

Section 1: California Financing Law

There are two California agencies which can grant mortgage licenses. The California Department of Real Estate¹ can give an endorsement to originate residential mortgage loans to those firms and individuals who have a real estate license. The California Department of Financial Protection and Innovation² (the DFPI) can grant licenses to mortgage lenders, mortgage brokers and mortgage loan originators. This course will focus the requirements of the DFPI.

There are two primary laws that govern mortgage origination under the DFPI. This section will address the California Financing Law³ (CFL). Section 2 will address the California Residential Mortgage Lending Act⁴ (CRMLA). Finance lenders and/or brokers licensed under the CFL may engage in residential mortgage lending and many other types of consumer and commercial lending. Those licensed under the CRMLA as either mortgage lenders or mortgage servicers can only engage in mortgage lending or mortgage brokerage and/or mortgage servicing.

After completing this Section, the reader will be able to understand and describe:

- Purpose of California Financing Law;
- Licensing Issues;
- Prohibited Conduct;
- Fees and Charges;
- Advertising Issues;
- Disciplinary Matters; and
- Supervisory Requirements.

Purpose of California Financing Law

The California Financing Law (CFL) states its purpose as follows:⁵

- (a) *This division shall be liberally construed and applied to promote its underlying purposes and policies, which are:*
- (1) *To ensure an adequate supply of credit to borrowers in this state.*
 - (2) *To simplify, clarify, and modernize the law governing loans made by finance lenders.*
 - (3) *To foster competition among finance lenders.*
 - (4) *To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.*
 - (5) *To permit and encourage the development of fair and economically sound lending practices.*
 - (6) *To encourage and foster a sound economic climate in this state.*
 - (7) *To protect property owners from deceptive and misleading practices that threaten the efficacy and viability of property assessed clean energy financing programs.*

¹ <https://mortgage.nationwidelicencingsystem.org/slr/Pages/DynamicLicenses.aspx?StateID=CADRE>

² <https://dfpi.ca.gov/>

³ Division 9 California Financial Code (CA Fin. Code) §§ 22000-22780

⁴ Div. 20 CA Fin. Code §§ 50000-50706

⁵ Div. 9 CA Fin. Code § 22001
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As we shall discuss, the CFL regulates both consumer and commercial loans and requires licensing as finance lenders and/or finance brokers along with the licensing of mortgage loan originators.

Licensing Issues

The California Financing Law has the following to say about mortgage licensing in general:⁶

- (a) *No person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner.*
- (b) *Every licensee engaging in the business of making or brokering residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator license from the commissioner under this division or Division 20 (commencing with Section 50000), or has first obtained a license endorsement from the Commissioner of Real Estate pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.*

Explanatory Comment: Paragraph (b) simply means that each MLO must be licensed, which can be done under the CFL or the California Residential Mortgage Lending Act or as a real estate licensee under the Business and Professions Code.

- (c) *A finance lender or broker shall not employ a mortgage loan originator whose license or license endorsement has lapsed.*
- (d) *A finance lender or broker may not make or broker a residential mortgage loan unless that loan is offered by, negotiated by, or applied for through a licensed mortgage loan originator.*
- (e) *Every licensee engaged in the business of making or brokering residential mortgage loans and every mortgage loan originator licensed under this division shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.*
- (f) *An individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license in accordance with the requirements of this division and any rules promulgated by the commissioner under this chapter.*
- (g) *A registered mortgage loan originator, as defined in subdivision (c) of Section 22013, is exempt from licensure under this section when he or she is employed by:*
 - (1) *A depository institution.*
 - (2) *A subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency.*
 - (3) *An institution regulated by the Farm Credit Administration.*

Explanatory Comment: Paragraph (g) simply refers to the requirement that MLOs who work

for depository institutions, such as banks, must be registered with the NMLS but do not need to meet the educational or testing requirements for licensing.

Licensing of Firms

The California Financing Law allows firms to make many different types of loans to consumers. Firms can be licensed as either finance lenders or finance brokers or as both. Those who are licensed as a broker only may only broker loans through firms licensed as finance lenders under the CFL.⁷ There are three different net worth standards, depending on the nature of the firm:

- All firms licensed under the CFL must have a net worth of at least \$25,000.
- A firm that is licensed as a finance broker only and that employs one or more Mortgage Loan Originators would need to maintain a net worth of at least \$50,000.
- A firm that is licensed as a finance lender and that employs one or more Mortgage Loan Originators would need to maintain a net worth of at least \$250,000.⁸

There are a number of firms which are exempt from the licensing requirement, including "banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies, community advantage lenders, California business and industrial development corporations when acting under federal law or other state authority, or licensed pawnbrokers when acting under the authority of that license."⁹ Real estate brokers are allowed to make loans secured by real property and to sell them to licensed finance lenders without being licensed as finance lenders or brokers.¹⁰ Also exempt would be a person who makes no more than five commercial loans in a calendar year.

There are cases where a financial firm is exempt from the licensing requirement under the CFL but will file for an exempt company registration so that they can hire licensed MLOs. A classic example of this is an insurance company which wants some of its insurance agents to be able to originate residential mortgage loans. Their licensed MLOs must also be licensed insurance producers.¹¹

When a firm applies for licensure as a finance lender or broker under the CFL the Commissioner of the DFPI will investigate the applicant and any individuals or other entities that own or control (directly or indirectly) 10 percent or more of the of the outstanding interests in the applicant, along with the principal officers, directors and managing members. If no reasons for denial are found in this investigation, the license shall be granted.¹² Section 22109 of the CFL lists the reasons for possible denial as follows:

- (a) *Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for a finance lender or broker license for any of the following reasons:*
- (1) *A false statement of a material fact has been made in the application.*
 - (2) *The applicant or an officer, director, general partner, person responsible for the applicant's lending activities or administering PACE programs for the*

⁷ Div. 9 CA Fin. Code § 22059

⁸ Div. 9 CA Fin. Code § 22104

⁹ Div. 9 CA Fin. Code § 22050

¹⁰ Div. 9 CA Fin. Code § 22057

¹² Div. 9 CA Fin. Code § 22105
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applicant in this state, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years, been convicted of or pleaded nolo contendere to a crime, or committed an act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

Explanatory Comment: The PACE program referenced above and in the paragraph below is a special mortgage loan available to California residents to finance solar panels.

- (3) *The applicant or an officer, director, general partner, person responsible for the applicant’s lending activities or administering PACE programs in this state, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.*
- (4) *The applicant employs a mortgage loan originator who is not licensed, or has not initiated an application to become licensed, pursuant to this division.*
- (b) *The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.*
- (c) *The commissioner shall, within 60 days from the filing of a full and complete application for a license with the fees, either issue a license or file a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

Explanatory Comment: We should note that the code section cited in paragraph (c) above is the section of the California Government Code that deals with administrative hearings. It spells out the procedures under which an applicant could appeal the denial of the license.

Firms licensed under the CFL as finance lenders or brokers are required to obtain a surety bond as a guarantee that they are able to pay fines and penalties should they ever be levied against the firms by the DFPI. The minimum bond for all licensed firms is \$25,000 but firms which engage in residential mortgage lending are required to maintain higher bonds based on their lending volume for the previous year:¹³

Aggregate Loans	Bond Amount
0 - \$1,000,000	\$25,000
\$1,000,001 - \$50,000,000	\$50,000
\$50,000,001 - \$500,000,000	\$100,000
Over \$500,000,001	\$200,000

Licensed firms may open new branches by applying for a Branch license and paying the appropriate fees. There must be a specific individual named as being the person responsible for the lending activity at that branch location. Should the firm move its principal place of business

¹³ 10 California Code of Regulations (CCR), § 1437
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or any branch office it must notify the Commissioner at least 10 days prior to the change of address.¹⁴

Licensed firms are also required to pay annual assessments to the DFPI to cover their pro rata share of the costs incurred by the DFPI in administering the laws and regulations. Each firm's assessment will be in proportion to its gross income as a percentage of the gross income of all licensees, but in no case less than \$250.¹⁵ They are required to file annual reports with the Commissioner.¹⁶

Reinforcer

There are cases where a financial firm is exempt from the {{1}} under the CFL but will file for an exempt company {{2}} so that they can hire licensed MLOs. A classic example of this is an {{3}} which wants some of its insurance agents to be able to originate residential mortgage loans. Their licensed MLOs must also be licensed insurance {{4}}.

1. licensing requirement
2. registration
3. insurance company
4. producers

MLO Licensing

The California Financing Law defines a mortgage loan originator as follows:¹⁷

- (a) *“Mortgage loan originator” means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.*
- (b) *Mortgage loan originator does not include any of the following:*
 - (1) *An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as provided in subdivision (c) of Section 22014. The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.*
 - (2) *An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the SAFE Act requires such an employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.*
 - (3) *An individual that is solely involved in extensions of credit relating to*

¹⁴ Div. 9 CA Fin. Code § 22102, 22153

¹⁵ Div. 9 CA Fin. Code § 22107

¹⁶ Div. 9 CA Fin. Code § 22159

¹⁷ Div. 9 CA Fin. Code § 22013

timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.

- (4) *An individual licensed as a mortgage loan originator pursuant to the provisions of Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code and the SAFE Act.*

Explanatory Comment: Paragraph (4) above exempts those who are licensed as MLOs through the Department of Real Estate from this definition so that they are not subject to the CFL since they are regulated under the Business and Professions Code.

The basic requirements for licensing as a mortgage loan originator under the CFL¹⁸ are probably familiar to the reader:

- (a) *The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:*
 - (1) *The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation.*
 - (2)
 - (A) *The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.*
 - (B) *For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).*
 - (3) *The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.*
 - (4) *The applicant has completed the prelicensing education requirement described in Section 22109.2.*
 - (5) *The applicant has passed a written test that meets the test requirement described in Section 22109.3.*
 - (6) *The applicant is employed by, and subject to the supervision of, a finance*

lender or broker that has obtained a license from the commissioner pursuant to this division.

