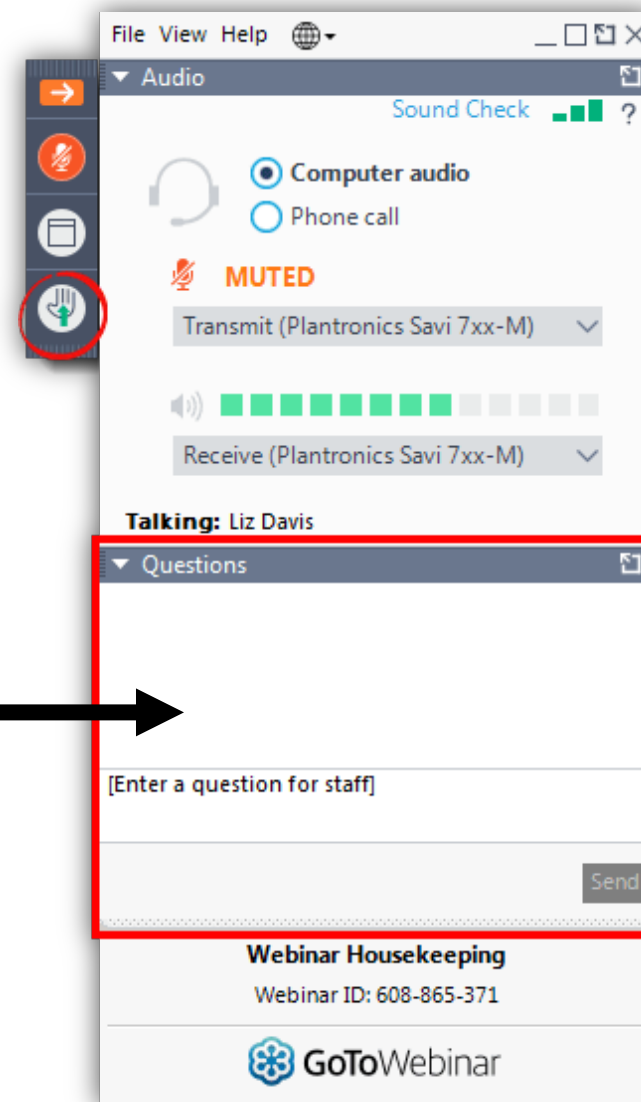
**EQUIPMENT LEASING AND FINANCE ASSOCIATION**

# Housekeeping



Today's web seminar is being recorded.

All questions should be submitted via the Questions Panel.



# Panelists Introduction

## **SCOTT RIEHL**

Vice President, State Government  
Relations, ELFA

(202) 368-2704

[sriehl@elfaonline.org](mailto:sriehl@elfaonline.org)

## **MOORARI SHAH**

Partner, Sheppard Mullin Richter &  
Hampton LLC

(714) 513-5100

[mshah@sheppardmullin.com](mailto:mshah@sheppardmullin.com)

## **ROBERT S. COHEN**

Partner, Moritt Hock & Hamroff LLP

(516) 873-2000

[rcohen@moritthock.com](mailto:rcohen@moritthock.com)

