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HEALTH AND SAFETY CODE - HSC

DIVISION 13. HOUSING [17000 - 19997] (*Division 13 enacted by Stats. 1939, Ch. 60.*)

PART 2. MANUFACTURED HOUSING [18000 - 18153] (*Heading of Part 2 amended by Stats. 2007, Ch. 540, Sec. 2.*)

CHAPTER 5. Sales and Escrows [18035 - 18039.5] (*Chapter 5 added by Stats. 1981, Ch. 975, Sec. 3.*)

18035. (a) (1) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome subject to registration under this part, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase contemporaneous with, or prior to, the receipt of any cash or cash equivalent from the buyer, shall establish an escrow account with an escrow agent, and shall cause to be deposited into that escrow account any cash or cash equivalent received at any time prior to the close of escrow as a deposit, downpayment, or whole or partial payment for the manufactured home or mobilehome or accessory thereto. Checks, money orders, or similar payments toward the purchase shall be made payable only to the escrow agent.

(2) The downpayment, or whole or partial payment, shall include an amount designated as a deposit, which may be less than, or equal to, the total amount placed in escrow, and shall be subject to subdivision (f). The parties shall provide for escrow instructions that identify the fixed amounts of the deposit, downpayment, and balance due prior to closing consistent with the amounts set forth in the purchase documents and receipt for deposit if one is required by Section 18035.1. The deposits shall be made by the dealer within five working days of receipt, one of which shall be the day of receipt.

(3) For purposes of this section, "cash equivalent" means any property, other than cash. If an item of cash equivalent is, due to its size, incapable of physical delivery to the escrowholder, the property may be held by the dealer for the purchaser until close of escrow and, if the property has been registered with the department or the Department of Motor Vehicles, its registration certificate and, if available, its certificate of title shall be delivered to the escrowholder.

(b) For every transaction by or through a dealer to sell or lease with the option to buy a new manufactured home or mobilehome subject to registration under this part, the escrow instructions shall provide all of the following:

(1) That the original manufacturer's certificate of origin be placed in escrow.

(2) (A) That, in the alternative, either of the following shall occur:

(i) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisfied by payment from the escrow account.

(ii) The inventory creditor shall consent in writing to other than full payment.

(B) For purposes of this paragraph, "inventory creditor" includes any person who is identified as a creditor on the manufacturer's certificate of origin or any person who places the original certificate of origin in escrow and claims in writing to the escrow agent to have a purchase money security interest in the manufactured home or mobilehome, as contemplated by Section 9103 of the Commercial Code.

(3) That the escrow agent shall obtain from the manufacturer a true and correct facsimile of the copy of the certificate of origin retained by the manufacturer pursuant to Section 18093.

(c) For every transaction by or through a dealer to sell or lease with the option to buy a used manufactured home or mobilehome subject to registration under this part, the escrow instructions shall provide:

(1) That the current registration card, all copies of the registration cards held by junior lienholders, and the certificate of title be placed in escrow.

(2) That, in the alternative, either of the following shall occur:

(A) (i) The registered owner shall acknowledge in writing the amount of the commission to be received by the dealer for the sale of the manufactured home or mobilehome, and (ii) the registered owner shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of the escrow where the buyer has executed a security agreement approved by the registered owner covering the unpaid balance of the purchase price.

(B) (i) The dealer shall declare in writing that the manufactured home or mobilehome is its inventory, (ii) the registered owner shall acknowledge in writing that the purchase price relating to the sale of the manufactured home or mobilehome to the dealer for resale has been paid in full by the dealer, (iii) the current certificate of title shall be appropriately executed by the registered owner to reflect the release of all of its ownership interests, and (iv) the dealer shall release all of its ownership interests in the manufactured home or mobilehome either contemporaneously upon the payment of a specified amount from the escrow account or at the close of escrow where the buyer has executed a security agreement approved by the dealer covering the unpaid balance of the purchase price.

(3) That, in the alternative, the legal owner and each junior lienholder, respectively, shall do either of the following:

(A) Release his or her security interest or transfer its security interest to a designated third party contemporaneously upon the payment of a specified amount from the escrow account.

(B) Advise the escrow agent in writing that the new buyer or the buyer's stated designee shall be approved as the new registered owner upon the execution by the buyer of a formal assumption of the indebtedness secured by his or her lien approved by the creditor at or before the close of escrow.

