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Mortgage Laws and Regulations-California

Introduction

LegalEase was asked to review and summarize any legislation since January of 2007 (including pending legislation) affecting the mortgage industry in California in the following areas:

I. MORTGAGE ORIGINATION

1. Pending legislation since January of 2007

There is no new pending legislation since January of 2007.

2. Legislation since January of 2007

There is no new legislation since January of 2007.

II. MORTGAGE LICENSING

1. Pending legislation since January of 2007

i) 2007 Bill Tracking CA A.B. 2161

DATE OF INTRODUCTION: February 20, 2008

LAST ACTION: April 22, 2008

STATUS OF BILL: In Assembly

SYNOPSIS: An Act to add and repeal sections 22171.5 and 50333.5 of the Financial Code, relating to loans.

SUMMARY: Relates to the licensing of persons engaged in the business of making and servicing residential mortgage loans. Requires licensees to establish a grievance resolution system that provides procedures to receive, review, and resolve grievances filed by consumers or borrowers. Provides that if a consumer or borrower defaults while participating in the resolution

system, all fees, penalties and foreclosure actions shall be stayed until the grievance is resolved. It also relates to consumer rights in regards to a loan.

This bill would:

- Require licensees to establish, by January 1, 2010, a grievance resolution system.
- Provide procedures to receive, review, and resolve grievances filed by consumers or borrowers within 30 calendar days of receipt.
- Require the Department of Corporations to establish a review process for these grievances and grievance systems and would authorize certain grievances to be referred to the department.
- Establish that if a consumer or borrower defaults in his or her loan while participating in the grievance resolution system, all fee, penalty and foreclosure actions shall be stayed until the grievance has been resolved.
- Allow any person who purchases or is otherwise assigned a consumer loan to have all the affirmative claims and defenses with respect to the loan that the consumer could assert against the person who originated the loan.

ii) 2007 Bill Tracking CA S.B. 1604

DATE OF INTRODUCTION: February 22, 2008

LAST ACTION: April 22, 2008

STATUS OF BILL: In Senate

SYNOPSIS: Amendment relating to finance lenders and residential mortgage lenders.

SUMMARY: Requires that applicants for a license to engage in the business of residential mortgage lending show a minimum tangible net worth of a specified amount for brokers and finance lenders. Requires that licensees update that information if a change occurs, and requires that licensees maintain the applicable net worth at all times. Requires that lenders and brokers maintain a surety bond in a specified amount.

This bill would:

- Revise/increase the current net worth requirement of \$25,000 for licensees under the California Finance Lenders Laws (CFLL) as follows: \$25,000 for a license to act as a broker (\$50,000 to act as a broker engaged in the business of negotiating or performing acts in connection with residential mortgage loans); and \$100,000 for a license to act as a finance lender (\$250,000 to act as a finance lender engaged in the business of making residential mortgage loans).

- Increase the required surety bond amount for finance lenders that make residential mortgage loans, or brokers acting in connection with residential mortgage loans, from \$25,000 to \$50,000, and allow the bond to be increased to \$100,000 after certain violations.
- Require anyone seeking employment with a finance lender, broker, residential mortgage lender, or servicer to complete a specified application, and require those licensees to report any new employee that affirmatively responds to questions concerning prior discipline, convictions, or specified civil judgments.
- Require the commissioner of (more) the Department of Corporations (DOC) to be notified before a business location or branch office is closed.
- Require a broker or finance lender to update their financial statements within a time period specified by, and in a format acceptable to, the commissioner upon commencing or ceasing to engage in the business of residential mortgage loans, as specified.
- Licensees would also be required to maintain the minimum amount of tangible net worth at all times and compute tangible net worth in accordance with generally accepted accounting principles.
- Define residential mortgage loan as a loan secured by real property located in the state and improved by a one-to-four family dwelling.
- Require finance lenders engaged in the business of making residential mortgage loans or brokers engaged in the business of negotiating or performing acts in connection with residential mortgage loans to maintain a bond in the amount of \$50,000, and would authorize the commissioner to increase that bond amount to \$100,000 if he or she determines that the licensee has violated the CFLL or a rule or order of the commissioner.
- Define residential mortgage loan as a loan secured by real property located in the state and improved by a one-to-four family dwelling.
- Require any person seeking employment with a finance lender, finance broker, or residential mortgage lender or residential mortgage loan servicer, to complete an employment application on or before the first day of employment, specify the content of that application, and state that nothing in the bill is
- Intended to prevent a licensee from requesting additional information from an applicant.
- Require the prospective employee to verify, by signature, that the statements in the form are correct, and require that a copy of the employment application be maintained as part of the licensee's books and records.