## **ROBERT HORNBY**

Member, CSG Law

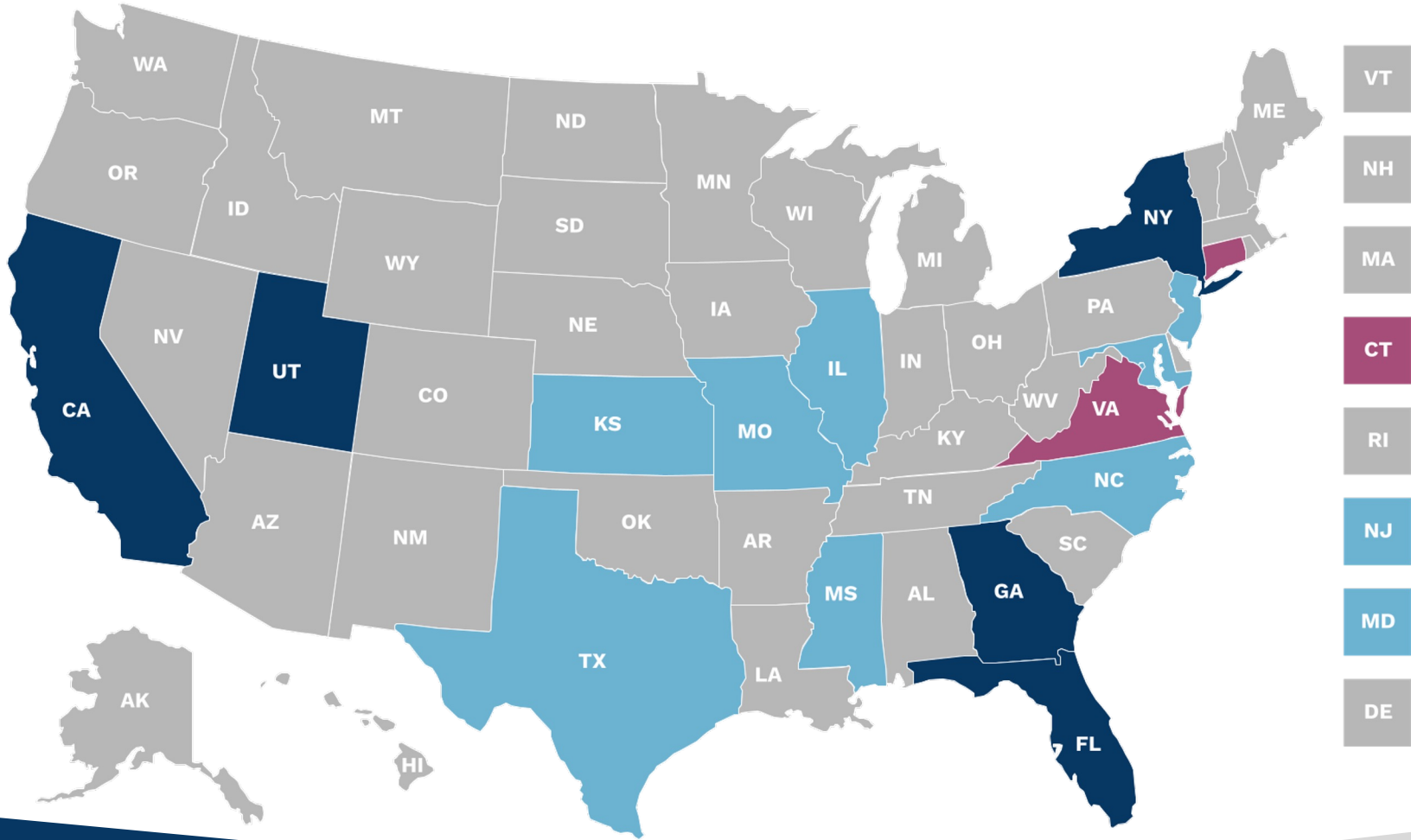
(973) 325-1500

[rhornby@csglaw.com](mailto:rhornby@csglaw.com)

# State Enhanced Financial Disclosure Laws & Introductions



# State Enhanced Financial Disclosure Laws & Introductions



States in **dark blue** are states where legislation has passed, states in **light blue** are states where legislation is introduced and active, and states in **red** are where the bill applies to revenue based financing.

# ELFA's Suite of Exemptions

- True Leases (2A)
- UCC Article 9 Transactions
- Captive governed transactions
- Bank Subsidiaries





# California Update

- California's regulations are now FINAL
- December 9, 2022 compliance date
- Sunset provision



# New York Update

- Regulations are Final
- August 1, 2023 compliance date
- Significant changes to final regulations:
  - Jurisdictional nexus narrowed
  - Amended notice requirements for servicing
  - Written Notice of Broker's Interest
  - Modified the disclosure form (different than CA)
  - Exempted bank subsidiaries





# Generally Who Must Comply Under NY Law?

Subject to the exemptions “Providers” must comply.

A “Provider” is a person who extends a specific offer of commercial financing to a recipient.

Unless otherwise exempt, “Provider” also includes a person who solicits and presents specific offers of commercial financing on behalf of a third party.

Brokers may be included as Providers, depending upon the circumstances.



# Exemptions\*

Generally financial institutions such as banks, trust companies, industrial loan companies, federally chartered savings and loan associations, federal savings banks, or federal credit unions and **bank subsidiaries in NY.**

\*This is a general non-exclusive description of the exemptions, please consult the applicable statute for the specific definition.



# Other Exemptions\*



- A “true lease”;
- A commercial financing transaction secured by real property;
- A lender regulated under the Federal Farm Credit Act;
- Motor vehicle dealers and rental vehicle companies (as defined under NY law).

\*This is a general non-exclusive description of the exemptions, please consult the applicable statute for the specific definition.