(d) For every transaction by or through a dealer to sell or lease with the option to buy a used manufactured home or mobilehome subject to registration under this part:

(1) The dealer shall present the buyer's offer to purchase the manufactured home or mobilehome to the seller in written form signed by the buyer. The seller, upon accepting the offer to purchase, shall sign and date the form. Copies of the fully executed form shall be presented to both the buyer and seller, with the original copy retained by the dealer. Any portion of the form that reflects the commission charged by the dealer to the seller need not be disclosed to the buyer.

(2) The escrow agent, upon receipt of notification from the dealer that the seller has accepted the buyer's offer to purchase and receipt of mutually endorsed escrow instructions, shall, within three working days, prepare a notice of escrow opening on the form prescribed by the department and forward the completed form to the department with appropriate fees. If the escrow is canceled for any reason before closing, the escrow agent shall prepare a notice of escrow cancellation on the form prescribed by the department and forward the completed form to the department.

(3) (A) The escrow agent shall forward to the legal owner and each junior lienholder at their addresses shown on the current registration card a written demand for a lien status report, as contemplated by Section 18035.5, and a written demand for either an executed statement of conditional lien release or an executed statement of anticipated formal assumption, and shall enclose blank copies of a statement of conditional lien release and a statement of anticipated formal assumption on forms prescribed by the department. The statement of conditional lien release shall include, among other things, both of the following:

(i) A statement of the dollar amount or other conditions required by the creditor in order to release or transfer its lien.

(ii) The creditor's release or transfer of the lien in the manufactured home or mobilehome contingent upon the satisfaction of those conditions.

(B) The statement of anticipated formal assumption shall include, among other things, both of the following:

(i) A statement of the creditor's belief that the buyer will formally assume the indebtedness secured by its lien pursuant to terms and conditions which are acceptable to the creditor at or before the close of escrow.

(ii) The creditor's approval of the buyer or his or her designee as the registered owner upon the execution of the formal assumption.

(4) Within five days of the receipt of the written demand and documents required by paragraph (3), the legal owner or junior lienholder shall complete and execute either the statement of conditional lien release or, if the creditor has elected to consent to a formal assumption requested by a qualified buyer, the statement of anticipated formal assumption, as appropriate, and prepare the lien status report and forward the documents to the escrow agent by first-class mail. If the creditor is the legal owner, the certificate of title in an unexecuted form shall accompany the documents. If the creditor is a junior lienholder, the creditor's copy of the current registration card in an unexecuted form shall accompany the documents.

(5) If either of the following events occurs, any statement of conditional lien release or statement of anticipated formal assumption executed by the creditor shall become inoperative, and the escrow agent shall thereupon return the form and the certificate of title or the copy of the current registration card, as appropriate, to the creditor by first-class mail:

(A) The conditions required in order for the creditor to release or transfer his or her lien are not satisfied before the end of the escrow period agreed upon in writing between the buyer and the seller or, if applicable, before the end of any extended escrow period as permitted by subdivision (g).

(B) The registered owner advises the creditor not to accept any satisfaction of his or her lien or not to permit any formal assumption of the indebtedness and the creditor or registered owner advises the escrow agent in writing accordingly.

(6) If a creditor willfully fails to comply with the requirements of paragraph (4) within 21 days of the receipt of the written demand and documents required by paragraph (3), the creditor shall forfeit to the escrow agent three hundred dollars (\$300), except where the creditor has reasonable cause for noncompliance. The three hundred dollars (\$300) shall be credited to the seller, unless otherwise provided in the escrow instructions. Any penalty paid by a creditor under this paragraph shall preclude any civil liability for noncompliance with Section 18035.5 relating to the same act or omission.

(e) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome, the escrow instructions shall specify one of the following:

(1) Upon the buyer receiving delivery of an installed manufactured home or mobilehome on the site and the manufactured home or mobilehome passing inspection pursuant to Section 18613 or after the manufactured home or mobilehome has been delivered to the location specified in the escrow instructions when the installation is to be performed by the buyer, all funds in the escrow account, other than escrow fees and amounts for accessories not yet delivered, shall be disbursed. If mutually agreed upon between buyer and dealer, the escrow instructions may specify that funds be disbursed to a government agency for the payment of fees and permits required as a precondition for an installation acceptance or certificate of occupancy, and the information that may be acceptable to the escrow agent.

