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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 4. REAL ESTATE [10000 - 11506] (*Division 4 added by Stats. 1943, Ch. 127.*)

PART 1. LICENSING OF PERSONS [10000 - 10580] (*Part 1 added by Stats. 1943, Ch. 127.*)

CHAPTER 3. Real Estate Regulations [10130 - 10249.93] (*Chapter 3 added by Stats. 1943, Ch. 127.*)

ARTICLE 7. Real Property Loans [10240 - 10248.3] (*Article 7 added by Stats. 1961, Ch. 886.*)

10240. (a) Every real estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower.

No real estate licensee shall permit the statement to be signed by a borrower if any information required by Section 10241 is omitted.

(b) For the purposes of applying the provisions of this article, a real estate broker is acting within the meaning of subdivision (d) of Section 10131 if he or she solicits borrowers, or causes borrowers to be solicited, through express or implied representations that the broker will act as an agent in arranging a loan, but in fact makes the loan to the borrower from funds belonging to the broker.

(c) In a federally regulated residential mortgage loan transaction in which the principal loan amount exceeds the principal loan levels set forth in Section 10245, a real estate broker satisfies the requirements of this section if the borrower receives (1) a "good faith estimate" that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. 2601 et seq.), and that sets forth the broker's real estate license number and a clear and conspicuous statement on the face of the document stating that the "good faith estimate" does not constitute a loan commitment, (2) all applicable disclosures required by the Truth in Lending Act (15 U.S.C.A. 1601 et seq.), and (3) if the loan contains a balloon payment provision, the disclosure described in subdivision (h) of Section 10241, the balloon disclosure required for that loan by Fannie Mae or Freddie Mac, or an alternative disclosure determined by the commissioner to satisfy the requirements of the Truth in Lending Act.

Prior to becoming obligated on the loan the borrower shall acknowledge, in writing, receipt of the "good faith estimate" and all applicable disclosures required by the Truth in Lending Act. The real estate broker shall retain on file for a period of three years a true and correct copy of the signed acknowledgment and a true and correct copy of the "good faith estimate" and all applicable disclosures required by the Truth in Lending Act as acknowledged by the borrower.

(Amended by Stats. 2001, Ch. 389, Sec. 3. Effective January 1, 2002.)

10240.1. The provisions of this article, exclusive of the provisions of Section 10240, apply only to loans secured by a dwelling.

(Added by Stats. 1985, Ch. 1355, Sec. 5.)

10240.2. As used in this article, "dwelling" means any of the following units which are owned by a signatory to the mortgage or deed of trust secured by the dwelling unit at the time of execution of the mortgage or deed of trust:

(a) A single dwelling unit in a condominium or cooperative.

(b) Any parcel containing only residential buildings if the total number of units on the parcel is four or less.

(Added by Stats. 1985, Ch. 1355, Sec. 6.)

10240.3. (a) The commissioner shall apply the guidance on nontraditional mortgage product risks published on November 14, 2006, by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and the Statement on Subprime Mortgage Lending published on July 17, 2007, by the aforementioned entities and the National Association of

Consumer Credit Administrators, to real estate brokers acting within the meaning of Section 10131.1 or subdivision (d) of Section 10131.

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

(c) A real estate broker acting within the meaning of Section 10131.1 or subdivision (d) of Section 10131 shall adopt and adhere to policies and procedures that are reasonably intended to achieve the objectives set forth in the documents described in subdivision (a).

(Added by Stats. 2007, Ch. 301, Sec. 3. Effective January 1, 2008.)

10241. The statement required by Section 10240, the form of which shall be approved by the commissioner, shall set forth separately the following items:

(a) The estimated maximum costs and expenses of making the loan, which are to be paid by the borrower, including but not limited to, the following:

- (1) Appraisal fees.
- (2) Escrow fees.
- (3) Title charges.
- (4) Notary fees.
- (5) Recording fees.
- (6) Credit investigation fees.

If a real estate licensee performs or is to perform any of the services for which costs and expenses are disclosed pursuant to this subdivision, the licensee shall be entitled to those costs and expenses in addition to the charges specified in subdivision (b).

(b) The total of the brokerage or commissions contracted for, or to be received by, the real estate broker for services performed as an agent in negotiating, procuring, or arranging the loan or the total of loan origination fees, points, bonuses, and other charges in lieu of interest to be received by the broker if he or she elects to act as a lender rather than agent in the transaction.

(c) Any liens against the real property, as disclosed by the borrower, the approximate amount thereof, and whether each lien will remain senior, or will be subordinate, to the lien that will secure the loan.