The prelicense education requirements mentioned in paragraph (4) above include the following:

- (1) *Three hours of instruction on federal law and regulations.*
- (2) *Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.*
- (3) *Two hours of training related to lending standards for the nontraditional mortgage product marketplace.*
- (4) *Two hours of training related to relevant California law and regulations.*¹⁹

The financial responsibility test referenced above in paragraph (3) is expanded upon by the DFPI regulations:²⁰

- (a) *The Commissioner's finding required by Section 22109.1(c) of the California Financing Law relates to any matter, personal or professional, that may impact upon an applicant's propensity to operate honestly, fairly, and efficiently when engaging in the role of a mortgage loan originator.*
- (b) *An applicant for a mortgage loan originator license shall authorize NMLS to obtain the applicant's current credit report. The credit report will be used as needed to validate the applicant's responses to the electronic application form, in order to support the Commissioner's finding required by Section 22109.1(c) of the California Financing Law.*
- (c) *An applicant may be precluded from obtaining a mortgage loan originator license where his or her personal history includes:*
 - (1) *Any liens or judgments for fraud, misrepresentation, dishonest dealing, and/or mishandling of trust funds, or*
 - (2) *Other liens, judgments, or financial or professional conditions that indicate a pattern of dishonesty on the part of the applicant.*

California MLOs must also file a Statement of Citizenship, Alienage and Immigration Status and any accompanying documentation as a condition of licensing.²¹ It is a document designed to prove legal status in the United States.

Mortgage loan originators must meet a continuing education requirement before they can renew their licenses, which must be done annually by December 31. These CE requirements include the following:²²

- (a) *A licensed mortgage loan originator shall complete at least eight hours of continuing education approved in accordance with subdivision (b). The continuing education shall include at least the following:*

¹⁹ Div. 9 CA Fin. Code § 22109.2

²⁰ 10 CCR § 1422.6.2

²¹ 10 CCR § 1422.7.1

²² Div. 9 CA Fin. Code § 22109.5
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- (1) *Three hours of instruction on federal law and regulations.*
- (2) *Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.*
- (3) *Two hours of training related to lending standards for the nontraditional mortgage product marketplace.*
- (4) *One hour of training related to relevant California law and regulations.*

An MLO who allows his or her license to lapse may reinstate the license as follows:²³

- (a) *A mortgage loan originator license that has not been renewed between November 1 and December 31 is a lapsed or expired license. A mortgage loan originator with an expired license may not continue doing business as a mortgage loan originator unless his or her license is reinstated.*
- (b) *A mortgage loan originator may reinstate an expired license if all of the following conditions are met:*
 - (1) *The mortgage loan originator must submit a request for reinstatement through NMLS before March 1 of the year immediately following the year the license expired.*
 - (2) *All continuing education courses and any other minimum requirements for the license renewal for the year in which the license expired must be completed before March 1 of the year immediately following the year the license expired.*
 - (3) *The mortgage loan originator must pay the applicable licensing fee (\$300), reinstatement fee (\$100), and any late fees or penalties. As of January 1, 2011, the mortgage loan originator must pay the applicable licensing fee (\$300), reinstatement fee (\$100), and any later fees or penalties.*
 - (4) *The mortgage loan originator must continue to meet minimum standards for renewal in Section 22109.4 of the Code.*
- (c) *If a mortgage loan originator whose license has expired cannot meet the requirements for reinstatement specified in this section or submits a reinstatement filing on or after March 1, the mortgage loan originator must apply for a new license and meet the requirements for licensure in effect at that time.*

Individuals who function only as a loan processor or underwriter may or may not need an MLO license, as stated below:²⁴

- (a) *A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator shall not be required to be licensed as a mortgage loan*

²³ 10 CCR § 1422.11

²⁴ Div. 9 CA Fin. Code § 22014
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originator.

- (b) *An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.*
- (c) *An independent contractor may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license under this division. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.*

Reports and Recordkeeping

The CFL and the related regulations specify rules regarding required reports and recordkeeping:

- Books, accounts and records must be kept by all licensees (including MLOs) for three years.²⁵
- Finance lenders and brokers must file annual reports by March 15th of each year.²⁶
- They must also file Mortgage Call Reports with the NMLS.²⁷

Prohibited Conduct

The CFL includes a fair number of prohibitions. We will quote the various sections of the law with explanatory comments where appropriate.

Fraudulent or Misleading Conduct²⁸

- (a) *A person subject to this division shall not do any of the following:*
 - (1) *Make a materially false or misleading statement or representation to a borrower about the terms or conditions of that borrower's loan, when making or brokering the loan.*
 - (2) *Make a materially false or misleading statement or representation to a property owner about the terms or conditions of an assessment contract.*
 - (3) *Advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating loans, or for making or negotiating assessment contracts, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive, or in the case of a licensee, that refers to the supervision of the business by the state or any department or official of the state.*
 - (4) *Commit an act in violation of Section 1695.13 of the Civil Code.*

²⁵ Div. 9 CA Fin. Code § 22157

²⁶ Div. 9 CA Fin. Code § 22159

²⁷ 10 CCR § 1430.5

²⁸ Div. 9 CA Fin. Code § 22161
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Explanatory Comment: Section 1695.13 of the California Civil Code is part of the California Home Equity Sales Contract Law that was designed to crack down on foreclosure rescue scams where people trying to avoid a foreclosure are defrauded by unscrupulous individuals or firms. The cited section simply states that it is unlawful to take unconscionable advantage of a property owner in foreclosure.

- (5) *Engage in any act in violation of Section 17200 of the Business and Professions Code.*

Explanatory Comment: Section 17200 of the California Business and Professions Code is the Unfair Competition Law. It prohibits unlawful or unfair business acts or practices and unfair, deceptive, untrue or misleading advertising.

- (6) *Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which the person is a party.*
- (7) *Commit an act that constitutes fraud or dishonest dealings.*

Prohibited Conduct by Mortgage Loan Originators²⁹

It is a violation of this division for a mortgage loan originator to do any of the following:

- (a) *Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.*
- (b) *Engage in any unfair or deceptive practice toward any person.*
- (c) *Obtain property by fraud or misrepresentation.*
- (d) *Solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower.*
- (e) *Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.*
- (f) *Conduct any business covered by this division without holding a valid license as required under this division, or assist or aid and abet any person in the conduct of business under this division without a valid license as required under this division.*
- (g) *Fail to make disclosures as required by this division and any other applicable state or federal law, including regulations thereunder.*
- (h) *Fail to comply with this division or rules or regulations promulgated under this division, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this division.*
- (i) *Make, in any manner, any false or deceptive statement or representation including, with regard to the rates, points, or other financing terms or conditions for a*

residential mortgage loan, or engage in bait and switch advertising.

- (j) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency.*
- (k) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.*
- (l) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this division.*
- (m) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.*
- (n) Fail to truthfully account for moneys belonging to a party of a residential mortgage loan transaction.*

Miscellaneous Prohibitions

It should also come as no surprise that you are not supposed to destroy evidence in an investigation or lie on applications.³⁰

- (a) It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.*
- (b) It is unlawful for any person to knowingly make an untrue statement to the commissioner or the Nationwide Mortgage Licensing System and Registry during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.*

Certain closing practices are prohibited:³¹

On any loan secured by real property, a licensee may not do either of the following:

- (a) Fail to disburse funds in accordance with a commitment to make a loan that is accepted by the applicant.*
- (b) Intentionally delay the closing of a loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.*

Licensees must not violate federal law and regulation:³²

³⁰ Div. 9 CA Fin. Code § 22170

³¹ Div. 9 CA Fin. Code § 22317.5

³² Div. 9 CA Fin. Code § 22346
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Any licensee that violates any provision of any of the following federal acts or regulations violates this division:

- (a) *The federal Real Estate Settlement Procedures Act, as amended (12 U.S.C. Sec. 2601 et seq.).*
- (b) *The federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).*
- (c) *The federal Home Ownership Equity Protection Act (15 U.S.C. Sec. 1639).*
- (d) *Any regulation promulgated under any of the federal acts in subdivision (a), (b), or (c).*

The following prohibitions are found in Title 10 of the California Code of Regulations under the listed section numbers:

§ 1408. Waivers Prohibited.

A finance company shall not require or permit a borrower to waive any statutory provision of the Law for his/her benefit, including any notice which the law requires to be given to the borrower (however, any notice may be given by registered mail, directed to his/her last known address), nor shall a finance company require or permit a borrower to waive any mandatory provision of these rules and regulations.

§ 1453. "Ballooning" Prohibited.

Any so-called "ballooning" of loan contracts is prohibited. Any scheduled installment that is more than twice the amount of any other scheduled installment will be considered a balloon payment for purposes of this section and Section 22307 of the Financial Code. This section shall not be construed to apply to open end loans.

§ 1455. Charges Subsequent to Loan.

- (a) *No charges shall be received from a borrower subsequent to the making of a loan unless authorized by the Law, and specifically provided for in the original contract.*
- (b) *All charges shall be clearly substantiated in the records of the finance company, and the borrower shall be provided with a detailed statement showing how the charges originated and the basis upon which the charges were calculated.*

Fees and Charges

The California Financing Law includes several sections that address the issue of permissible fees and charges that licensees may charge to borrowers. The following quotations come from the law in Division 9 of the California Financial Code in the sections shown.

22163.

The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in the manner that the commissioner deems necessary to prevent misunderstanding by prospective borrowers or property owners.

22164.

If any person engaged in the business regulated by this division refers in any advertising to rates of interest, charges, or cost of loans or assessment contracts, the commissioner shall require that the rates, charges, or costs are stated fully and clearly in the manner

that he or she deems necessary to give adequate information to prospective borrowers or property owners. If the rates or costs advertised do not apply to loans or assessment contracts of all classes made or negotiated by the person, this fact shall be clearly indicated in the advertisement.

22200.

“Charges” include the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted for, or received by a licensee or any other person in connection with the investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing of a loan or forbearance of money, credit, goods, or things in action, or any other service rendered.