(2) Upon the buyer receiving delivery of an installed manufactured home or mobilehome not subject to the provisions of Section 18613 with delivery requirements as mutually agreed to and set forth in the sales documents, all funds in the escrow account, other than escrow fees, shall be disbursed.

(f) Upon receiving written notice from a party to the escrow of a dispute, the escrow agent shall inform the party of his or her right to hold funds in escrow by submitting a written request to hold funds in escrow. Upon receipt by the escrow agent of a party's written request to hold funds in escrow, all funds denoted as deposit shall be held in escrow until a release is signed by the disputing party, or pursuant to new written escrow instructions signed by the parties involved, or pursuant to a final order for payment or division by a court of competent jurisdiction. Any other funds, other than escrow fees, shall be returned to the buyer or any person, other than the dealer or seller, as appropriate. At the opening of escrow, the escrow agent shall give notice of the right to request that funds be held in escrow pursuant to this subdivision.

(g) Escrow shall be for a period of time mutually agreed upon, in writing, by the buyer and the seller. However, the parties may, by mutual consent, extend the time, in writing, with notice to the escrow agent.

(h) No dealer or seller shall establish with an escrow agent any escrow account in an escrow company in which the dealer or seller has more than a 5-percent ownership interest.

(i) The escrow instructions may provide for the proration of any local property tax due or to become due on the manufactured home or mobilehome, and if the tax, or the license fee imposed pursuant to Section 18115, or the registration fee imposed pursuant to Section 18114, is delinquent, the instructions may provide for the payment of the taxes or fees, or both, and any applicable penalties.

(j) For every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome that is subject to inspection pursuant to Section 18613, and for which it is stated, on the face of the document certifying or approving occupancy or installation, that the issuance of the document is conditioned upon the payment of a fee, charge, dedication, or other requirement levied pursuant to Section 53080 of the Government Code, the escrow instructions shall provide that the payment of that fee, charge, dedication, or other requirement be made to the appropriate school district upon the close of escrow.

(k) No agreement shall contain any provision by which the buyer waives his or her rights under this section, and any waiver shall be deemed contrary to public policy and shall be void and unenforceable.

(l) If a portion of the amount in the escrow is for accessories, then that portion of the amount shall not be released until the accessories are actually installed.

(m) Upon opening escrow on a used manufactured home or mobilehome which is subject to local property taxation, and subject to registration under this part, the escrow officer may forward to the tax collector of the county in which the used manufactured home or

mobilehome is located, a written demand for a tax clearance certificate, if no liability exists, or a conditional tax clearance certificate if a tax liability exists, to be provided on a form prescribed by the office of the Controller. The conditional tax clearance certificate shall state the amount of the tax liability due, if any, and the final date that amount may be paid out of the proceeds of escrow before a further tax liability may be incurred.

(1) Within five working days of receipt of the written demand for a conditional tax clearance certificate or a tax clearance certificate, the county tax collector shall forward the conditional tax clearance certificate or a tax clearance certificate showing no tax liability exists to the requesting escrow officer. In the event the tax clearance certificate's or conditional tax clearance certificate's final due date expires within 30 days of date of issuance, an additional conditional tax clearance certificate or a tax clearance certificate shall be completed which has a final due date of at least 30 days beyond the date of issuance.

(2) If the tax collector on which the written demand for a tax clearance certificate or a conditional tax clearance certificate was made fails to comply with that demand within 30 days from the date the demand was mailed, the escrow officer may close the escrow and submit a statement of facts certifying that the written demand was made on the tax collector and the tax collector failed to comply with that written demand within 30 days. This statement of facts may be accepted by the department in lieu of a conditional tax clearance certificate or a tax clearance certificate, as prescribed by subdivision (a) of Section 18092.7, and the transfer of ownership may be completed.

(3) The escrow officer may satisfy the terms of the conditional tax clearance certificate by paying the amount of tax liability shown on the form by the tax collector out of the proceeds of escrow on or before the date indicated on the form and by certifying in the space provided on the form that all terms and conditions of the conditional tax clearance certificate have been complied with.

(n) This section creates a civil cause of action against a buyer or dealer or other seller who violates this section, and upon prevailing, the plaintiff in the action shall be awarded actual damages, plus an amount not in excess of two thousand dollars (\$2,000). In addition, attorney's fees and court costs shall also be awarded a plaintiff who prevails in the action.