(d) The estimated amounts to be paid on the order of the borrower, as disclosed by the borrower, including, but not limited to:

- (1) Fire insurance premiums.
- (2) Amounts due on prior liens, including interest or other charges arising in connection with the payment, release, reconveyance, extinction, or other removal of record of the prior liens.
- (3) Amounts due other creditors.
- (4) Assumption, transfer, forwarding, and beneficiary statement fees.

(e) The estimated balance of the loan funds to be paid to the borrower after deducting the total of amounts disclosed pursuant to subdivisions (a), (b), and (d).

(f) The principal amount of the loan.

(g) The rate of interest.

(h) The term of the loan, the number of installments, the amount of each installment, and the approximate balance due at maturity, and the following notice in 10-point bold typeface:

"NOTICE TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN IT COMES DUE, YOU MAY HAVE TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY TO MAKE THE BALLOON PAYMENT. IN THAT CASE, YOU MAY AGAIN HAVE TO PAY COMMISSIONS, FEES, AND EXPENSES FOR THE ARRANGING OF THE NEW LOAN. IN ADDITION, IF YOU ARE UNABLE TO MAKE THE MONTHLY PAYMENTS OR THE BALLOON PAYMENT, YOU MAY LOSE THE PROPERTY AND ALL OF YOUR EQUITY THROUGH FORECLOSURE. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THIS LOAN."

(i) A statement containing the name of the real estate broker negotiating the loan, his or her license number, and the address of his or her licensed place of business.

(j) If the broker anticipates that the loan to the borrower may be made wholly or in part from broker-controlled funds, a statement to that effect.

For purposes of this section, "broker-controlled funds" means funds owned by the broker, by a spouse, child, parent, grandparent, brother, sister, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the broker, or by any entity in which the broker alone or together with any of the above relatives of the broker has an ownership interest of 10 percent or more.

(k) The terms of prepayment privileges and penalties, if any.

(l) A statement that the purchase of credit or credit disability insurance is not required as a condition for the making of the loan.

(m) If the loan is one that is within the limits specified in Section 10245, a certification by the real estate licensee negotiating the loan that the loan is being made in compliance with the provisions of this article.

(Amended by Stats. 1989, Ch. 1275, Sec. 5.5.)

10241.1. (a) The purchase of credit life insurance on the life of the borrower or credit disability insurance to provide indemnity for payments becoming due on the indebtedness shall not be required as a condition of making a loan under this article.

(b) The licensee may provide through duly licensed agents, and collect from the borrower the costs of purchasing, credit life insurance on the life of a borrower and credit disability insurance to provide indemnity for payments becoming due on the indebtedness, with the borrower's consent. The form and rate of the insurance shall be approved by the Insurance Commissioner, as provided in Section 779.9 of the Insurance Code. The insurance shall be in an amount not in excess of that reasonably necessary to discharge the obligation of the borrower, and for a term not exceeding the term of the loan. Only one premium for credit disability insurance may be collected by the licensee in connection with any loan contract irrespective of the number of borrowers, and only one borrower may be insured, except that where more than one borrower is a party to a loan contract and each borrower is a wage earner whose earnings are reasonably relied upon by the lender for the repayment of the loan, each borrower may be insured.

(c) The licensee may collect from the borrower the costs of purchasing fire and hazard insurance on the property offered as security for a loan in order to reasonably insure against loss for a reasonable term considering the circumstances of the loan, (1) if the policy or policies of insurance are made payable to the borrower or any member of his or her family, regardless of whether a customary mortgagee clause is attached, and (2) if the insurance is sold at standard rates through duly licensed agents.

(d) If premiums for any insurance provided under this section are to be paid from the proceeds of the loan, any amount so paid and any commission under subdivision (b) of Section 10242 attributable to borrowing that amount, shall not be considered in determining whether the loan is exempt from this article under Section 10245.

(Amended by Stats. 1989, Ch. 1275, Sec. 6.)

10241.2. If the broker elects to make a loan subject to Section 10240 which consists wholly or in part of broker-controlled funds as defined in subdivision (j) of Section 10241, the broker shall advise the borrower of that fact not later than the next business day after making the election, but in any event before the close of escrow of the loan transaction.

(Added by Stats. 1982, Ch. 886, Sec. 6.)

10241.3. In any loan transaction in which a fee is charged to a borrower for an appraisal of the real property that will serve as security for the loan, a copy of the appraisal report shall be given by or on behalf of the broker to both the borrower and the lender at or before the closing of the loan transaction.