- Exempt any person already required to file a statement of identity and questionnaire from a requirement to complete that employment application.
- Require a licensee of the CFLL or CRMLA to report to the commissioner any new employee who affirmatively answers questions regarding prior discipline, convictions, or specific civil judgments on his or her employment application, and to submit a copy of the employment application to the commissioner within 14 calendar days of the new employee's employment. Any person who knows of a violation is required to immediately report the violation in writing to the commissioner.
- Require each licensee under the CRMLA to notify the commissioner, in writing, by certified mail, return receipt requested, before closing a business location or locations, or branch office or offices, and would subject licensees who fail to notify to the above fines.

2. Legislation since January of 2007

i) Amendment to the Cal. Financial Code § 50123 that requires a plan for withdrawal of a license to include either the closing audit, review or other procedures prescribed by rule or order of the commissioner. Section 50123 of the Financial Code was amended to read (amendments are capitalized in bold):

§ 50123.

(a) A license shall remain in effect until suspended, surrendered, or revoked.

(b) A licensee that ceases to engage in the business regulated by this division and desires to no longer be licensed shall inform the commissioner in writing and, at that time, surrender the license and all other indicia of licensure to the commissioner. The licensee shall file a plan for the withdrawal from regulated business, [**AND THE PLAN SHALL INCLUDE**] a timetable for the disposition of the business [**THE PLAN SHALL ALSO INCLUDE**] a closing audit [, **REVIEW, OR OTHER AGREED UPON PROCEDURES**] performed by an independent certified public accountant [**PRESCRIBED BY RULE OR ORDER OF THE COMMISSIONER**]. Upon receipt of the written notice and plan, the commissioner shall review the plan and, if satisfactory to the commissioner, shall accept the surrender of the license. A license is not surrendered until its tender is accepted in writing by the commissioner after a review, and a finding has been made on the licensee's plan required to be filed by this section, and a determination has been made that there is no violation of this law.

(c) A licensee may not surrender its license under this division and, under the authority of a real estate license, subsequently engage in residential mortgage lending or servicing activities that are subject to this division, unless the licensee has been licensed under this division for a period of five years or more.

ii) Amendment to the Cal. Financial Code § 50205 that require the licensee to file an original surety bond with the commissioner. Section 50205 of the Financial Code is amended to read:

§ 50205.

(a) A licensee shall maintain a surety bond in accordance with this subdivision. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division. The bond shall be payable when the licensee fails to comply with a provision of this division and shall be in the amount of fifty thousand dollars (\$50,000), and may be increased by order of the commissioner to one hundred thousand dollars (\$100,000) upon a determination by the commissioner that the licensee is not in compliance with any provision of this chapter or any rule or order adopted or issued by the commissioner to implement or enforce provisions of this chapter. The bond shall be payable to the commissioner and issued by an insurance company authorized to do business in this state. [AN ORIGINAL SURETY] bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner [* * *] within 10 days of its execution.

III. MORTGAGE FEES AND CHARGES

1. Pending legislation since January of 2007

i) 2007 Bill Tracking CA A.B. 1837

DATE OF INTRODUCTION: January 24, 2008

LAST ACTION: February 7, 2008

STATUS OF BILL: To Assembly Committee on Banking and Finance

SYNOPSIS: An act to amend Sections 4970 and 4973 of, and to add Section 4973.4 to, the Financial Code relating to loans.

SUMMARY: This bill relates to consumer loans: sub prime and nontraditional loans. It addresses real estate brokers, finance lenders, residential mortgage lenders and financial institutions with respect to consumer loans and covered loans. It prohibits a covered loan from including a prepayment penalty under certain circumstances. It prohibits such loans from including prepayment fees or penalties. It prohibits a licensed person from receiving any compensation for originating a sub prime loan.