(Amended by Stats. 2007, Ch. 543, Sec. 1. Effective January 1, 2008.)

18035.1. (a) As a part of the documents executed for every transaction by or through a dealer to sell or lease with the option to buy a new or used manufactured home or mobilehome, the dealer and purchaser shall sign a receipt for deposit, a copy of which shall be provided to the purchaser and a copy shall be retained by the dealer for not less than three years. It shall state at least the following in type not less than 6-point type size:

(1) A statement that the purchaser shall receive a copy of the purchase contract and receipt for deposit.

(2) A statement that all portions of the purchase documents and receipt for deposit shall be completed prior to obtaining the purchaser's signature.

(3) A statement of the specific amounts of the deposit, downpayment, or other category of funds required to be placed in escrow prior to closing, and a warning that the deposit may be withheld in escrow in case of a dispute between the purchaser and the dealer.

(4) A statement that the amounts of the deposit and downpayment shall be agreed upon by the purchaser and dealer and shall have been entered on the purchase documents and receipt of deposit prior to the purchaser's signing.

(5) Sections 18035, 18035.1, and 18035.3 of this code and Section 1797.3 of the Civil Code reprinted in their entirety.

(6) A statement that any oral promises or commitments that have been made are not binding unless they appear in writing on the purchase documents.

(7) A warning that a warranty document complying with Section 1797.3 of the Civil Code shall be provided to the purchaser of a new manufactured home or mobilehome immediately after signing the purchase documents.

(8) A statement that the terms and duration of any other warranty, not required by law, offered by the dealer shall be in writing.

(9) A statement that, if the purchaser has any complaints with respect to sales practices, delivery, warranty, or other matters related to the manufactured home or mobilehome, he or she may seek administrative relief from the department or legal relief in a court of competent jurisdiction.

(10) A statement that the sale will not be complete until the escrow for the sale closes.

(b) For the sale of a manufactured home or mobilehome not subject to registration by the department, the dealer shall provide a statement of fact, in type not less than 6-point type size, containing the information specified in paragraphs (6), (7), (8), (9), and (10) of subdivision (a) as part of the purchase documents.

(c) Where the sale of a new or used manufactured home or mobilehome subject to registration under this part does not involve a dealer, the department, by regulation, may require the seller and buyer to execute a receipt for deposit containing whatever information of the nature described in this section, the department deems appropriate.

(Amended by Stats. 1996, Ch. 799, Sec. 9. Effective January 1, 1997.)

18035.2. (a) For every sale by a dealer of a new or used manufactured home or mobilehome to be installed on a foundation system pursuant to subdivision (a) of Section 18551, the dealer shall execute in writing and obtain the buyer's signature on a purchase order, conditional sale contract, or other document evidencing the purchase, and provide a statement of fact complying with subdivision (b) of Section 18035.1, contemporaneous with or prior to the receipt of any cash or cash equivalent from the buyer and shall establish an escrow account with an escrow agent. The escrow shall not be subject to Section 18035. The parties shall provide for escrow instructions that identify the fixed amounts of the deposit and balances due prior to closing, consistent with the amounts set forth in the document evidencing the purchase and related services. Escrow disbursements and closing shall be consistent with the mutually agreed terms and conditions of the documents evidencing the purchase and related services. Disbursements of funds from escrow prior to delivery and installation of the unit, any accessory structures, and related services shall only be as mutually agreed upon in writing by the dealer and buyer.

(b) For every sale by a dealer of a new manufactured home or mobilehome installed or to be installed on a foundation system pursuant to subdivision (a) of Section 18551, the escrow instructions shall provide all of the following:

(1) That the original manufacturer's certificate of origin be placed in escrow.

(2) That, in the alternative:

(A) The lien of any inventory creditor on the manufactured home or mobilehome shall be satisfied by payment from the escrow account.

(B) That the inventory creditor shall consent in writing to other than full payment.

For purposes of this paragraph, "inventory creditor" includes any person who is identified as a creditor on the manufacturer's certificate of origin or any person who places the original certificate of origin in escrow and claims in writing to the escrow agent to have a purchase money security interest in the manufactured home or mobilehome as contemplated by Section 9103 of the Commercial Code.

(3) That the escrow agent shall obtain from the manufacturer a true and correct facsimile of the copy of the certificate of origin retained by the manufacturer pursuant to Section 18093.