22300.

No licensee shall directly or indirectly charge, contract for, or receive any interest or charge of any nature unless a loan is made.

22318.

On any loan made that is secured by real property, an escrow fee of a reasonable amount may be charged. The fee shall be considered reasonable when paid to a company licensed to do business under the Escrow Law (Division 6 (commencing with Section 17000)), or any person exempted by the Escrow Law, provided that the fees are comparable to fees charged by escrow companies authorized to do business in this state. The fee is not included in charges defined in this division in determining the applicable maximum charges that may be made under this article.

22319.

On any loan that is secured by real property, the fee to be paid to the trustee for reconveyance of the trust deed may be collected by the licensee for transmittal to the trustee. The fee is not included in charges defined in this division or in determining the applicable maximum charges that may be made under this article.

22320.

With respect to a loan under this division, a fee not to exceed fifteen dollars (\$15) for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft may be charged and collected by the licensee. The fee is not included in charges defined in this division or in determining the applicable maximum charges that may be made under this article.

It is significant to note that federal regulations prohibit the collection of any fees or charges (other than a credit report fee) prior to the provision to the applicant of a Loan Estimate form and receiving an indication of intent to proceed with the loan from the applicant.³³

Appraisal Fees

The following sections of the CFL address issues related to appraisals. There are references to automated valuations in these sections. An automated valuation is an estimate of value done

³³ 12 Code of Federal Regulations (CFR) § 1026.19(e)(1)(i) and (e)(2)(i)
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by a computerized analysis of public records regarding the property itself and recent nearby sales. There are websites such as realtor.com and zillow.com and others that allow consumers to enter their property address and receive an estimate of the current value of the home. These sites use essentially the same process as an automated valuation used by a lender. Automated valuations are rarely used for purchase transactions but they are often used when obtaining a home equity line of credit, for instance.

22317.

On any loan made that is secured by real property, an appraisal fee not to exceed the actual cost of the appraisal may be charged by the licensee if a written appraisal is provided to the licensee by a qualified appraiser. Only one fee for appraising the same real property may be collected unless the borrower has obtained a new or additional loan and more than one year has elapsed since the prior appraisal. The fee is not included in charges as defined in this division or in determining the maximum charges that may be made under this article.

22317.2.

- (a) *A licensee may collect a fee for use of an automated valuation model result prepared by a third party not to exceed the actual cost paid to the third party for a written automated valuation model result in lieu of the appraisal provided for in Section 22317. The borrower shall not be charged for both an automated valuation model result and an appraisal as defined in Section 22317 for the same property in a single transaction. Only one fee for providing an automated valuation model result or an appraisal for the same real property may be collected unless the borrower has obtained a new or additional loan and more than one year has elapsed since the prior delivery of an automated valuation model result or an appraisal. However, if a fee for an automated valuation model result has been paid, an appraisal fee minus the amount that has been paid by the borrower for the automated valuation model result may be charged for an appraisal for the same real property within one year if the borrower has obtained a new or additional loan. The fee is not included in charges as defined in this division or in determining the maximum charges that may be made under this article.*
- (b) *A licensee in a loan transaction secured by real property shall provide notice as described in this section to a borrower of the borrower's right to receive a copy of the automated valuation model result, provided he or she has paid a fee for the automated valuation model result. A borrower's written request for a copy of an automated valuation model result shall be received by the licensee no later than 90 days after (1) the licensee has provided notice of the action taken on the application, including a notice of incompleteness, or (2) the application has been withdrawn.*
- (c) *The licensee shall mail or deliver a copy of an automated valuation model result within 15 days after receiving a written request from the borrower, or within 15 days after receiving the automated valuation model result, whichever occurs later.*
- (d) *Where the loan is proposed to be secured by real property, the notice of the borrower's right to a copy of the automated valuation model result shall be given in at least 10-point boldface type, as a separate document in a form that the borrower may retain, and no later than 15 days after the licensee receives the written application. The notice shall specify that the borrower's request for the automated*

valuation model result must be in writing and must be received by the licensee no later than 90 days after the licensee provides notice of the action taken on the application or a notice of incompleteness, or in the case of a withdrawn application, 90 days after the withdrawal. The notice shall also include the following statement: "An automated valuation model is not an appraisal. It is a computerized property valuation system that is used to derive a real property value." An address to which the request should be sent shall be specified in the notice. Release of the automated valuation model result to the borrower may be conditioned upon payment of the fee.

- (e) This section does not apply to automated valuation model results obtained by licensees on property owned by the licensee, nor to automated valuation model results obtained by the licensee in anticipation of modifying any existing loan agreement if the licensee does not charge for the use of the automated valuation model result.*
- (f) For purposes of this section, an "automated valuation model" is a computerized property valuation system that is used to derive a real property value.*
- (g) Nothing in this section authorizes the use of an automated valuation model result in lieu of an appraisal that is required under state or federal law.*

Regulations

Division 10 of the California Code of Regulations also addresses some fees and charges in the following sections:

§ 1457. Charges: Limited to Amounts Disbursed.

- (a) Except as provided in subsections (b), (c) and (d) of this section, a finance company may collect and receive charges only on the portion of the unpaid principal balance actually disbursed to the borrower or on the borrower's behalf, and only from the date of such disbursement.*
- (b) Charges on the amount of any statutory fees to be paid to a public officer may be collected and received from the date of the loan, provided the fees are actually paid within a reasonable time after the loan is made.*
- (c) Charges on the amount of premium for insurance written in connection with a loan may be collected and received only from the effective date of the insurance. However, if the loan is refinanced and insurance extended to cover the refinanced loan to the new maturity date, charges upon the premium may be collected and received from the date of such refinance.*
- (d) Charges on a loan secured by real property may be collected and received only from the date of closing of the escrow, when the loan proceeds are disbursed by the escrow holder, except as provided by Civil Code Section 2948.5.*

§ 1458. Notary Fees.

A finance company may not charge or collect from a borrower any consideration for notary services unless such consideration is actually paid to and retained by the notary public who rendered such services. A finance company may not directly or indirectly receive, participate in, or benefit from the consideration paid for said notary services.

Advertising Issues

The CFL includes the following statement about advertising:

No advertising copy shall be used after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval. The commissioner may by order direct any licensee to submit advertising copy to the commissioner for review prior to use.³⁴

Division 10 of the California Code of Regulations also addresses advertising in the following sections:

§ 1550. Advertising: Submission for Examination.

- (a) A finance company shall refer to its licensure under the California Financing Law in any written, printed, or oral communication, including any communication by means of recorded telephone messages, telephonic or electronic media, or spoken on radio, television or similar communications media, only by the following statement: "Loans made or arranged pursuant to a California Financing Law license."*
- (b) Any advertisement proposed to be used by a licensed mortgage lender, mortgage broker, mortgage lender and broker, or mortgage loan originator shall indicate the unique identifier of the mortgage lender, mortgage broker, mortgage lender and broker, or mortgage loan originator **licensee**.*

§ 1552. Maintenance of Advertising Copy.

- (a) A licensee shall maintain in its home office, a file of all advertising copy for a period of at least two (2) years after the last date of its use.*
- (b) All advertising copy shall have noted thereon the name or names of all advertising media used and the dates when such advertising appeared.*
- (c) In the case of radio or television advertising, unless the full text of such announcements is retained for the aforesaid prescribed time by the broadcasting station or stations and is available to the commissioner, a licensee shall cause a voice transcription of the full text of such announcements to be prepared and retained for two (2) years after the last date of its use.*
- (d) Any advertising used by a mortgage loan originator shall be maintained by the sponsoring mortgage lender, mortgage broker, or mortgage lender and broker, in the manner set forth in this section.*
- (e) For purposes of this section, a licensee shall include a mortgage loan originator.*

§ 1557. "Blind" Advertising Prohibited.

A licensee shall not use "blind" advertisements. "Blind" advertising is an advertisement used to solicit business that gives only a telephone number, post office or newspaper box number, or name other than that of the licensee. For purposes of this section, a licensee includes a mortgage loan originator.

Disciplinary Matters

The California Financing Law includes a good many provisions regarding enforcement of the law and the penalties for violations of the law. The following quotations come from the law in Division 9 of the California Financial Code in the sections shown. Explanatory comments are added as clarifications in some instances.

22169.

- (a) *The commissioner may, after appropriate notice and opportunity for hearing, by order, censure or suspend for a period not exceeding 12 months, or bar a person, including a mortgage loan originator, from any position of employment with, or management or control of, any finance lender, broker, program administrator, or any other person, if the commissioner finds either of the following:*
- (1) *That the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the finance lender, broker, program administrator, or mortgage loan originator, or to the public.*
 - (2) *That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.*
- (b) *Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a) or (b), the person may request a hearing under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.*

Explanatory Comment: As indicated by the context, the citation of the section in the Administrative Procedures Act is the section of California law that governs (among other things) the disciplinary hearings and appeals process in the case of a violation.

- (c) *Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any activities subject to licensure under the law.*
- (d) *Persons suspended or barred under this section are prohibited from participating in any business activity of a finance lender, broker, program administrator, or mortgage loan originator, and from engaging in any business activity on the premises where a finance lender, broker, program administrator, or mortgage loan originator is conducting business.*

We should note that the CFL imposes the same penalties and procedures for any licensee who falsely used or claimed a designation or certification of special education or used a confusingly similar designation or certification for the purpose of misleading the public regarding his or her qualifications or experience.³⁵ An example of this is the Certified Residential Mortgage Specialist (CRMS) which is granted by the National Association of Mortgage Brokers and requires a specified amount of education, experience, licensing and testing.

22172.

- (a) *The commissioner may do one or more of the following:*
- (1) *Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.*
 - (2) *Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 22109.1 or 22109.4, or withholds information or makes a material misstatement in an application for a license or license renewal.*

Explanatory Comment: Section 22109.1 refers to the qualifications for licensure as an MLO, including prelicense education requirements and no disqualifying felony convictions. Section 22109.4 refers to the qualifications for renewal of an MLO license, including the continuing education requirements.