(Added by Stats. 1984, Ch. 828, Sec. 1.)

10241.4. (a) Prior to a borrower becoming obligated on any loan secured by a dwelling that provides for a balloon payment and is otherwise subject to Section 10240, if any agreement includes a promise, representation, or similar undertaking to extend or seek the extension of the term of the loan or refinancing of the loan, and the undertaking is not set forth in the promissory note evidencing the loan or in a rider to that note, the undertaking shall be in writing and the notice required by this section shall be provided to the borrower.

(b) The notice required by subdivision (a), shall state in at least 10-point boldface capitalized type:

"AS THIS LOAN PROVIDES FOR A BALLOON PAYMENT, SEE THE MORTGAGE LOAN DISCLOSURE STATEMENT/GOOD FAITH ESTIMATE FOR IMPORTANT INFORMATION ON BALLOON PAYMENTS. ALSO, REFER TO THE LOAN DOCUMENTS AND THIS EXTENSION AGREEMENT FOR YOUR SPECIFIC RIGHTS AND OBLIGATIONS."

(c) The notice shall also contain, in at least 10-point boldface capitalized type, either of the following statements depending upon which statement best describes the nature of the undertaking:

(1) The lender or noteholder has agreed to an extension, refinancing, or renegotiation of the terms of this loan, and the lender's or noteholder's signed agreement is attached (or the notice may describe the method used to furnish that signed document). Transmission by a broker of a lender's or noteholder's undertaking or the broker's representation of that undertaking, pursuant to this section, does not of itself, create or alter any agency or similar relationship between the lender or noteholder and the borrower, or the lender or noteholder and the broker.

(2) The broker, ____ (insert name of broker making or arranging the loan), has agreed to use his or her best efforts to obtain a future extension, refinancing, or renegotiation of the loan by the lender or note owner. There can be no assurance or guarantee that the lender or note owner will agree.

(Added by Stats. 1994, Ch. 86, Sec. 1. Effective January 1, 1995. Operative July 1, 1995, by Sec. 2 of Ch. 86.)

10242. The maximum amount of expenses, charges and interest to be paid by a borrower with respect to any loan subject to this article shall be as follows:

(a) The maximum amount of all costs and expenses referred to in subdivision (a) of Section 10241, exclusive of actual title charges and recording fees, shall not exceed 5 percent of the principal amount of the loan or three hundred ninety dollars (\$390), whichever is greater but in no event to exceed seven hundred dollars (\$700), provided that in no event shall said maximum amount exceed actual costs and expenses paid, incurred or reasonably earned.

(b) The maximum amount of the charges referred to in subdivision (b) of Section 10241 shall not exceed the following amounts:

(1) In the case of a loan secured directly or collaterally, in whole or in part by a first trust deed, 5 percent of the principal amount of the loan where the term of the loan is a period of less than three years and 10 percent where the term is a period of three years or more.

(2) In the case of a loan secured directly or collaterally by a trust deed other than a first trust deed, 5 percent of the principal amount of the loan where the term of the loan is a period of less than two years, 10 percent where the term is a period of two years but less than three years, and 15 percent where the term is a period of three years or more.

(3) With respect to a further advance on a note, the charges shall not exceed the charges for an original loan in the same amount as the further advance and made for a term equal to the remaining term of the note on which the further advance is being made, including any extension thereof.

(c) No interest may be charged with respect to any period prior to the date that the proceeds of the loan are made available to the borrower or are deposited in escrow.

(Amended by Stats. 1990, Ch. 834, Sec. 1.)

10242.5. (a) A charge imposed for late payment of an installment due on a loan secured by a mortgage or deed of trust on real property shall not exceed an amount equal to 10 percent of the installment due, except that a minimum charge of five dollars (\$5) may be imposed when the late charge permitted by this section would otherwise be less than that minimum charge.

The charge permitted by this section may be assessed only as a percentage of the increment of any installment due that is attributable to principal and interest.

(b) No charge may be imposed more than once for the same late payment of an installment. No late charge may be imposed on any installment which is paid or tendered in full within 10 days after its scheduled due date, even though an earlier maturing installment or a late charge on an earlier installment may not have been paid in full. For purposes of this subdivision, a payment or tender of payment made within 10 days of a scheduled installment due date shall be deemed to have been made or tendered for payment of that installment.