(c) For every sale by a dealer of a new or used manufactured home or mobilehome that is subject to inspection pursuant to subdivision (a) of Section 18551, and for which it is stated, on the face of the document certifying or approving occupancy, that the issuance of the document is conditioned upon the payment of a fee, charge, dedication, or other requirement levied pursuant to Section 17620 of the Education Code, the escrow instructions shall provide that the payment of that fee, charge, dedication, or other requirement be made to the appropriate school district upon the close of escrow.

(Amended by Stats. 2002, Ch. 713, Sec. 4. Effective January 1, 2003.)

18035.25. Notwithstanding any other provision of this part to the contrary, it is a ground for disciplinary action, and not a criminal offense, for a dealer to fail to correct, or cause to be corrected, any defects in the installation of a manufactured home or mobilehome performed by a licensed contractor whom the dealer had certified to the purchaser as the installation contractor pursuant to subdivision (c) of Section 7027 of the Business and Professions Code. Any accusation filed against a licensee for a violation of this section shall be filed within three years after the occurrence of the act or omission alleged as the ground for disciplinary action.

(Added by Stats. 1986, Ch. 851, Sec. 2.)

18035.26. (a) Notwithstanding any other provision of law, the requirements of this section apply only to the sale of a new or used manufactured home or multiunit manufactured housing or used mobilehome sold by a dealer and to be installed by the buyer on a foundation system pursuant to subdivision (a) of Section 18551.

(b) The sale shall be deemed complete at the close of escrow. Escrow shall be deemed closed when all of the following have been completed:

(1) The following document is executed:

Declaration of Delivery Sale

The undersigned purchaser hereby declares that he/she is agreeing to a delivery sale wherein he/she intends to actually and physically install the subject home described below, or accept responsibility for engaging the services of a licensed contractor to perform that installation. Additionally, the purchaser hereby declares that he/she understands that most manufacturers' warranties do not cover defects caused by improper site preparation or installation. The purchaser takes full responsibility for the proper storage, including blocking of the home and protection from the elements, prior to the completion of the installation.

It is strongly recommended that, before entering into this agreement, the purchaser has ensured that the home described below will be installed pursuant to subdivision (a) of Section 18551 of the Health and Safety Code (see reverse side) and the manufacturer's installation instructions. Additionally, the purchaser should make certain that he/she can meet all permit and fee requirements, including school development fees, most of which may be financed, for the installation of the subject home.

Warranty Expiration

Notwithstanding Section 1797 of the Civil Code, in order to provide reasonable time for the installation of your home, the manufacturer's warranty, when applicable, will expire one year after either the issuance of a certificate of occupancy or 120 days from the close of escrow, whichever occurs first.

Name of Escrow Company: _____; Escrow Number: _____

Manufacturer's Name: _____; Serial Number: _____

Dealer's Name: _____;

Address where purchaser will accept delivery: _____;

Address where purchaser intends to install home: _____

(NOTE: An original copy of this document must be deposited with the above named escrow agent as a condition precedent to the preparation of escrow instructions. Upon close of escrow, the escrow agency shall submit a copy of the original document to the department along with documents required to report the sale; the original document shall be retained by the escrow agent. Additionally, a copy of the original document shall be sent to the manufacturer.)

WARNING: This is an important document. Do not sign unless you have read and understood the above declaration.

Purchaser's Printed Name: _____ Purchaser's Signature: _____ Date: _____

Purchaser's Printed Name: _____ Purchaser's Signature: _____ Date: _____

(Section 18551 of the Health and Safety Code shall be reprinted on the reverse side of this document.)

(2) All funds in the escrow account, other than escrow fees, amounts for accessories not yet delivered, and any other amounts mutually agreed to by the dealer and buyer are disbursed.

(3) The buyer takes delivery of the manufactured home, mobilehome, or multiunit manufactured housing. For the purpose of this section, taking delivery occurs upon the transfer of the home to the buyer at a location mutually agreed upon and as specified in the purchase agreement and the escrow instructions.

(c) The warranty period pursuant to Chapter 3 (commencing with Section 1797) of the Civil Code shall expire one year after either 120 days after the close of escrow or upon the issuance of the certificate of occupancy, whichever occurs first.