This bill would:

- Prohibit a covered loan from including a prepayment penalty after the first 24 months from the date of consummation of the loan and would authorize a covered loan to include a prepayment penalty before that time period if specified conditions are satisfied.
- Define the terms "sub prime loan" and "nontraditional loan" and would prohibit these loans from including prepayment fees or penalties.
- Prohibit a licensed person from receiving any compensation for originating a sub prime
- Loan or nontraditional loan with an interest rate above the wholesale par rate for which the consumer qualifies. The bill's provisions would apply to consumer loans originated on or after January 1, 2009.

ii) 2007 Bill Tracking CA S.B. 702

DATE OF INTRODUCTION: February 23, 2007

LAST ACTION: September 11, 2007

STATUS OF BILL: In Assembly. To Inactive File.

SYNOPSIS: An act to amend Sections 1675 and 2985 of the Civil Code, relating to housing.

SUMMARY: This bill relates to damages awarded to a seller in the sale of a newly constructed attached residential condominium in the event of a buyer's default that exceeds 3% of the purchase price. Provides that a real estate sales contract does not include a contract for purchase of such condominium pursuant to a final subdivision report. Prohibits disclosure of contract information by a seller and requires that certain information be provided by the seller prior to execution of a contract.

This bill would:

- Increases the presumptively valid amount of liquidated damages for default by certain buyers for specified condominium presale agreements.
- Increases from 3% to 5% the presumptively valid amount of liquidated damages that may be assessed against a buyer for defaulting on an agreement to purchase a newly constructed attached residential condominium in a building of 10 units or more if the buyer has signed two or more presale contracts within 90 days in the same metropolitan area.
- Provides that the foregoing provision shall become effective on July 1, 2008.
- Provides that the Real Estate Commissioner shall adopt a regulation to be effective on or before June 30, 2008, to require sellers of newly constructed attached residential condominiums to provide buyers with written notice of their rights regarding liquidated

damages prior to execution of a contract for sale or presale if the contract contains a liquidated damages provision subject to this section.

- Prohibits a seller from disclosing information regarding presale contracts except pursuant to court order.
- Provides that a real property sales contract for the purposes of installment land sales contract law does not include a real estate sales contract for the purchase of an attached residential condominium unit entered into pursuant to a final subdivision public report issued by the Department of Real Estate (DRE) pursuant to Business and Professions Code Section 11018, if the real estate sales contract requires conveyance of title to occur not less than two years after the date of formation of the contract.
- Provides that the DRE shall conduct a study of the operation and effectiveness of the act and report to the Legislature prior to this bill's sunset date of January, 2012.

iii) 2007 Bill Tracking CA A.B. 2740

DATE OF INTRODUCTION: February 22, 2008,

LAST ACTION: April 22, 2008

STATUS OF BILL: In Assembly

SYNOPSIS: An Act to add section 2938.1 to the Civil Code, relating to Mortgages.

SUMMARY: Provides that a residential mortgage loan servicer, or a bank, credit union, or finance lender that services loans secured by residential real property, owes a duty of good faith and fair dealing to a borrower. Regulates the fees and charges that may be imposed by such entities. Establishes prohibited acts and requirements applicable to servicing mortgage loans including the time period to respond to a borrower's request for information and for dispute resolution.

Specifically, this bill:

- Provides that a residential mortgage loan servicer, a bank, credit union, or finance lender that services loans secured by residential real property, owes a duty of good faith and fair dealing to a borrower.
- Regulates the fees and charges that may be imposed by banks, credit unions, finance lenders, or mortgage loan servicers.
- Requires banks, credit unions, finance lenders, and mortgage loan servicers to respond within 10 days to a borrower's request for information and for dispute resolution.
- Applies to mortgage loan servicing contracts entered into on and after January 1, 2009.

iv) 2007 Bill Tracking CA A.B. 1830

DATE OF INTRO: January 23, 2008

LAST ACTION: April 15, 2008

STATUS OF BILL: From Assembly Committee on Judiciary

SUMMARY: Prohibits a high-cost loan from including prepayment penalties and from including at origination a payment schedule with regular periodic payments that do not fully amortize the principal balance as of the maturity date of the loan, a person from making a high-cost loan unless at the time the loan is consummated the person reasonably believes the consumer will be able to make the scheduled payments, including taxes and insurance. Prohibits a high-cost loan from being originated as a stated income loan.

