

Publications

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Ninth Circuit Decision Underscores Preemption Limits, Spotlights State-Level Banking Risk

Key Takeaways:

- **Ninth Circuit reaffirms that the National Bank Act does not preempt California’s escrow-interest law:** The court found no significant interference with national bank powers and again upheld the state’s authority to require interest payments on mortgage escrow accounts.
- **Cantero and Dodd-Frank continue to narrow the scope of federal preemption:** The decision confirms that courts will demand a high bar for preemption and will give weight to congressional intent, preserving state-level consumer protections.
- **National banks should reassess preemption strategies and bolster state-law compliance:** Where preemption isn’t viable, lenders should be prepared with strong, state-specific programs to reduce litigation risk and meet overlapping regulatory obligations.

The U.S. Court of Appeals for the Ninth Circuit reaffirmed that the National Bank Act (NBA) does not preempt a California law requiring lenders and loan servicers to pay interest on mortgage escrow accounts tied to one- to four-family residences. The Oct. 2, 2025 decision reinforces that national banks must comply with certain state escrow-interest laws, even when those laws impose specific payment obligations.

Ninth Circuit Affirms State Authority Over Escrow-Interest Payments

In this case, a class of California borrowers sued a national bank for failing to pay interest on residential mortgage escrow accounts, arguing that the California statute applied to their escrow accounts. The national bank contended that the NBA preempted the state requirement that interest be paid on escrow accounts.¹ The U.S. District Court for the Northern District of California rejected the national bank’s argument, and a Ninth Circuit panel upheld that ruling.

Following the U.S. Supreme Court’s decision in *Cantero*,² — which affirmed that state laws are preempted only if they “significantly interfere” with a national bank’s powers — the Supreme Court vacated and remanded the Ninth Circuit’s earlier decision. On remand, the appellate court found no evidence that California’s interest-on-escrow laws imposed

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that level of interference. It emphasized that the Dodd-Frank Act explicitly allows states to require interest payments on escrow accounts under certain conditions — suggesting that Congress intended to preserve such state laws. Accordingly, the Ninth Circuit again held that the NBA does not preempt California’s escrow-interest statute.

National Banks Must Evaluate NBA Preemption Defenses and Maintain State Compliance Programs

This case reinforces the need for careful, experience-driven preemption analysis to determine whether the National Bank Act may preempt a given state law, and whether asserting preemption is strategically sound. Where exercised thoughtfully, supported by solid research into court precedent and federal agency guidance, preemption can help federally-chartered banks avoid a patchwork of duplicative state regulations in favor of a uniform federal standard. This case also underscores that when preemption isn’t available, a robust state-by-state compliance program is key to avoiding costly and public litigation.

[1] See Cal. Civ. Code § 2954.9(a).

[2] 602 U.S. 205 (2024)