(d) All sales subject to this section shall meet the escrow requirements of Section 18035.2 and the reporting requirements of Section 18080.5. An escrow agent shall not create an escrow instruction wherein a purchaser accepts responsibility for the installation of a manufactured home unless and until the escrow agent is in receipt of the declaration specified in subdivision (a). An escrow instruction created before the receipt of the declaration is null and void and unenforceable.

(e) The report of sale and any related required documents shall be filed with the department within 10 calendar days of the close of escrow. The department shall designate its record as "pending installation" for the unit until the certificate of occupancy is issued and the recorded HCD 433A and applicable fees are received from the enforcement agency. Only at this time shall the record be amended to designate the foundation type to be a permanent foundation pursuant to subdivision (a) of Section 18551 and the department's record cancelled.

(Added by Stats. 2006, Ch. 80, Sec. 1. Effective January 1, 2007.)

18035.3. (a) For every sale by a dealer of a new or used manufactured home or mobilehome, either the purchase order, conditional sale contract, or other document evidencing the purchase thereof, or any attachment to a purchase document signed and dated by the purchaser, shall contain all of the following:

(1) A description of the manufactured home or mobilehome, a description and the cash price of each accessory, structure, or service included with the purchase, and the total cash price for the purchase. The statement shall also state whether the purchase price includes or excludes the towbar, wheels, wheel hubs, tires, and axles and, if they are not included in the purchase price, the price of each shall be listed.

(2) The amount, if any, charged by the dealer for documentary preparation and, if a documentary preparation charge is imposed, a notice advising the purchaser that the charge is not a governmental fee.

(3) A notice in type no smaller than 8-point that complaints concerning the purchase shall be referred to the dealer and, if the complaint is not resolved, may be referred to the Department of Housing and Community Development, Division of Codes and Standards, Occupational Licensing. The notice shall contain the current address and telephone number of the department.

(4) A notice, in at least 10-point boldface type reading as follows:

(A) Do NOT sign the purchase agreement before you read it or if it contains any blank spaces to be filled in.

(B) You are entitled to a completely filled-in copy of that agreement and, if purchasing a manufactured home or mobilehome covered by a warranty, a copy of the warranty.

(5) The name, business address, and contractor's license number of the licensed contractor whom the dealer certifies as performing the installation of the manufactured home or mobilehome pursuant to subdivision (c) of Section 7026.2 of the Business and Professions Code.

(6) The disclosures required by this subdivision need not be contained in the same document.

(b) A failure to disclose pursuant to this section shall not be the basis for rescission of a conditional sales contract.

(c) Notwithstanding any other provision of this part to the contrary, a failure to provide the disclosures specified in paragraph (5) of subdivision (a) is a ground for disciplinary action and not a criminal offense.

(d) If the dealer is also licensed as a real estate broker, the sale of a manufactured home or mobilehome being installed on a foundation system pursuant to Section 18551 may be included in the purchase document for the underlying real property, if the requirements of this section are met.

(Amended by Stats. 1998, Ch. 689, Sec. 11. Effective January 1, 1999.)

18035.4. Sections 18035, 18035.1, and 18035.2 shall not apply to the sale of manufactured homes or mobilehomes to:

(a) The federal government.

(b) The state.

(c) Any agency or political subdivision of the state.

(d) Any city, county, or city and county.

(Added by Stats. 1987, Ch. 1339, Sec. 3.)

18035.5. (a) As used in this section:

(1) "Secured party" means a legal owner or junior lienholder.

(2) "Entitled party" means a registered owner or any person holding a security interest or other lien or encumbrance which is subordinate to the security interest of the secured party or an escrow agent in conjunction with an escrow involving the sale or transfer of an interest in a manufactured home, mobilehome, or commercial coach subject to registration under this part.

(b) A secured party shall, on the written demand of an entitled person, or the authorized agent of the entitled person, prepare and deliver to the person demanding it, a true, correct, and complete copy of the conditional sale contract or the promissory note and security agreement and any subsequent modification thereto, and a written statement indicating all of the following:

(1) The amount of the unpaid balance of the obligation owing to the secured party and the interest rate, together with the total amounts, if any, of all overdue installments of either principal or interest, or both.

(2) The amounts of periodic payments, if any.

(3) The date on which the obligation is due in whole or in part.

(4) The date to which taxes and special assessments have been paid to the extent that information is known to the secured party.

(5) The amount of hazard insurance in effect and the term and premium of that insurance to the extent that information is known to the secured party.

(6) The amount in an account, if any, maintained for the accumulation of funds with which to pay taxes and insurance premiums.