Enacts the Subprime Lending Reform Act (Act). Specifically, this bill:

- Changes the current "covered loan" designation to "high-cost" and defines "high cost loan" as a consumer loan in which the principle balance of the loan does not exceed the most current conforming loan limit as established by the Federal National Mortgage Association (Fannie Mae) and where one of the following exists:
 - a) The annual percentage rate (APR) at consummation, will exceed by more than eight points for first lien loans or by more than 10 percentage points for subordinate lien loans the yield on Treasury securities having comparable periods of maturity; or
 - b) The total points and fees payable by the consumer at or before closing will exceed 5% of the total loan amount.
- Defines "subprime loan" as a consumer loan in which:
 - a) If the loan is a closed-end loan, the difference between the APR for the loan and the yield on Treasury securities having comparable periods of maturity is either equal to or greater than 3 percentage points if the loan is secured by a first lien mortgage or deed of trust, or
 - b) 5 percentage points if the loan is secured by a subordinate lien mortgage or deed of trust.
 - c) The difference between the annual percentage rate for the loan and the annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in statistical release H.15 or any publication that may supersede it, is either equal to or greater than (A) 1.75 percentage points, if the loan is secured by a first lien mortgage or deed of trust, or (B) 3.75 percentage points, if the loan is secured by a subordinate lien mortgage or deed of trust.
- Defines "Nontraditional loan" as a consumer loan that allows borrowers to defer payment of principal and, sometimes, interest, as set forth in the "Interagency Guidance on Nontraditional Nontraditional Mortgage Products Risk" (Guidance).

- Proposes a list of prohibited acts and limitations for high-cost loans.
- Proposes a list of limitations and prohibitions for subprime and non-traditional loans.
- Proposes various penalties and enforcement actions relative to high-cost, subprime and nontraditional loans.
- Provides that a failure to comply with the Act, that was not willful shall be corrected no later than 45 days after discovery of the error;
- Provides that a person who originates a high cost, subprime or nontraditional loan and the person knew, or should have known of, and showed reckless disregard for a violation of this division by a broker, the person and broker shall be jointly and severally liable for all damages;
- After a knowing and willful violation the licensing agency may suspend the license of the licensed person;
- After a knowing and willful violation resulting in a second or subsequent administrative or civil action, the licensing agency may bring a proceeding to permanently revoke the license of licensed person;
- Allows for administered penalties in the amount of \$10,000 for each violation as administered by the licensing agency;
- Allows the Attorney General, city Attorney, or District Attorney, or licensing agency to bring an action;
- Provides for civil liability in the amount of \$25,000 or the consumer's actual damages;
- Provides that if a provision of a high-cost loan, subprime loan, or nontraditional violates the Act, that provision of the loan is unenforceable.
- Provides that a high cost, subprime or nontraditional loan that violates the Act shall constitute a defense to foreclosure.

2. Legislation since January of 2007

i) An act to amend Sections 10131.1 and 10245 of, and to add Section 10240.3 to, the Business and Professions Code, to add Sections 215.5, 22171, and 50333 to the Financial Code, and to add Section 13984 to the Government Code, relating to real estate, and making an appropriation therefore. The amendments require specified financial institutions, specified real estate brokers, finance lenders, and persons licensed under the California Residential Mortgage Lending Act to adopt and adhere to policies

and procedures that are reasonably intended to achieve the objectives set forth in the guidance and statement. Because a willful violation of these provisions with respect to real estate brokers and persons licensed under the California Residential Mortgage Lending Act would be a crime, the amendment would impose a state-mandated local program.

The amendment would also expand definition a real estate broker as a person who engages as a principal in the business of making loans and would define the term "in the business" as the making of eight or more specified loans in a calendar year to the public from the person's own funds, as defined and create new crimes.

Section 215.5 is added to the Financial Code, to read:

§ 215.5.