# Other Exemptions\*

## New York

- An individual commercial transaction in an amount over **\$2,500,000**;
- The personal provider who makes no more than 5 commercial financing transactions in the state in a 12 month period; and
- A technology service provider.

\*This is a general non-exclusive description of the exemptions, please consult the applicable statute for the specific definition.

# NY Disclosure Requirements

## **Closed-end commercial financing disclosure requirements under Section 804:**

- ✓ The total amount of commercial financing and the disbursement amount, if different from the financing amount, after any fees deducted or withheld at disbursements;
- ✓ The finance charge (broadly defined);
- ✓ The annual percentage rate using only the words annual percentage rate or the abbreviation “APR” expressed as a yearly rate, inclusive of any fees and finance charges that cannot be avoided by a recipient and calculated in accordance with the Federal Truth in Lending Act, Regulation Z 12. C.F.R. §1026.22, regardless of whether such act or such regulation would require such a calculation.
- ✓ The term of financing.
- ✓ The total repayment amount (disbursement plus finance charge).
- ✓ A description of the collateral requirements or security interests, if any.



# NY Disclosure Requirements

## Payment Amounts Under Section 804

- ✓ For fixed payments, the payment amount and frequency (daily, weekly, monthly) and if the term is longer than one month, the average monthly payment amount.
- ✓ For variable payment amounts, the full payment schedule or description of the method used to calculate the amounts and frequency of payments and if the term is longer than one month the estimated average monthly payment amount.



# NY Disclosure Requirements

## Fees and Charges

- ✓ A description of all other potential fees and charges that can be avoided by the recipient, including but not limited to, late payment fees and returned payment fees.
- ✓ If the recipient was to pay off or refinance the commercial financing prior to the full payment the following must also be disclosed:
  - Whether the recipient would be required to pay any finance charges other than the accrued interest since their last payment and if so, disclosure of the percentage of any unpaid portion of the finance charge and maximum dollar amount the recipient could be required to pay; and
  - Whether the recipient would be required to pay any additional fees not already included in the finance charge.
- ✓ See Section 804 for other disclosure requirements.

# Change In Operations

## Timing of Disclosure

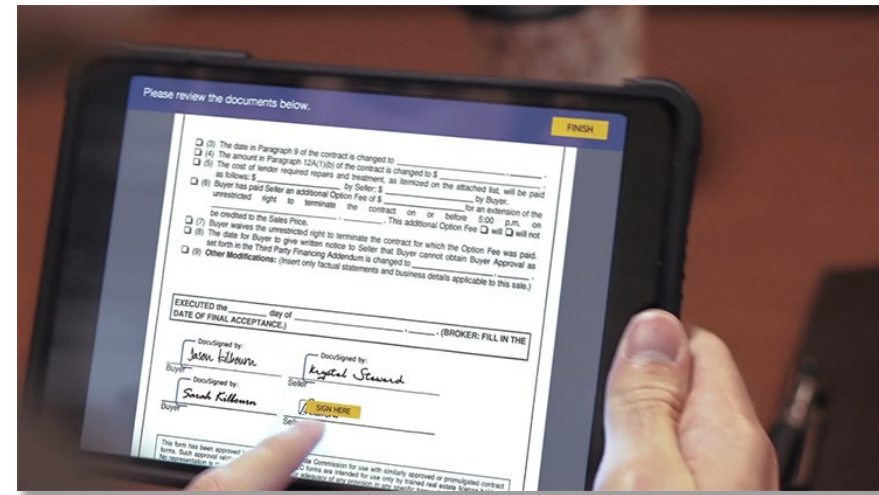
- ✓ At the time of extending a specific offer for the covered financing according to the format prescribed by the superintendent.
- ✓ **Not at the time the financing documents are signed.**



# Required Signature

## § 809. Required signature.

The provider shall obtain the recipient's signature, which may be fulfilled by an electronic signature, on all disclosures required to be presented to the recipient by this article before authorizing the recipient to proceed further with the commercial financing transaction application.



# Penalties

**§ 812. Penalties.** (a) Upon a finding by the superintendent that a provider has violated the provisions of this article, or the rules or regulations promulgated hereunder, the provider shall be ordered to pay to the people of this state a civil penalty for each violation of this article or any regulation or policy promulgated hereunder a sum not to exceed two thousand dollars for each violation or where such violation is willful ten thousand dollars for each violation.