(c) A late-payment charge may be imposed pursuant to this subdivision for the payment of any balloon payment more than 10 days after the date due. The charge shall not exceed an amount equal to the maximum late charge that could have been assessed with respect to the largest single monthly installment previously due, other than the balloon payment, multiplied by the sum of one plus the number of months occurring since the late-payment charge began to accrue. For purposes of this subdivision, "month" means the period between a particular day of a calendar month and the same day of the next calendar month.

(Amended by Stats. 1989, Ch. 1275, Sec. 7.)

10242.6. (a) The principal and accrued interest on any loan secured by a mortgage or deed of trust on real property containing only a single-family, owner-occupied dwelling may be prepaid in whole or in part at any time but only a prepayment made within seven years of the date of execution of such mortgage or deed of trust may be subject to a prepayment charge and then solely as herein set forth. An amount not exceeding 20 percent of the unpaid balance may be prepaid in any 12-month period. A prepayment charge may be imposed on any amount prepaid in any 12-month period in excess of 20 percent of the unpaid balance which charge shall

not exceed an amount equal to the payment of six months' advance interest on the amount prepaid in excess of 20 percent of the unpaid balance.

(b) Notwithstanding subdivision (a), there shall be no prepayment penalty charged to a borrower under a loan subject to this section if the dwelling securing the loan has been damaged to such an extent by a natural disaster for which a state of emergency is declared by the Governor, pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code, that the dwelling cannot be occupied and the prepayment is causally related thereto.

(c) As used in this section, "owner-occupied dwelling" means a dwelling which will be owned and occupied by a signatory to the mortgage or deed of trust secured by the dwelling within 90 days of the execution of the mortgage or deed of trust.

(Amended by Stats. 1990, Ch. 663, Sec. 1.)

10243. If the loan is not consummated due to the failure of the borrower to disclose the outstanding liens of record or the correct current vested title which is material to the loan upon the real property as provided by subdivision (c) of Section 10241, the borrower shall be liable for the costs and expenses provided in subdivision (a) of Section 10241 that have been paid or incurred and shall be liable for the payment of one-half of the charges provided in subdivision (b) of Section 10241. An exclusive agreement authorizing or retaining a licensee to negotiate a loan secured directly or collaterally by a lien on real property shall be limited to a term of not more than 45 days.

If the loan is not consummated and the broker is entitled to any charges, costs, or expenses authorized by this article, he or she may not record a lien or encumbrance against the borrower's property except subsequent to the filing of a legal action pursuant to the Code of Civil Procedure to recover said charges, costs, or expenses. However, nothing contained herein shall prohibit a broker from recording a lien pursuant to a voluntary lien agreement in conjunction with a stipulation to dismiss an actual or proposed complaint for damages entitling the broker to those charges, costs, or expenses after written notice to the borrower that the broker proposes or has initiated a complaint for damages pursuant to the Code of Civil Procedure.

(Amended by Stats. 2018, Ch. 285, Sec. 51. (AB 2884) Effective January 1, 2019.)

10244. Any loan made by any person and secured directly by a lien on real property, other than a note given back to the seller by the purchaser on account of the purchase price, which provides for installment payments and the term of which is less than three years, shall require substantially equal installment payments over the period of the loan with the final payment not payable until the maturity date thereof. No installment including the final installment shall be greater than twice the amount of the smallest installment.

If any loan having an original maturity period of less than three (3) years is renewed or refinanced, the total amount of charges to be paid on both the original obligation and the balance of such obligation, as renewed or refinanced, shall not in the aggregate exceed the amount of charges as provided in Section 10242, and if such a loan is renewed or refinanced through the person who negotiated the original loan, the total amount of costs and expenses to be paid on both the original obligation and the renewed or refinanced obligation shall not exceed in the aggregate the amount of costs and expenses authorized in subdivision (a) of said section.

The provisions of this section do not apply to a bona fide loan, secured by a first trust deed on real property, made in connection with the financing of the usual costs of the development of a residential, commercial or industrial building or buildings on the property under a written agreement providing for the disbursement of the loan funds as costs are incurred or in relation to the progress of the work and providing for title insurance insuring the priority of the security as against mechanic's and materialmen's liens or for the final disbursement of at least ten (10) percent of the loan funds after the expiration of the period for the filing of mechanics and materialmen's liens.

(Amended by Stats. 1963, Ch. 1978.)

10244.1. Notwithstanding the provisions of Section 10244, on a loan secured directly or collaterally by a lien on real property comprising an owner-occupied dwelling, for a term of six years or less, no installment, whether providing for payment of principal and interest or interest only, shall be greater than twice the amount of the smallest installment. This section does not apply to a note given back to the seller by the purchaser on account for the purchase price or any collateral loans secured solely by such a note. As used in this section, "owner-occupied dwelling" means a single dwelling unit in a condominium or cooperative or a residential building of less than three separate dwelling units, one of which will be owned and occupied by a signatory to the mortgage or deed of trust secured by such dwelling within 90 days of the execution of the mortgage or deed of trust.