- (3) *Order restitution against a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator for a violation of this division.*
- (4) *Impose fines on a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).*
- (5) *Issue orders or directives to mortgage loan originators under this division as follows:*
 - (A) *Order or direct a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.*
 - (B) *Order or direct a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator to cease any harmful activities or violations of this division, including immediate temporary orders to desist and refrain.*
 - (C) *Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under Section 22100 if the commissioner determines that the license was erroneously granted or the mortgage loan originator is currently in violation of this division.*

- (D) *Order or direct any other affirmative action as the commissioner deems necessary.*
- (b) *The commissioner may impose a civil penalty on a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.*
- (c) *The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).*
- (d) *Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.*

22701.

For the purpose of discovering violations of this division or securing information required by him or her in the administration and enforcement of this division, the commissioner may at any time investigate the loans, assessment contracts, and business, and examine the books, accounts, records, and files used in the business, of every person engaged in the business of a finance lender, broker, or program administrator, whether the person acts or claims to act as principal or agent, or under or without the authority of this division. For the purpose of examination, the commissioner and his or her representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all these persons.

22702.

In making any examination or investigation, the commissioner may, for a reasonable time not to exceed 30 days, take possession of the books, records, accounts, and other papers pertaining to the business. The commissioner may place a keeper in exclusive charge and custody of the books, records, accounts, and other papers in the office or place where they are usually kept. During possession, no person shall remove or attempt to remove any of the books, accounts, papers, records, files, safes, and vaults, or any part thereof, except in compliance with a court order or written consent of the commissioner.

22704.

The power of investigation and examination by the commissioner is not terminated by the surrender, suspension, or revocation of any license issued by him or her.

22706.

The commissioner may require the attendance of witnesses and examine under oath all persons whose testimony he or she requires relative to loans, assessment contracts, or business regulated by this division or to the subject matter of any examination, investigation, or hearing.

22707.

- (a) *The cost of each examination of a licensee or a person subject to this division shall be paid to the commissioner by the licensee or person examined, and the commissioner may maintain an action for the recovery of the cost in any court of*

competent jurisdiction. In determining the cost of an examination, the commissioner may use the estimated average hourly cost for all persons performing examinations of licensees or other persons subject to this division for the fiscal year.

- (a) *For the purpose of this section only, no person other than a licensee shall be deemed to be a person subject to this division until the person is determined to be a person subject to this division by an administrative hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code or by a judicial hearing in any court of competent jurisdiction.*

Explanatory Comment: We should note that the code section cited in paragraph (b) above is the section of the California Government Code that deals with administrative hearings. It spells out the procedures under which an applicant could appeal the decision.

22707.5.

- (a) *If, upon inspection, examination, or investigation, the commissioner has cause to believe that a licensee or other person is violating or has violated any provision of this division or any rule or order thereunder, the commissioner or their designee, may issue a citation to the licensee or person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and provide a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500) that shall be deposited in the Financial Protections Fund. In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors including the gravity of the violation, the good faith of the person or licensees cited, and the history of previous violations. In addition, the commissioner may include a claim for ancillary relief. The ancillary relief may include, but not be limited to, refunds, restitution or disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. A citation issued or a fine assessed pursuant to this section, while constituting punishment for a violation of law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited.*
- (b) *Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business or activity or activities, or an order to suspend all business operations to a person or licensee who is engaged in or who has engaged in continued or repeated violations of this division. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.*
- (c) *If, within 30 days from the receipt of the citation, the licensee or person cited fails to notify the department that he or she intends to request a hearing as described in subdivision (d), the citation shall be deemed final.*
- (d) *Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

Explanatory Comment: Again, the cited section gives the procedures under which an applicant could appeal the decision.

- (e) *After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative fine and an order compelling the cited licensee or person to comply with the order of the commissioner.*
 - (1) *The application shall include a certified copy of the final order of the commissioner.*
 - (2) *Upon the filing of the application, the superior court shall set a date for a hearing for an order to show cause why judgment should not be entered, which shall be set not less than 60 calendar days from the date the application is filed.*
 - (3) *The commissioner shall serve a copy of the application and order along with notice of the hearing to all entities or persons cited in the order against whom a civil judgment is sought not less than 15 calendar days before the date set for the hearing. Service of the application shall be pursuant to the methods specified by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure for service of summons.*
 - (4) *The court shall consider the filing of a certified copy of the final order of the commissioner and the proof of service of the application and notice of the hearing on the persons or entities against whom the judgment is sought, a sufficient prima facie showing to warrant the issuance of the civil judgment at the hearing. The respondent then has the burden of showing by affirmative evidence at the hearing why the order of the commissioner is not final, or why the timely notice of application and hearing was not provided to avoid judgment being entered. Any method of service authorized by laws under which the order was issued is considered valid service for the purposes of determining whether the order is final. Absent this showing by the respondent, the superior court shall issue a final civil judgment compelling compliance with the order.*
 - (5) *The judgment issued pursuant to paragraph (4) may be for injunctive relief or payment of ancillary relief or penalties. The judgment may be enforced by the court pursuant to the procedures authorized for any other civil judgment.*
 - (6) *This subdivision shall not be construed to limit judicial review of any order of the commissioner in accordance with the law.*

22708.

After an examination, investigation, or hearing under this division, if the commissioner deems it of public interest or advantage, he or she may certify a record to the proper prosecuting official of the city, county, or city and county in which the act complained of, examined, or investigated occurred.

22710.

The commissioner may upon three days' notice and a hearing, suspend any license for a

period not exceeding 30 days, pending investigation.

22711.

Any licensee may surrender any license by delivering to the commissioner written notice that the licensee surrenders that license. Surrender of the license does not affect the licensee's civil or criminal liability for acts committed prior to surrender of the license.

22712.

- (a) Whenever, in the opinion of the commissioner, any person is engaged in business as a finance lender, broker, program administrator, or a mortgage loan originator, as defined in this division, without a license from the commissioner, or any licensee is violating or has violated any provision of this division, any provision of an order, or any regulation adopted pursuant to this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further continuing that violation. In addition, the commissioner may include a claim for ancillary relief. The ancillary relief may include, but not be limited to, refunds, restitution or disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. If, within 30 days after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded. For purposes of this section, "licensee" includes a mortgage loan originator.*
- (b) Notwithstanding subdivision (a), if, after an investigation, the commissioner has reasonable grounds to believe that a person is conducting or has conducted business in an unsafe or injurious manner, the commissioner shall, by written order addressed to that person, direct the discontinuance of the unsafe or injurious practices. The order shall be effective immediately, but shall not become final except in accordance with the provisions of Section 22717.*

Explanatory Comment: The reference to Section 22717 just means that for normal matters there must be time for a hearing before an order becomes effective but that the Commissioner has the authority to waive these waiting times when deemed appropriate, as in this case.

22713.

- (a) Whenever the commissioner believes from evidence satisfactory to the commissioner that any person has violated or is about to violate a provision of this division, or a provision of any order, license, decision, demand, requirement, or any regulation adopted pursuant to this division, the commissioner may, in the commissioner's discretion, bring an action, or the commissioner may request the Attorney General to bring an action in the name of the people of the State of California, against that person to enjoin that person from continuing that violation or doing any act in furtherance of the violation. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and other ancillary relief may be granted as appropriate.*
- (b) If the commissioner determines that it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on*

behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award additional relief.

- (c) Any person who willfully violates any provisions of this division, or who willfully violates any rule or order adopted pursuant to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.*
- (d) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.*

22714.

- (a) The commissioner shall suspend or revoke any license, upon notice and reasonable opportunity to be heard, if the commissioner finds any of the following:
 - (1) The licensee has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of this division.*
 - (2) The licensee has violated any provision of this division or any rule or regulation made by the commissioner under and within the authority of this division.*
 - (3) A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license originally.*
 - (4) There has been repeated failure by the finance lender, when making or negotiating loans, to take into consideration in determining the size and duration of loans, the financial ability of the borrower to repay the loan in the time and manner provided in the loan contract, or to refinance the loan at maturity.*
 - (5) There has been repeated failure by the program administrator, when administering assessment contracts, to take into consideration in determining the size and duration of the assessment contracts, the property owner's ability to meet the annual PACE obligations in the time and manner provided in the contract.**
- (b) A master license shall not be suspended or revoked pursuant to this section as a result of any action or failure to act by a subsidiary licensee unless grounds exist for the suspension or revocation of the master license pursuant to this section. An order suspending or revoking a license or imposing sanctions against a licensee shall not affect other licensed locations unless expressly stated in the order.*

22715.

The commissioner may by order summarily suspend or revoke the license of any licensee if that person fails to file the report required by Section 22159 within 10 days after notice by the commissioner that the report is due and not filed. If, after an order is made, a request for hearing is filed in writing within 30 days and the hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date.

Explanatory Comment: The reference to Section 22159 in the section above refers to the annual report required of finance lenders and brokers.

22718.

Every order, decision, license, or other official act of the commissioner is subject to judicial review in accordance with law.

The regulations associated with the CFL add one other provision:³⁶

§ 1411. Criminal Actions: Report to Commissioner.