(b) In addition to any penalty imposed pursuant to subdivision (a) of this section, upon a finding by the superintendent that a provider has knowingly violated this article, the superintendent may order additional relief, including, but not limited to, restitution or a permanent or preliminary injunction on behalf of any recipient affected by the violation.





# Shifting from Implementation To Record Keeping/Reporting

- Who must maintain records?
- A provider shall maintain a copy of each disclosure for a period of **at least four years** following the date that the disclosure is presented to the recipient or provided to a broker (CA and NY)
- A financier shall maintain a copy of the evidence of transmission of the disclosures provided by a broker to the financier for a period of at least four years following the date that the disclosure is presented to the recipient; a
  - *“After a broker transmits disclosures to the recipient, the broker shall provide evidence of transmission of the disclosures to the financier, including the time of transmission.”*

4

# Reporting

- NY requires annual reporting for Sales Based Financing starting in 2025
  - Further, the superintendent may require any provider to make special reports to the department “at such times as the superintendent prescribes, as may be necessary for the enforcement of the CFDL.”



# Effective Dates for the “Other” States

## Upcoming Effective dates

- Georgia January 1, 2024
- Florida January 1, 2024
- Connecticut July 1, 2024



## Laws Already Effective (other than CA & NY)

- Virginia July 1, 2022
- Utah January 1, 2023



# Note — “Other” States May Have Additional Requirements/Protections

***If you are potentially subject to other state disclosure laws be sure to review them carefully as they have different requirements and exemptions***

- Georgia & Florida
  - No private right of action under the law
  - Violation of the act does not affect the enforceability of the financing
- Florida
  - Prohibits certain acts by brokers, including relating to misrepresentations and advertising
- Connecticut
  - Other state disclosure forms may be used if approved by the commissioner and they meet or exceed the requirements of the law
  - Financier cannot revoke a specific offer for three (3) calendar days
  - Cannot waive notice of prejudgment remedies (replevin) in contract

# Utah – Registration

## 7-27-201. Registration requirements – Rule making.

(1) (a) Beginning January 1, 2023, it is unlawful for a person to engage in a **commercial financing transaction** as a provider in Utah or with a Utah resident, unless the person

(i) registers with the department in accordance with this chapter

- "Commercial financing transaction" means a business purpose transaction . . . under which a person extends a business a commercial loan or a commercial open-end credit plan
- "Commercial loan" means a loan to a business, regardless of whether the loan is secured.





# Utah – Registration

## 7-27-102. Application.

### The provisions of this chapter do not apply to:

- a provider that is a depository institution
- a provider that is . . . a subsidiary of a depository institution
- a commercial financing transaction that is a lease as defined in Section [70A-2a-103](#)
- a commercial financing transaction that is a purchase-money obligation as defined in Section [70A-9a-103](#)
- a commercial financing transaction offered by a person in connection with the sale of a product or service that: (a) the person manufactures, licenses, or distributes; or (b) the person's parent company or the person's owned and controlled subsidiary manufactures, licenses, or distributes; or
- a commercial financing transaction of more than \$1,000,000.

# Connecticut — Registration

"Provider" means a person who extends a specific offer of commercial financing to a recipient and includes, unless otherwise exempt under this section, a commercial financing broker, **but does not include:**

- bank, out of state bank, bank holding company, Connecticut credit union, federal credit union, out of state credit union or any subsidiary or affiliate of the foregoing, as those terms are defined in section 36a of the general status
- Person or provider who extends or brokers a lease, as defined in section 42a 102 of the general statutes
- person or provider who extends or brokers a purchase- money obligation, as defined in section 42a9103a of the general statutes,

# Questions?

## **SCOTT RIEHL**

Vice President, State Government  
Relations, ELFA

(202) 368-2704

[sriehl@elfaonline.org](mailto:sriehl@elfaonline.org)

## **ROBERT S. COHEN**

Partner, Moritt Hock & Hamroff LLP

(516) 873-2000

[rcohen@moritthock.com](mailto:rcohen@moritthock.com)

## **MOORARI SHAH**

Partner, Sheppard Mullin Richter &  
Hampton LLC

(714) 513-5100

[mshah@sheppardmullin.com](mailto:mshah@sheppardmullin.com)

## **ROBERT HORNBY**

Member, CSG Law

(973) 325-1500

[rhornby@csglaw.com](mailto:rhornby@csglaw.com)



# Thank You!



For previously-recorded web seminars go to:  
[www.elfaonline.org/events/elearning/web-seminars](http://www.elfaonline.org/events/elearning/web-seminars)