(a) The commissioner shall apply the Interagency Guidance on Nontraditional Mortgage Product Risks issued in September 2006 and the Statement on Subprime Mortgage Lending issued in June 2007 by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration to state-regulated financial institutions, including, but not limited to, privately insured, state-chartered credit unions.

(b) The commissioner may issue emergency and final regulations to clarify the application of this section as soon as possible.

(c) A bank or credit union to which the commissioner applies the documents described in subdivision (a) shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in those documents.

Section 22171 is added to the Financial Code, to read:

§ 22171.

(a) The commissioner shall apply the guidance on nontraditional mortgage product risks published on November 14, 2006, by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and the Statement on Subprime Mortgage Lending published on July 17, 2007, by the aforementioned entities and the National Association of Consumer Credit Administrators, to licensees.

(b) The commissioner may adopt emergency and final regulations to clarify the application of this section as soon as possible.

(c) A licensee shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the documents described in subdivision (a).

Section 50333 is added to the Financial Code, to read:

§ 50333.

(a) The commissioner shall apply the guidance on nontraditional mortgage product risks published on November 14, 2006, by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and the Statement on Subprime Mortgage Lending published on July 17, 2007, by the aforementioned entities and the National Association of Consumer Credit Administrators, to licensees.

(b) The commissioner may adopt emergency and final rules to clarify the application of this section as soon as possible.

(c) A licensee shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the documents described in subdivision (a).

IV. CONTINUING EDUCATION FOR MORTGAGE INDUSTRY PROFESSIONALS

1. Pending legislation since January of 2007

There is no new pending legislation since January of 2007.

2. Legislation since January of 2007

There is no new legislation since January of 2007

V. OTHER SIGNIFICANT STATUTORY OR REGULATORY EFFECT ON THE MORTGAGE INDUSTRY

1. Pending legislation since January of 2007

i) 2007 Bill Tracking CA A.B. 512

DATE OF INTRODUCTION: February 20, 2007

LAST ACTION: September 10, 2007

STATUS OF BILL: Re-referred to Senate Committee on Banking, Finance and Insurance

SYNOPSIS: An act to amend Section 1632 of the Civil Code, relating to contracts.

SUMMARY: The purpose of this bill ensures that non-English speakers whose primary language is Spanish, Chinese, Tagalog, Vietnamese, or Korean, and who negotiate the terms of their mortgage loans in their primary language, understand the terms of their mortgages. This bill requires a person in a trade or business who negotiates specified contracts or agreements in

the languages of Spanish, Chinese, Tagalog, Vietnamese, and Korean to deliver to the other party a translation thereof in the applicable foreign language and provides that the provisions apply to the Industrial Loan Law, the California Finance Lenders Law and the Residential Mortgage Lending Act. It requires supervised financial organizations making real property secured loans to provide, in a certain form, translations.

This bill:

- Adds residential mortgage lenders to the definition of a supervised financial organization under Civil Code Section 1632.
- Clarifies the circumstances under which provision of a translation of the disclosures required by Regulation M or Regulation Z, and, if applicable, the disclosures required under the Industrial Loan Company Law or the Finance Lenders Law, represent compliance with Section 1632's translation requirements by providing that translations of these documents are appropriate for unsecured loans or extensions of credit and for loans or extensions of credit secured by other than real property.
- Adds a summary of loan terms translation requirement for loans secured by real property that are made by a supervised financial organization.
- Requires the Secretary of Business, Transportation and Housing Agency (BT&H), on or before January 1, 2009, to create a form drafted in each language mentioned in the bill for use by a supervised financial organization in summarizing the terms of a mortgage loan.
- Specifies that requirements applying to supervised financial organizations shall be operative commencing on January 1, 2009, or 90 days following issuance of forms by the Secretary of BT&H pursuant to subdivision (m), whichever is later.
- Contains a severability clause stating that if any provision of the bill or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

ii) 2007 Bill Tracking CA A.B. 529

DATE OF INTRODUCTION: February 21, 2007,

LAST ACTION: February 7, 2008

STATUS OF BILL: To Senate Committees on Banking, Finance and Insurance and Judiciary

SYNOPSIS: An act to add Section 2924.8 to the Civil Code, relating to mortgages.