- (a) A licensee shall immediately report in writing to the commissioner any criminal action filed against such company or its directors, officers or management personnel.*
- (b) A mortgage lender, mortgage broker, mortgage lender and broker, and mortgage loan originator shall file the information in subsection (a) with the NMLS on Form MU1 and MU2, as applicable, in accordance with its procedures for transmission to the Commissioner.*

Supervisory Requirements

The regulations associated with the CFL require licensed finance lenders or brokers to adequately supervise mortgage loan originators:³⁷

- (a) Every mortgage lender, mortgage broker, and mortgage lender and broker shall exercise diligent supervision over the mortgage loan origination and lending activities of every mortgage loan originator that it sponsors.*
- (b) Every mortgage loan originator employed by a mortgage lender, mortgage broker, or mortgage lender and broker shall be subject to the supervision of a branch manager designated by such mortgage lender, mortgage broker, or mortgage lender and broker. Every branch manager shall be identified on Form MU3 and shall submit a Form MU2 to NMLS.*
- (c) Every mortgage lender, mortgage broker, and mortgage lender and broker shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, that set forth the procedures adopted by the mortgage lender, mortgage broker, and mortgage lender and broker to comply with the duties imposed by this section.*
- (d) Every mortgage lender, mortgage broker, and mortgage lender and broker shall designate a Supervisor, an individual who shall:
 - (1) Supervise and periodically review the activities of the branch managers**

³⁶ 10 CCR § 1411

³⁷ 10 CCR § 1414
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designated pursuant to subsection (b) of this section;

- (2) Periodically inspect each business office of the mortgage lender, mortgage broker, or mortgage lender and broker to ensure that the written procedures are enforced; and*
 - (3) In the event a mortgage lender, mortgage broker, or mortgage lender and broker does not have any branch offices, the supervisor shall directly supervise and review the activities of the mortgage loan originators.*
- (e) The supervisor shall be identified in Form MU1 as a qualifying individual and shall submit a Form MU2. For purposes of this section, a qualifying individual is a person in charge and responsible for the actions of the mortgage lender, mortgage broker, and mortgage lender and broker.*

Section II – California Residential Mortgage Lending Act

The other major law that governs the Department of Financial Protection and Innovation's regulation of the California residential mortgage lending business is the California Residential Mortgage Lending Act (the CRMLA). After completing this Section the reader should be able to understand and describe:

- Key Definitions;
- Licensing Issues;
- Prohibited Conduct;
- Fees & Charges;
- Advertising Issues;
- Disciplinary Matters;
- Brokerage Agreements; and
- Escrow Funds.

Key Definitions

The definitions section of any law is often a particularly important section of any law. Sometimes when reading the text of a law people miss some of the significance of the text by missing some of the subtleties of the definition being used. We will look at several terms to aid your understanding of the text of the law.

Term: "Engage in the business"³⁸;

Definition: *"Engage in the business" means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. "Engage in the business" also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.*

Why you should care: When the term "engage in the business" is used in the CRMLA it means more than just making or servicing loans. It also includes those who hold themselves out to the public as making, brokering or servicing mortgage loans. A firm would be "engaged in the business" if it advertised itself as doing so even if it never successfully made or brokered or serviced a residential mortgage loan.

Term: "Federal banking agencies"³⁹;

Definition: *"Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.*

Why you should care: Some of the definitions of persons exempt from licensing, or who are only required to register with the NMLS hinge on whether the individual works for a firm which is regulated by federal banking agencies.

Term: "In this state"⁴⁰;

Definition: *"In this state" includes any activity of a person relating to making or servicing a residential mortgage loan that originates from this state and is directed to persons outside this*

³⁸ Div. 20 CA Fin. Code §§ 50003(g)

³⁹ Div. 20 CA Fin. Code §§ 50003(h)

⁴⁰ Div. 20 CA Fin. Code §§ 50003(i)

state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state, or that leads to the formation of a contract and the offer or acceptance thereof is directed to a person in this state (whether from inside or outside this state and whether the offer was made inside or outside the state).

Why you should care: This definition just prevents firms from claiming an exemption to the licensing and other provisions of the CRMLA because they are located out of state or because the borrower is out of state.

Term: “Mortgage servicer⁴¹”;

Definition: “*Mortgage servicer*” or “*residential mortgage loan servicer*” means a person that (1) is an approved servicer for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, and (2) directly services or offers to service mortgage loans.

Why you should care: This definition gives the qualifications for becoming a licensed mortgage servicer under the CRMLA.

Term: “Person⁴²”;

Definition: “*Person*” means a natural person, a sole proprietorship, a corporation, a partnership, a limited liability company, an association, a trust, a joint venture, an unincorporated organization, a joint stock company, a government or a political subdivision of a government, and any other entity.

Why you should care: The CRMLA uses the term “person” in many places throughout the text of the law. It is important to understand that the word “person” does not mean only an individual, but includes business entities such as corporations and other entities.

Licensing Issues

Residential mortgage lenders, residential mortgage loan servicers and mortgage loan originators are all licensed under the California Residential Mortgage Lending Act. The NMLS includes both residential mortgage lenders and residential mortgage loan servicers under the licensing category of “Residential Mortgage Lending Act (CRMLA) license.” Its website specifies: “This license is required for any company or person who makes or services residential mortgage loans in California. A CRMLA license is an alternative to the licenses under the California Finance Lenders Law or the California Real Estate Law. A licensed CRMLA lender is authorized to provide brokerage services to its borrowers.”⁴³

The basic requirements for who needs to be licensed are found in the following sections of the CRMLA, which may be found in Division 20 of the California Financial Code. Explanatory comments are added where they can be helpful.

50002.

⁴¹ Div. 20 CA Fin. Code §§ 50003(q)

⁴² Div. 20 CA Fin. Code §§ 50003(u)

⁴³ <https://mortgage.nationwidelicensingsystem.org/slr/sitepages/DynamicLicenses.aspx?StateID=CADOC>

- (a) *No person shall engage in the business of making residential mortgage loans or servicing residential mortgage loans, in this state, without first obtaining a license from the commissioner in accordance with the requirements of Chapter 2 (commencing with Section 50120) or Chapter 3 (commencing with Section 50130), and any rules promulgated by the commissioner under this law, unless a person or transaction is excepted from a definition or exempt from licensure by a provision of this law or a rule of the commissioner.*

Explanatory Comment: In the paragraph above Section 50120 deals with licensing of Residential Mortgage Lenders and Section 50130 deals with licensing of Residential Mortgage Loan Servicers. Both Sections will be discussed below.

(b)

- (1) *An employee of a licensee or of a person exempt from licensure is not required to be licensed when acting within the scope of his or her employment and shall be exempt from any other law from which his or her employer is exempt, except that an individual who meets the definition of a mortgage loan originator in Section 50003.5 shall be subject to this division.*
- (2) *A person exempt from this division may apply to the commissioner for an exempt company registration for the purpose of sponsoring one or more individuals required to be licensed as mortgage loan originators as defined in Section 50003.5 and pursuant to the SAFE Act.*
- (3) *An exempt person applying under the exempt company registration procedure shall comply with all rules and orders that the commissioner deems necessary to ensure compliance with the SAFE Act and shall pay an annual registration fee established by the commissioner.*

Explanatory Comment: This is the same exemption as in the California Financing Law which allows companies that are exempt from the licensing company to register as an Exempt Company so they can hire licensed MLOs.

(c) *The following persons are exempt from subdivision (a):*

- (1) *Any bank, trust company, insurance company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States that is authorized to transact business in this state.*
- (2) *A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state.*
- (3) *A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state.*
- (4) *A person engaged solely in business, commercial, or agricultural mortgage lending.*
- (5) *A wholly owned service corporation of a savings and loan association or*

savings bank organized under the laws of this state or the wholly owned service corporation of a federally chartered savings and loan association or savings bank that is authorized to transact business in this state.

- (6) *An agency or other instrumentality of the federal government, or state or municipal government.*
- (7) *An employee or employer pension plan making residential mortgage loans only to its participants, or a person making those loans only to its employees or the employees of a holding company, or an owner who controls that person, affiliate, or subsidiary of that person.*
- (8) *A person acting in a fiduciary capacity conferred by the authority of a court.*
- (9) *A real estate broker licensed under California law, when making, arranging, selling, or servicing a residential loan.*
- (10) *A California finance lender or broker licensed under Division 9 (commencing with Section 22000), when acting under the authority of that license.*

Explanatory Comment: The citation in paragraph 10 above refers to finance lenders and brokers licensed under the CFL.

- (11) *A trustee under a deed of trust pursuant to the Civil Code, when collecting delinquent loan payments, interest, or other loan amounts, or performing other acts in a judicial or nonjudicial foreclosure proceeding.*
- (12) *A mortgage loan originator who has obtained a license under Chapter 3.5 (commencing with Section 50140), provided that the mortgage loan originator is employed by a residential mortgage lender or servicer.*
- (13) *A registered mortgage loan originator described in subdivision (e).*
- (d) *An individual, unless specifically exempted under subdivision (e), shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license in accordance with the requirements of Chapter 3.5 (commencing with Section 50140) and any rules promulgated by the commissioner under that chapter. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.*

Explanatory Comment: Section 50140 referenced above is the Section of the CRMLA dealing with the licensing of Mortgage Loan Originators. It simply means that an MLO does not need to be licensed as a Residential Mortgage Lender or Servicer.

- (e) *A registered mortgage loan originator is exempt from licensure under subdivisions (a) and (d), when he or she is employed by a depository institution, a subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration.*
- (f) *A loan processor or underwriter who is an independent contractor employed by a residential mortgage lender or servicer may not perform the activities of a loan processor or underwriter under this division unless the independent contractor loan*

processor or underwriter obtains and maintains a license under Section 50120.

Explanatory Comment: The licensing requirement for loan processors or underwriters who operate as independent contractors is different under the CRMLA than it is under the CFL. Under the CFL independent contractor loan processors must be licensed as an MLO, while under the CRMLA they must be licensed as a Residential Mortgage Lender or Servicer (under the Residential Mortgage Lending Act license) and a Mortgage Loan Originator⁴⁴. We will see shortly that this would subject the independent contractor to significant net worth requirements, among other issues.