(Added by Stats. 1973, Ch. 641.)

10245. The provisions of this article, exclusive of the provisions of Sections 10240, 10240.3, 10242.5, and 10242.6, do not apply to any bona fide loan secured directly or collaterally by a first trust deed, the principal of which is thirty thousand dollars (\$30,000) or more, or to any bona fide loan secured directly or collaterally by any lien junior thereto, the principal of which is twenty thousand dollars (\$20,000) or more.

(Amended by Stats. 2007, Ch. 301, Sec. 4. Effective January 1, 2008.)

10246. If any amount:

(a) In excess of the charges referred to in Section 10241 and limited by Section 10242,

(b) In excess of the charges permitted by Section 10242.5, or

(c) Prohibited by Section 10248.1, is received, the borrower may recover, from the person who shall have taken or received the excess or prohibited amount, three times the amount of the excess or prohibited amount and the borrower shall be entitled to costs and a reasonable attorney's fee; provided that any action for recovery must be brought within two (2) years from the date such excess or prohibited charge was received. However, if the excess or prohibited amount is the result of a bona fide error the borrower may only recover such excess or prohibited amount.

(Amended by Stats. 1973, Ch. 641.)

10247. The provisions of this article pertaining to maximum costs and expenses, charges and interest, together with the penalties stated in this article, shall apply to any transaction involving a third party as a purported lender or any other transaction which is used as a subterfuge or means of avoiding or evading the provisions of this article.

(Added by Stats. 1961, Ch. 886.)

10248. Every person who, for compensation to be received directly or indirectly, sells, offers to sell, purchases for resale or offers to purchase for resale, or who negotiates or arranges for the purchase, sale or exchange of a promissory note secured directly or collaterally by a lien on real property, may receive only the maximum total charges provided for in Section 10242.

(Added by Stats. 1961, Ch. 886.)

10248.1. No real estate licensee shall charge, receive, or negotiate for the payment by the borrower of any service charge or fee other than charges and fees specified in Sections 10241, 10241.1, 10242, and 10242.5, prepayment penalties as authorized by law, beneficiary-statement, payoff-demand, extinction, release, reconveyance or other removal of record fees, and trustee's costs and fees, and any other fees if in accordance with the Civil Code and the Code of Civil Procedure.

(Amended by Stats. 1989, Ch. 1275, Sec. 9.)

10248.2. (a) A borrower may not waive any right or remedy under this article. This subdivision shall not be deemed to prohibit a bona fide settlement, release or compromise of any claim under this article.

(b) If a loan is negotiated in violation of any section of this article, the licensee, on demand, shall return to the borrower any bonus, brokerage or commission paid or payable under subdivision (b) of Section 10242 for negotiation of such loans. In the event such demand is not satisfied within 20 days from the date of written demand, the borrower may commence an action under this subdivision and may recover actual damages or twice any bonus, brokerage, or commission paid or payable under subdivision (b) of Section 10242 for the negotiation of said loan whichever is greater, plus costs and reasonable attorney's fees.

The "date of written demand" shall mean either the date upon which the written demand is personally delivered to the licensee or the date upon which the written demand is mailed to the licensee.

A licensee may not be held liable in any action brought under this section for a violation of this article if the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

If the borrower proceeds under this section he may not proceed under Section 10246 as to the same breach.

(c) If a real estate licensee subject to the provisions of this article violates any provision of Section 10241.1 he shall be liable for, and pay over to the borrower, any commission or experience rating dividend attributable to the insurance written on that loan received by the licensee as a result of the sale of such insurance to the borrower in violation of Section 10241.1 in addition to any premium loss due to short rate cancellation of any insurance subject to Section 10248.1 which was purchased by the borrower.

(d) No action for damages shall be maintained under this section unless brought within two years after the maturity of the loan.

(e) The provisions of this article are not exclusive. The remedies provided for herein shall be in addition to any other procedures or remedies provided under law.

(Added by Stats. 1973, Ch. 641.)

10248.3. The provisions of this article shall apply only to those loans otherwise subject to this article which are made or negotiated by real estate brokers acting within the meaning of subdivision (d) of Section 10131 or subdivision (b) of Section 10240.

(Amended by Stats. 1982, Ch. 886, Sec. 7.)