SUMMARY: Requires a lender who provides a loan secured by property improved by four or fewer residential units, and the interest rate on the loan is initially fixed and then becomes adjustable, to notify the borrower of specified items of information 120, 60 and 30 days prior to

an interest rate adjustment. It provides that the notification requirements are satisfied if the lender either personally delivers the notice or mails it.

Included specified items are:

- Current interest rate and a projected interest rate, which shall be the amount of the consumer's interest rate if the rate adjustment occurred on the date of the notification;
- Current loan payment, the estimated payment resulting from the projected interest rate, and a statement describing whether the estimate of the payment includes insurance and property tax;
- Duration of the new payment before the next interest rate adjustment;
- Frequency of future interest rate adjustments; and,
- Information on who the borrower may contact to seek additional assistance regarding modifying or refinancing their existing loan.
- Requires the notification to be provided on or within five days prior to the dates specified by first class mail or personally delivered.

Effects of the bill would be to require notification at 120, 90 and 45 days prior to any projected change in a mortgage payment amount.

iii) 2007 Bill Tracking CA A.B. 2105

DATE OF INTRODUCTION: February 20, 2008

LAST ACTION: April 8, 2008

STATUS OF BILL: From Assembly Committee on Aging & Long Term Care: Do pass to Committee on Public Safety.

SYNOPSIS: An act to amend Section 15630.1 of the Welfare and Institutions Code, relating to abuse of elders and dependent adults.

SUMMARY: Expands the category of mandated reporters of suspected financial abuse to include both licensees as that term is defined under the State Finance Lenders Law, the State Residential Mortgage Lending Act, and real estate brokers, as defined in the Real Estate Law.

Specifically, this bill:

- Expands the definition of mandated reporters of financial abuse of an elder or dependent adult to include all finance lenders or brokers and real estate brokers in addition to all officers and employees of financial institutions.

- Provides that finance lenders or brokers and real estate brokers who fail to report financial abuse would be subject to a civil penalty not exceeding one thousand dollars (\$1,000). If the failure to report is willful, the lender or broker shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000), which shall be paid by the lender or broker that is the employer of the mandated reporter.
- Specifies that the civil penalty shall be recovered only in a civil action brought against the finance lender or broker, or real estate broker by the Attorney General, district attorney, or county counsel.
- Provides that reports of suspected financial abuse of an elder or dependent adult made by a finance lender or broker, or real estate broker are covered under Section 47 of the Civil Code which covers privileged communications.

iv) 2007 Bill Tracking CA A.B. 2187

DATE OF INTRODUCTION: February 20, 2008

LAST ACTION: April 22, 2008

STATUS OF BILL: From ASSEMBLY Committee on JUDICIARY: Do pass as amended.

SYNOPSIS: An act to amend Sections 2924 and 2924c of, and to add Section 2924.8 to, the Civil Code, relating to mortgages.

SUMMARY: Requires a lender or person foreclosing on real property subject to a mortgage or deed of trust to mail to borrower a homeowner's bill of rights specifying the process of foreclosure employed and set forth the rights of the borrower regarding contracts with mortgage foreclosure consultants. Requires a lender or other person who takes possession of property to notify the city or county in which the property is located, by mail, of its plan for managing the property in the period prior to the sale of the property.

Specifically, this bill:

- Provides a homeowner a foreclosure notice and imposes obligations to maintain vacant residential property acquired following foreclosure.
- Requires a lender or other person foreclosing on real property subject to a mortgage or deed of trust to mail to the borrower, at the time the notice of default is mailed, a foreclosure statement specifying the processes of foreclosure and setting forth the rights of the homeowner regarding contracts with mortgage foreclosure consultants.
- Until 2013, requires a legal owner to maintain vacant residential property purchased by that owner at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust.