We should note that the CRMLA requires that loans be originated only by licensed Mortgage Loan Originators. These MLOs can be licensed under the CFL, the CRMLA or (in the case of individuals who have a real estate license) the Business and Professions Code.⁴⁵

Licensing of Firms

The process of becoming a licensed Residential Mortgage Lender starts with filing an application with the Department of Financial Protection and Innovation. The applicant may not conduct its licensed business activities under any other name than the name which appears on the application. Firms also cannot use in their names the words "bank," "trust," "trustee," "loan association," or related terms.⁴⁶ The application requires the applicant to agree to either make its books, accounts, papers, records and files available within 10 calendar days of the Commissioner's request or pay the reasonable expenses for DFPI staff during an investigation or examination made at the licensee's location outside of California. Applications and fees and assessments are to be submitted through the NMLS. The application must be accompanied by the payment of the appropriate fees. The DFPI will conduct an investigation as to whether there is reason to believe that the applicant has the financial responsibility, experience, character and general fitness of the applicant is such that the business is likely to be operated honestly, fairly and within the law.⁴⁷

The CRMLA includes the following requirements for the contents of the application:⁴⁸

- (b) The application shall contain the name and complete business and residential address or addresses of the applicant. If the applicant is a partnership, association, corporation, or other entity, the application shall contain the names and complete business and residential addresses of each member, director, and principal officer. The application also shall include a description of the activities of the applicant in the detail and for the periods that the commissioner may require, including all of the following:*
 - (1) A statement of financial solvency, noting the net worth requirements and supported by an audited financial statement prepared by an independent certified public accountant, and access to the supporting credit information as required by this division.*
 - (2) A statement that the applicant or its members, directors, or principals, as*

⁴⁴ Div Div. 20 CA Fin. Code § 50006, 50003.6(c)

⁴⁵ Div. 20 CA Fin. Code § 50002.5

⁴⁶ Div. 20 CA Fin. Code § 50120, .50006

⁴⁷ Div. 20 CA Fin. Code § 50121

⁴⁸ Div. 20 CA Fin. Code § 50122(b)

appropriate, are at least 18 years of age. The statement may be made by providing each person's date of birth.

- (3) *Information as to the character, fitness, financial and business responsibility, background, experience, and criminal convictions of any of the following:*
 - (A) *Any person that owns or controls, directly or indirectly, 10 percent or more of any class of stock of the applicant.*
 - (B) *Any person that controls, directly or indirectly, the election of 25 percent or more of the members of the board of directors of an applicant.*
 - (C) *Any person or entity that significantly influences or controls the management of the applicant.*
- (4) *A description of any disciplinary action filed under any other license through which the person conducts its business.*
- (5) *A description of any adverse judgments entered in court actions filed by borrowers based upon allegations of fraud, misrepresentation, or dishonesty in the conduct of the person's business.*
- (6) *A copy of the fidelity bond currently in effect.*
- (7) *Other information as required by rule of the commissioner.*

The Commissioner of the DFPI may deny an application for licensure as a mortgage lender or servicer for any of the following reasons (after an opportunity to be heard):⁴⁹

- A false statement of a material fact was made on the application;
- Any officer, director, general partner or person who holds or controls 10 percent or more of the ownership interest of the applicant has, within the past 10 years, been convicted of a crime or committed an act involving dishonesty, fraud, or deceit if such crime or act was related to the qualifications, functions or duties of a person engaged in business or violated this law or its related rules or any similar regulatory scheme of this or any other state;
- The applicant or any of its key personnel has violated mortgage law in California or a foreign jurisdiction;
- The applicant employs an MLO who is not licensed and not exempt from licensing;

Mortgage lenders and servicers have a good number of ongoing responsibilities:⁵⁰

- They must maintain adequate staffing to meet the requirements of the CRMLA.
- They must maintain copies of their records for at least 36 months after the date of entry.
- They must file an amendment to their application for licensure if there is any material change in the information contained in that application including its plan of operation. The Commissioner will have 20 days after receipt to approve or disapprove the amendment.
- They must notify the Commissioner of any material judgment filed against the firm or any

⁴⁹ Div. 20 CA Fin. Code § 50126

⁵⁰ Div. 20 CA Fin. Code § 50124

bankruptcy petition filed by the firm within five days of the filing.

- They must give prior notice to the Commissioner of the opening of any branch office or changes in the business location or of the location of branch offices.

In addition to the above, mortgage lenders and servicers licensed under the CRMLA must maintain a minimum net worth of \$250,000.⁵¹ The surety bond requirement for mortgage lenders and servicers under the CRMLA is as follows:⁵²

Aggregate Loans	Bond Amount
\$0 - \$50,000,000	\$50,000
\$50,000,001 - \$500,000,000	\$100,000
Over \$500,000,001	\$200,000

This is similar to the requirements under the CFL except that the minimum surety bond starts at \$50,000 rather than the \$25,000 minimum under the CFL.⁵³

Some other provisions of the CRMLA include the following:

- In the event of the change of ownership or control of a mortgage lender or servicer, the person or firm acquiring control must file an application with the Commissioner prior to the change. The change of ownership or control cannot occur without the approval of the Commissioner.⁵⁴
- The firm's license must be conspicuously posted in the place of business authorized by the license.⁵⁵
- Anyone who has been convicted of specified financial crimes in the past 10 years or has received a final judgment in a civil action related to those specified crimes in the past seven years shall not serve as an officer, director, partner, shareholder controlling 10 percent or more of the ownership interests, trustee, or employee of a residential mortgage lender or residential mortgage loan servicer.⁵⁶

Reinforcer

When the term "engage in the business" is used in the CRMLA it means more than just making or servicing loans. It also includes those who hold themselves out to the public as making, brokering or servicing mortgage loans. A firm would be "engaged in the business" if it advertised itself as doing so even if it never made or brokered or serviced a residential mortgage loan.

1. engage
2. servicing
3. hold themselves out
4. successfully

⁵¹ Div. 20 CA Fin. Code § 50201

⁵² Div. 20 CA Fin. Code § 50205; <https://dfpi.ca.gov/requirements-after-a-california-residential-mortgage-lender-and-or-servicer-license-has-been-issued/>

⁵³ <https://dfpi.ca.gov/requirements-after-a-finance-lenders-license-has-been-issued/>

⁵⁴ Div. 20 CA Fin. Code § 50206

⁵⁵ Div. 20 CA Fin. Code § 50207

⁵⁶ Div. 20 CA Fin. Code § 50317

Mortgage Loan Originator Licensing

The CRMLA defines the term "mortgage loan originator" in much the same way as the CFL. It is defined as "an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan."⁵⁷ It includes the following exemptions:

- Individuals who perform only administrative or clerical tasks are exempt from licensing. This would include loan processors or underwriters who are employees of a licensed lender or servicer.
- Individuals who solely renegotiate terms of existing mortgage loans held or serviced by their employers are exempt.
- Those who are solely involved in financing timeshare interests are exempt.
- Those real estate licensees who have an endorsement as an MLO under the Business and Professions Code are exempt from licensing under the CRMLA.
- Individuals who are employees of a federal, state or local government agency and only originate loans in that capacity are exempt.
- Employees of bona fide nonprofit organizations who exclusively originate mortgage loans with term favorable to the borrower are exempt.
- Registered mortgage loan originators (those who are MLOs for banks and other depository institutions) do not need to be licensed if they are registered with the NMLS.

The basic qualifications for licensure are the same as those in the California Financing Law:

- The applicant must never have had an MLO license revoked unless the revocation was subsequently vacated.
- The applicant must not have committed any felony in the 7 years preceding the date of the application and must never have committed a felony involving an act of fraud, dishonesty, a breach of trust or money laundering.
- The applicant must demonstrate such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the CRMLA.
- The applicant must have completed the required prelicense education requirement, which is the same as those of the CFL.
- The applicant must have passed both the national and California components of the NMLS exam.
- The applicant must be employed by a licensed residential mortgage lender or servicer and be subject to the supervision of that licensee.
- The licensee must be covered by a surety bond.⁵⁸

We should also note that the MLO license under the CRMLA expires annually on December 31st and requires the same continuing education requirements as the CFL.⁵⁹

⁵⁷ Div. 20 CA Fin. Code § 50003.5 (a)

⁵⁸ Div. 20 CA Fin. Code § 50141

⁵⁹ Div. 20 CA Fin. Code §§ 50144-50145

Audits & Assessments

The CRMLA requires mortgage lenders and servicers to have their financial records audited by an independent certified public accountant (CPA). To understand this requirement, we should briefly discuss the possible results of these audits. Upon the completion of the audit, the CPA will issue one of four types of opinions:⁶⁰

1. **Unqualified Opinion:** This is also sometimes called a "clean" opinion. It states that the records of the firm were free of misrepresentation and were kept in accordance with "generally accepted accounting principles," commonly referred to as GAAP. This is the desired opinion.
2. **Qualified Opinion:** This opinion typically states that there was no evidence of misrepresentation in the records but that the records were not kept in accordance with GAAP.
3. **Adverse Opinion:** This is the worst type of opinion to receive. It means that there was evidence of misrepresentation in the records and they were not kept in accordance with GAAP.
4. **Disclaimer of Opinion:** This is done when the auditor is unable to complete an accurate report, often because the records are incomplete or absent.

The CRMLA provisions regarding audits of licensees books and accounts include the following:⁶¹

- Mortgage lenders and servicers must have their books and accounts audited by an independent CPA audited at the end of their fiscal years, but in no case more than 12 months after the last such audit.
- If the auditor's opinion is anything other than a qualified opinion, the Commissioner may require the licensee to take any action deemed appropriate to address the qualification. The licensee would then have 30 days to correct the deficiencies.
- In the case of qualified, adverse or disclaimer of opinion, the reasons for such opinions must be fully explained.
- The audit report must be filed within 105 days of the end of the licensee's fiscal year.
- If the licensee fails to obtain the required audit, the Commissioner may appoint an independent CPA to audit the records at the licensee's expense or face revocation of the license.
- Audits conducted in accordance with the uniform single audit procedures of the federal Department of Housing and Urban Development (HUD) may be submitted in fulfillment of these requirements.

The Department of Financial Protection and Innovation levies an annual assessment against each licensee. This assessment is levied as follows:⁶²

- The assessment will be the lesser of either \$5,000 or the firm's pro rata share of all costs and expenses (including overhead and the maintenance of a prudent reserve not to exceed 90 days' costs and expenses) that the commissioner reasonably expects to incur in the current fiscal year in the administration of this division and not otherwise recovered by the commissioner under this division or from the State Corporations Fund, plus a deficit

⁶⁰ <http://smallbusiness.chron.com/4-types-audit-reports-3794.html>

⁶¹ Div. 20 CA Fin. Code § 50200

⁶² Div. 20 CA Fin. Code § 50401

or less a surplus actually incurred during the prior fiscal year.

- This pro rata share will be apportioned according to a complex formula based on the total dollar volume of the licensee compared to the total dollar volume of all licensees, but at least \$1,000.
- The total of all assessments shall not exceed the costs incurred by the DFPI in administering the CRMLA plus a prudent reserve of 90 days' costs and expenses.
- The Commissioner will notify each firm of its assessment on or before September 30th of each year and the assessment must be paid within 20 days or the licensee will face a late payment fee of 1 percent of the assessment for each month (or portion of a month) that the payment was late or withheld. The Commissioner can also suspend the firm's license for late payments.

Prohibited Conduct

The California Residential Mortgage Lending Act includes the following sections which specify various forms of prohibited conduct and related matters. All of these cited sections can be found in Division 20 of the California Financial Code.

50204.

A licensee may not do any of the following:

- (a) *Disburse the mortgage loan proceeds in a form other than direct deposit to the borrower's or borrower's designee's account, wire, bank or certified check, ACH funds transfer, or attorney's check drawn on a trust account. An entity may apply to the commissioner for a waiver of the requirements of this subdivision by demonstrating, in a letter application, that it has adopted or will adopt another method of disbursement of loan proceeds that will satisfy the purposes of this subdivision.*
- (b) *Fail to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant.*
- (c) *Accept fees at closing that are not disclosed to the borrower on the federal HUD-1 Settlement Statement.*

Explanatory Comment: Presumably, the reference to the HUD-1 Settlement Statement currently refers to the Closing Disclosure.

- (d) *Commit an act in violation of Section 2941 of the Civil Code.*

Explanatory Comment: Section 2941 of the Civil Code deals with requirements for lenders or servicers to take appropriate action to release the lien of a mortgage or trust deed when the underlying loan has been repaid.

- (e) *Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.*
- (f) *Intentionally delay closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.*
- (g) *Engage in fraudulent home mortgage underwriting practices.*
- (h) *Make payment of any kind, whether directly or indirectly, to an in-house or fee*

appraiser of a government or private money lending agency, with which an application for a home mortgage has been filed, for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by the home mortgage.

- (j) Engage in any acts in violation of Section 17200 or 17500 of the Business and Professions Code.*

Explanatory Comment: Section 17200 of the California Business and Professions Code is the Unfair Competition Law. It prohibits unlawful or unfair business acts or practices and unfair, deceptive, untrue or misleading advertising. Section 17500 also deals with false advertising.

- (j) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which it is a party.*
- (k) Do an act, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealings.*
- (l) Sell more than eight loans in a calendar year made under the authority of this license to a person who is not an institutional investor.*
- (m) Commit an act in violation of Section 1695.13 of the Civil Code.*

Explanatory Comment: Section 1695.13 of the Civil Code prohibits taking unconscionable advantage of a person whose property is in the foreclosure process.

- (n) Make or service a loan that is not a residential mortgage loan under the authority of the license.*
- (o) Commit an act in violation of Section 2948.5 of the Civil Code. Evidence of compliance with Section 2948.5 of the Civil Code may be evidenced by (1) a certification executed by the licensee, at no cost to the borrower, pursuant to Section 2015.5 of the Code of Civil Procedure, or (2) other evidence in the loan file acceptable to the commissioner.*

Explanatory Comment: Section 2948.5 of the Civil Code generally prohibits any accrual of interest costs more than one business day prior to the disbursal of the loan funds. Section 2015.5 of the Code of Civil Procedure gives the format required for signing a document under penalty of perjury.

- (p) Make or broker a loan that is offered by, negotiated by, or applied for through a mortgage loan originator who is not licensed in this state through the Nationwide Mortgage Licensing System and Registry, unless the mortgage loan originator is exempt from licensure.*

50500.

Any person who willfully violates any provision of this division, or any rule or order under this division, shall, upon conviction, be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for not more than one year, or to both that fine and imprisonment. No person may be imprisoned for the violation of any rule or order unless he or she had

knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 50320.

Explanatory Comment: Section 50320 of the CRMLA gives the Commissioner the authority to issue a cease and desist order.

50503.

- (a) *It is a violation for any person subject to this law or any director, partner, shareholder controlling an ownership interest of 10 percent or more, trustee, officer, agent, or employee of any such person to do any of the following:*
- (1) *Knowingly or recklessly disburse or cause the disbursement of trust funds, except as permitted by Section 50202, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity that constitutes theft or fraud in connection with any trust fund transaction.*

Explanatory Comment: Section 50502 deals with escrow accounts and specifies when disbursements may appropriately be made from these accounts

- (2) *Knowingly or recklessly make or cause to be made any misstatement or omission of a material fact, pertaining to a loan or loan servicing.*
- (b) *Any director, officer, partner, shareholder controlling an ownership interest of 10 percent or more, trustee, or employee of a residential mortgage loan servicer who abstracts or misappropriates money, funds, trust obligations, or property deposited with a licensee, commits a violation of this section. If a violation results in a criminal conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.*

50505.

Any person who violates any provision of any of the following federal acts or regulations violates this division:

- (a) *The federal Real Estate Settlement Procedures Act, as amended (12 U.S.C. Sec. 2601 et seq.).*
- (b) *The federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).*
- (c) *The federal Home Ownership Equity Protection Act (15 U.S.C. Sec. 1639).*
- (d) *Any regulation promulgated under any of the federal acts in subdivision (a), (b), or (c).*

50506.

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who knowingly receives or appropriates any of the licensee's property, other than in payment of a just demand or with intent to defraud, or who omits to make or causes an omission to be made in the full and true entry thereof in its books and accounts or

concurs in omitting to make any material entry thereof, violates this division.

50507.

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who knowingly makes or concurs in making or publishing any false entry in its books or records, any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or having the custody of its books, willfully refuses or neglects to make any proper entry in the books as required by law or to allow the books to be inspected by the commissioner or his or her deputies or investigators, violates this division.

50508.

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who makes a false entry in any book or record of the business, or in connection with any transaction of the business, with intent to deceive any officer, director, or employee thereof, or any agent or examiner, employed or lawfully appointed to examine into its condition or any of its affairs or transactions, or to any public officer who has authority to examine into its affairs or transactions, or who, with like intent, omits to make a new entry of any matter particularly pertaining to the business property condition, or transactions of the entity in any document of the licensee, or who, with like intent, makes unavailable any document of the licensee made, written, or kept, or required to be made, written, or kept by him or her under his or her direction, violates this division.

50509.

Any officer, director, partner, trustee, or employee of any entity who abstracts or misapplies any of the money, funds, or property of a licensee, or misapplies its credit, or abstracts or misapplies money, funds, trust obligations, or property deposited with a licensee, violates this division. If a violation results in a criminal conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the licensee. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

Fees & Charges

Two Sections of the CRMLA deal with Fees and Charges:

50203.

- (a) *A licensee may not require a borrower to pay fees or charges prior to the residential mortgage loan closing, except for:*
 - (1) *Actual charges to be incurred by the licensee on behalf of the borrower for services from third parties necessary to process the application, such as credit reports, appraisals, flood certification, and tax service, and in transactions where these services are provided by the licensee, a charge not to exceed the prevailing market rate for the service.*
 - (2) *An application fee.*

- (3) *A rate-lock fee, provided:*
- (A) *There is a written agreement signed by the borrower and licensee.*
 - (B) *The terms of the agreement include, but are not limited to:*
 - (i) *The expiration date of the rate-lock fee agreement.*
 - (ii) *The principal amount of the mortgage loan, the term of the mortgage loan, and identification of the property.*
 - (iii) *The initial interest rate and the discount (points) to be paid.*
 - (iv))
The amount and payment term of the rate-lock fee along with a statement disclosing whether the fee is refundable and the terms and conditions necessary to obtain a refund.
 - (C) *The licensee demonstrates to the commissioner that it is able to perform under the terms of the agreement.*
- (4) *A commitment fee, upon approval of the residential mortgage loan application, provided:*
- (A) *The commitment is in writing and signed by the licensee and the borrower.*
 - (B) *The commitment contains all of the following information:*
 - (i) *The terms and conditions of the residential mortgage loan.*
 - (ii) *The terms and conditions of the commitment, including, but not limited to, all of the following:*
 - (I) *The time period during which the commitment is irrevocable and may be accepted by the borrower, which may not be less than three calendar days from the date of commitment or the date of mailing, whichever is later.*
 - (II) *The amount and payment terms of the commitment fee, along with a statement disclosing whether the fee is refundable and the terms and conditions necessary to obtain a refund.*
 - (III) *The expiration date of the commitment.*
 - (IV) *Conditions precedent to closing.*
- (b) *If the licensee has performed its obligations under the law related to the transaction, fees or charges collected pursuant to this section, other than those collected pursuant to paragraphs (1) and (2) of subdivision (a), shall be refunded if a valid commitment or closing, respectively, does not occur, except that the licensee may retain appropriate fees upon the licensee's demonstration to the commissioner that any of the following occurred:*

- (1) *The borrower withdrew the loan application.*
- (2) *The borrower made a material misrepresentation or omission on the loan application.*
- (3) *The borrower failed, after written request, to provide documentation necessary to the processing or closing of the loan application.*
- (4) *The closing failed to occur due solely to the fault of the borrower.*

50504.

- (a) *If an amount other than or in excess of the charges permitted by this division is willfully charged, contracted for, or received, in addition to any other penalties or remedies, the commissioner may order the licensee to refund to all borrowers charged the excess amount, the excess amount and the amount of the charge, both with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed.*

Explanatory Comment: In case you find the wording of the paragraph above to be unclear, it means that if the licensee makes charges in excess of what is permissible, the licensee must refund the full charge (not just the excess) plus interest at a rate of 10% per annum from the date the charge was imposed.