- Until 2013, permits a governmental entity to impose a civil fine of up to one thousand dollars (\$1,000) per day for a violation of the foregoing obligation, and if the governmental entity chooses to impose a fine, requires that it shall give notice of the alleged violation, including a description of the conditions giving rise to the allegation, and notice of the entity's intent to assess a civil fine if action to correct the violation is not commenced within a period of not less than 14 days and completed within a period of not less than 30 days, mailed to the address provided in the deed or other instrument or to the return address provided on the deed or other instrument.
- Requires that the governmental entity provide a period of not less than 30 days for the legal owner to remedy the violation prior to imposing a civil fine and allow for a hearing and opportunity to contest any fine imposed. In determining the amount of the fine, the governmental entity shall take into consideration any timely and good faith efforts by the legal owner to remedy the violation. The maximum civil fine authorized by this section is one thousand dollars (\$1,000) for each day that the owner fails to maintain the property, commencing on the day following the expiration of the period to remedy the violation established by the governmental entity.
- Subject to the provisions of this section, a governmental entity may establish different compliance periods for different conditions on the same property in the notice of alleged violation mailed to the legal owner.

v) **2007 Bill Tracking CA A.B. 2359**

DATE OF INTRODUCTION: February 21, 2008

LAST ACTION: April 21, 2008

STATUS OF BILL: From Assembly Committee on Banking and Finance

SYNOPSIS: An act to amend section 2953 of the Civil Code, to amend section 1281 of the Code of Civil Procedure, and to repeal and add section 4979.8 of the Financial Code, relating to loans.

SUMMARY: Prohibits a broker, trustee, or mortgagee or his or her agent, beneficiary, or assign from requiring as a condition of an agreement regarding a high cost loan, subprime loan, or nontraditional mortgage that a borrower or applicants waive any related rights, remedies, obligations or procedures provided for in existing law related to a residential mortgage or mortgage foreclosure. Prohibits the refusal to enter into an agreement for failure to provide such waiver. Relates to mortgagor liability.

Specifically, this bill:

- Provides that any person who purchases, or is otherwise assigned a high-cost loan shall be subject to all affirmative claims and any defenses with respect to the loan that the borrower could assert against the originator of the loan.

- Makes various legislative findings and declarations relative to the rights of homeowners and mortgage loans.
- Specifies that liability shall not apply to an assignee or purchaser, provided they demonstrate that a person exercising due diligence could not determine the mortgage was high-cost.
- Provides for a safe harbor, that includes polices and procedures, for those who inadvertently purchase or assign a high-cost loan.
- Defines "High-cost loan" as a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association in the case of a mortgage or deed of trust, and where one of the following conditions is met:
 - a) For a mortgage or deed of trust, the annual percentage rate at consummation of the transaction will exceed by more than 8 percentage points for first lien loans, or by more than 10 percentage points for subordinate lien loans, the yield on treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or
 - b) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6% of the total loan amount.
- Defines "Points and fees" and provides that "Points and fees" shall not include any of the following:
 - a) Taxes, filing fees, recording fees, and other charges and fees paid, or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; or,
 - b) Bona fide and reasonable fees paid to a person other than the creditor or an affiliate of the creditor for fees for tax payment services, flood certification, or pest infestation and flood determination, appraisal fees, fees for inspections performed prior to closing, credit report fees, survey fees, attorneys' fees if the borrower has the right to select the attorney from an approved list or otherwise, notary fees, escrow charges, title insurance premiums, and fire and hazard insurance and flood insurance premiums.
- Provides that an originator, beneficiary, trustee or assignee shall not require as a condition of an agreement regarding a high-cost loan, subprime loan, or non-traditional loan that the applicant waive any rights, remedies, obligations, or procedures of California law with respect to a residential mortgage or mortgage foreclosure.

- Provides the originator of a mortgage loan or a trustee, beneficiary, or assignee shall not refuse to enter into an agreement with a borrower solely because the borrower refuses to waive their rights, remedies, obligations, or procedures.
- Requires that any waiver of rights must be known and voluntary.
- Provides that the originator, beneficiary, trustee or assignee shall have the burden of proof in proving that an agreement to arbitrate a dispute is voluntary.

vi) 2007 Bill Tracking CA A.B. 2594

DATE OF INTRODUCTION: February 22, 2008
LAST-ACTION: APRIL 21, 2008
STATUS OF BILL: In Assembly.

SYNOPSIS: An act to add and repeal Chapter 7 (commencing with Section 33700) of Part 1 of Division 24 of the Health and Safety Code, relating to redevelopment.

SUMMARY: Authorizes a redevelopment agency to expend money to purchase, assume, or refinance subprime and nontraditional mortgages on homes owned by persons of low or moderate income or make loans to those homeowners, to purchase homes within its jurisdiction that have been foreclosed and are vacant and sell those homes to persons of low or moderate income, and to provide mortgage and credit counseling services to low or moderate income homeowners.

vii) 2007 Bill Tracking CA S.B. 707

DATE OF INTRODUCTION: February 23, 2007
LAST ACTION: October 13, 2007
STATUS OF BILL: Chaptered by Secretary of State. Chapter No. 658

SYNOPSIS: Expiring state housing loans

SUMMARY: Authorizes the Department of Housing and Community Development or the State Housing Finance Agency to extend and alter the terms of existing multifamily housing loans made under specified programs upon the request of any borrower, subject to certain conditions. Assembly Amendments allow for the Department of Housing and Community Development, if they determine that the useful life of the project is less than 55 years, to extended the loan for the remainder of the projects useful life, but not less than 30 years, recast language related to the Department of Housing and Community Development's findings that the project has insufficient income to maintain fiscal integrity, require the project not only be affordable to, but also be occupied by, households earning less than the midlevel target, and allow the California Housing Finance Authority the same authority provided to Department of Housing and Community Development with respect to the Rental Housing Construction Program.

This bill becomes operative on July 1, 2008.

viii) 2007 Bill Tracking CA S.B. 1065

DATE OF INTRODUCTION: January 8, 2008

LAST ACTION: April 22, 2008

STATUS OF BILL: In Senate

SUMMARY: Amends provisions which provide that a city or county has specified powers and duties and may administer a home mortgage financing program to acquire, contract, and enter into advance commitments to acquire home mortgages made or owned by lenders. Includes the refinancing of home mortgages in the criteria for establishing a maximum household income for the purposes of a city or county administered home financing program.

This bill:

- Would revise the definition of "home mortgage" or "mortgage" for purposes of a local housing agency home financing program to include the refinancing of an existing home within the city or county making or purchasing the home mortgage, when the owner of the home is and will be the occupant of the house;
- Would apply the maximum household income criteria of 120% for most areas and 150% for specified economically disadvantaged to borrowers who obtain refinanced mortgages through a local housing agency home financing program;
- Would sunset its provisions on January 1, 2012.
- Allows local governments to issue bonds whose proceeds will be used to help refinance the mortgages of low- and moderate-income families.
- Intends to allow private sector lenders to refinance certain borrowers in unaffordable mortgages into more affordable loan products.

ix) 2007 Bill Tracking CA A.B. 180

DATE OF INTRODUCTION: January 24, 2007

LAST ACTION: February 7, 2008

STATUS OF BILL: To Senate Committee on Judiciary

SYNOPSIS: An act to amend Sections 2945.1, 2945.2, 2945.3, and 2945.4 of, and to add Section 2945.45 to, the Civil Code, relating to mortgages.

SUMMARY: Allows a homeowner to cancel a contract with a foreclosure consultant at any time, and to do so by mail, e-mail, or facsimile. The bill requires a contract with a consultant be written in the language principally used by the consultant to describe his or her services or to negotiate a contract. The bill also requires the consultant to provide the contract in other

languages. It prohibits the consultant from taking the power of attorney from the owner. And requires the consultant to register and provide a transaction surety bond.

This Bill makes substantive changes in law regarding foreclosure consultants. Specifically, this bill:

- Allows an owner to cancel a contract until midnight of the fifth business day.
- Permits an owner to cancel a contract by mail, e-mail, or facsimile.
- Requires the foreclosure consultant to provide the owner, before the owner signs the contract, with a copy of a completed contract written in any other language requested by the owner.
- Deletes provisions allowing a foreclosure consultant to enter into a contract with the owner 65 days following foreclosure sale related to surplus funds.
- Requires a foreclosure consultant to register with the Department of Justice (DOJ) and to obtain and maintain a surety bond of \$100, 000.

2. Legislation since January of 2007

There is no new legislation since January of 2007