- (b) *If interest on the principal amount of a loan in excess of the amount authorized by this division is willfully charged, contracted for, or received, in addition to any other penalties or remedies, the commissioner may order the licensee to refund the excess interest amount to all borrowers charged the excess amount, with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed.*

Once again, it is significant to note that federal regulations prohibit the collection of any fees or charges (other than a credit report fee) prior to the provision to the applicant of a Loan Estimate form and receiving an indication of intent to proceed with the loan from the applicant.⁶³

Advertising Issues

The CRMLA includes the following sections dealing with advertising:

50308.

If any person engaged in the business regulated by this division refers in any advertising to rates of interest, charges, or costs of loans, the commissioner shall require that they are stated fully and clearly in the manner that he or she deems necessary to give adequate information to prospective borrowers. If the rates or costs advertised do not apply to loans of all classes made or negotiated by that person, this fact shall be clearly indicated in the advertisement. Compliance with the requirements of the federal Truth in Lending Act and Regulation Z promulgated thereunder is presumed to satisfy the requirements of this section.

50309.

⁶³ 12 CFR § 1026.19(e)(1)(i) and (e)(2)(i)
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The commissioner may require licensees to maintain a file of all advertising copy for a period of 90 days from the date of its use. The file shall be available to the commissioner upon request.

Disciplinary Matters

The Commissioner of the DFPI has the powers one would expect of such a position:

- To issue or deny a license;
- To revoke or suspend a license for cause and levy fines;
- To investigate complaints about a licensee and take appropriate action; and
- To require licensees to provide documents and information, including the power to subpoena documents and witnesses.⁶⁴

The Commissioner also has the power to conduct examinations of licensees. The commissioner may conduct an examination of mortgage lenders and servicers whenever it is deemed necessary but at least once every 48 months. This examination will look at the books, records and documents of the licensee along with conducting interviews with officers, directors, employees and agents.⁶⁵ The Commissioner may control access to those books and records for a reasonable period not to exceed 30 days.⁶⁶ The licensee is charged an assessment to cover the costs of the examination. The licensee will receive a written statement of the findings of the examination and its management team will be expected to correct any problems discovered.⁶⁷ If criminal conduct was involved, the Commissioner can refer the matter to the district attorney in the county where the violation occurred.⁶⁸

We stated earlier that mortgage lenders or servicers who open a new branch or change the location of an existing location must notify the Commissioner in advance. If the firm fails to do so it will be fined \$100 for the first 10 days and \$10 for each day thereafter during which the branch office or changed location is maintained without notifying the Commissioner.⁶⁹

Each licensed residential mortgage lender or servicer is required to file an annual report with the Commissioner on or before March 1 of each year. This report will be used by the Commissioner to compute the annual assessment to be charged to the licensee. Firms may also be required to file special reports as requested by the commissioner. Failure to provide these annual or special reports as required or requested may immediately cause the Commissioner to conduct an examination of the firm.⁷⁰ Further, the Commissioner may fine the licensee up to \$100 per day for up to 10 days and thereafter the Commissioner can move to suspend or revoke the license.⁷¹

The Commissioner can censure a licensee or suspend a license for not more than 12 months or bar a licensee from any position of employment with any licensee if the licensee violates the CRMLA or has committed a crime. The licensee would have 15 days from the date of notice of the Commissioner's intent to issue an order to request a hearing under the Administrative Procedures Act. Once a suspension or bar becomes effective, the licensee cannot engage in

⁶⁴ Div. 20 CA Fin. Code § 50301

⁶⁵ Div. 20 CA Fin. Code § 50302

⁶⁶ Div. 20 CA Fin. Code § 50329

⁶⁷ Div. 20 CA Fin. Code § 50302

⁶⁸ Div. 20 CA Fin. Code § 50315

⁶⁹ Div. 20 CA Fin. Code § 50306

⁷⁰ Div. 20 CA Fin. Code § 50307

⁷¹ Div. 20 CA Fin. Code § 50326

any licensed activities but any pending transactions could be completed by another licensee.⁷²

The Commissioner can suspend a license for up to 12 months or bar a licensee from employment with a licensee if the individual has willfully used or claimed without authority a designation or certification for the purpose of misleading the public regarding his or her qualifications or experience.⁷³

If the Commissioner becomes aware that a licensee has committed a crime or has become insolvent or no longer has a valid surety bond the Commissioner can require that persons managing the licensee's trust funds stop any further disbursements from the trust funds and that a separate trust fund account be established for any future trust funds received by the licensee. The licensee will have 15 days from the date of the order to request a hearing under the Administrative Procedures Act.⁷⁴

If the Commissioner becomes aware that a person or firm is engaging in licensed activity without having a license or has violated the CRMLA or is operating in an unsafe or injurious manner, the Commissioner may issue a cease and desist order requiring the respondent to stop the practice. The respondent will have 10 days to obtain a restraining order from the court to restrain the enforcement of the order once the order is made final. The Commissioner may in extreme cases immediately revoke the license and obtain a court order requiring the firm to be placed in receivership and may also order restitution to persons injured by the practice.⁷⁵

The Commissioner may impose a civil penalty on a Mortgage Loan Originator or any Residential Mortgage Lender or Servicer employing a Mortgage Loan Originator of up to \$25,000 per violation.⁷⁶

Brokerage Agreements

The California Residential Mortgage Lending Act does not provide for a license as a mortgage broker. Residential Mortgage Lenders may act in the capacity of a broker under the following guidelines⁷⁷:

- Licensed Residential Mortgage Lenders and licensed Mortgage Loan Originators may act as a mortgage broker for residential mortgage loans made by government agencies, depository institutions and other Residential Mortgage Lenders and may close the loans either in their own name or in the name of the actual lender.
- The firm acting as broker may be compensated by either the lender or the consumer.
- There must be a brokerage agreement between the consumer and the firm acting as broker.
- Mortgage Loan Originators must be employees, not independent contractors.

In acting as a mortgage broker, the following actions are prohibited:⁷⁸

- Providing brokerage services through independent contractors or unlicensed MLOs.
- Providing brokerage services for a "high-cost mortgage" as defined by the Home

⁷² Div. 20 CA Fin. Code § 50318

⁷³ Div. 20 CA Fin. Code § 50511

⁷⁴ Div. 20 CA Fin. Code § 50319

⁷⁵ Div. 20 CA Fin. Code § 50320-50326

⁷⁶ Div. 20 CA Fin. Code § 50513

⁷⁷ Div. 20 CA Fin. Code § 50700

⁷⁸ Div. 20 CA Fin. Code § 50700 (d)

Ownership and Equity Protection Act (HOEPA).⁷⁹

- Firms licensed under the CRMLA may not advertise themselves as mortgage brokers, but when acting as a broker must disclose that status when required by law.

The following provisions of the CRMLA govern the brokerage agreement which is required when acting as a broker:⁸⁰

- The brokerage agreement must be entered into prior to the provision of any brokerage services.
- The agreement must be signed by both the MLO and the borrower and a copy must be given to the borrower either upon signature (if signed in the licensee's office) or within three business days after execution.
- The agreement must show the MLO's unique identifier.
- The loan brokerage agreement shall contain an explicit statement that (1) the licensee is acting as the agent of the borrower in providing brokerage services to the borrower, and (2) when acting as agent for the borrower, it owes to that borrower a fiduciary duty of utmost care, honesty, and loyalty in the transaction, including the duty of full disclosure of all material facts. If the licensee is authorized to act as an agent for any other person, the brokerage agreement shall contain a statement of that fact and identification of that person.
- The agreement must include a detailed description of the services to be provided by the licensee, the fees to be paid to the licensee and the conditions under which the consumer is required to pay those fees.
- The agreement must state that if the licensee makes a materially false or misleading statement or omission the borrower may rescind the agreement, recover fees paid to the licensee and recover actual costs including attorney's fees.
- The licensee may not require the borrower to pay any loan fees prior to closing except for an application fee and necessary third-party fees such as credit report fees and appraisal fees.
- If those third-party services are performed by the licensee, the fee may not exceed the fee customarily charged by other providers in that community.
- If the licensee charges an application fee, the form of the agreement must be first approved by the Commissioner of the DFPI prior to its first use. The Commissioner will review the form of the agreement to ensure that it specifies the services to be rendered for the application fee, the amount of the fee and the date it would become due and payable. The agreement must not include any provision that would relieve the licensee of its obligations nor may it guarantee that a loan will be obtained. There must be a definite date for full performance of the promised services.

Escrow Funds

Escrow accounts, also referred to as trust funds or impound accounts, must be handled by mortgage lenders or servicers as required by the CRMLA:⁸¹

⁷⁹ 15 U.S.C. Sec. 1602(bb)

⁸⁰ Div. 20 CA Fin. Code § 50701

⁸¹ Div. 20 CA Fin. Code § 50202

- These funds must be held in a federally-insured depository institution or a federal home loan bank or federal reserve bank.
- They are usually held in non-interest-bearing accounts, except as noted below.
- The funds can only be disbursed for the following reasons:
 - Payments authorized by the borrower, the loan contract or federal or state law;
 - Refunds to the borrower;
 - Transfer to another institution;
 - Forwarded to a new servicer; or
 - Compliance with a regulatory or court order.
- Trust funds are not considered to be assets of the licensee and are not subject to judgments against the licensee;
- Borrowers must be paid at least 2 percent simple interest per annum on funds held for property taxes, assessments, insurance and the like.
- Trust funds may only be held in an interest-bearing account if so requested by the owner of the trust funds and the funds are kept separate and distinct from any other funds. The licensee must disclose how interest will be calculated and paid, who pays any service charges and any notice requirements or penalties for withdrawal of funds from the account. All funds in the account must be federally insured, and all interest paid on the account must be paid to the owner of the trust funds or the beneficiary.