(7) The nature and, if known, the amount of any additional charges, costs, or expenses paid or incurred by the secured party which have become a lien on the manufactured home, mobilehome, or commercial coach involved.

(8) If applicable, a statement indicating that subsequently incurred obligations will be secured by the manufactured home, mobilehome, or commercial coach and, if there is a maximum amount that may thereafter become secured, the maximum amount that may thereafter become secured.

(c) The secured party may, before delivering a statement, require reasonable proof that the person making the demand is, in fact, an entitled person, in which event the secured party shall not be subject to the penalties of this section until 21 days after receipt of the proof herein provided for. A statement in writing signed by the entitled person appointing an authorized agent when delivered personally to the secured party or delivered by registered return receipt mail shall constitute reasonable proof as to the identity of an agent. Similar delivery of a policy of title insurance, preliminary report issued by a title company, original or photographic copy of a sales agreement covering the manufactured home, mobilehome, or commercial coach or certified copy of letters testamentary, guardianship, or conservatorship shall constitute reasonable proof as to the identity of a successor in interest, provided the person demanding a statement is named as successor in interest in the document.

(d) Delivery of the statement by the secured party, as herein referred to, shall mean depositing or causing to be deposited in the United States mail an envelope, with postage prepaid, containing a copy of the statement, addressed to the person whose name and address is set forth in the demand therefor.

(e) If a secured party for a period of 21 days after receipt of the written demand willfully fails to prepare and deliver the statement, the secured party is liable to the entitled person for all damages which may be sustained by reason of the refusal and, whether or not actual damages are sustained, the secured party shall forfeit to the entitled person the sum of three hundred dollars (\$300). Each such failure to prepare and deliver such a statement, occurring at a time when, pursuant to this section, the secured party is required to prepare and deliver the statement, creates a separate cause of action, but a judgment awarding an entitled person such forfeiture, or damages and forfeiture, for any such failure to prepare and deliver a statement bars recovery of such damages and forfeiture for any other failure to prepare and deliver a statement, with respect to the same obligation, in compliance with a demand therefor made within six months before or after the demand as to which the award was made.

(f) If the secured party has more than one branch, office, or other place of business, then the demand shall be made to the branch or office at which the payments of the obligation are made, and the statement, unless it specifies otherwise, shall be deemed to apply only to the unpaid balance owing to or payable at that branch office or place of business.

(g) The secured party may make a charge not to exceed fifty dollars (\$50) for furnishing the required statement, whether or not the security agreement covering the manufactured home, mobilehome, or commercial coach so provides.

(Repealed and added by Stats. 1983, Ch. 1124, Sec. 21. Operative July 1, 1984, by Sec. 57 of Ch. 1124.)

18036. In the event a buyer of a manufactured home or mobilehome obligates himself or herself to purchase, or receive possession of, a manufactured home or mobilehome pursuant to a contract or purchase order, and the seller knows that the buyer intends to obtain financing from a third party without the assistance of the seller, and the buyer is unable to obtain the financing within 30 days of the execution of the contract or purchase order, the contract or purchase order shall be deemed rescinded and all consideration thereupon, other than escrow fees, shall be returned by the respective parties without demand.

(Amended by Stats. 1983, Ch. 1076, Sec. 27.)

18036.5. (a) As used in this section:

(1) "Act" means the federal Truth in Lending Act, as amended (15 U.S.C., Sec. 1601, et seq.).

(2) "Regulation Z" means any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System under the act and any interpretation or approval issued by an official or employee of the Federal Reserve System duly authorized by the board under the act to issue these interpretations or approvals.

(b) A conditional sale contract relating to a new or used manufactured home or mobilehome subject to registration under this part shall contain all the disclosures required by Regulation Z if Regulation Z otherwise applies to the transaction. Any disclosure violation corrected pursuant to subdivision (d) shall not be the basis of any recovery by the buyer.

(c) With respect to a violation which is not corrected as provided in subdivision (d), the seller shall be liable to the buyer in an amount equal to the sum of:

(1) Any actual damage sustained by such person as a result of the failure;

(2) (A) In the case of an individual action twice the amount of any finance charge in connection with the transaction, except that the liability under this subparagraph shall not be less than one hundred dollars (\$100) or greater than one thousand dollars (\$1,000); or

(B) In the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same seller shall not be more than the lesser of five hundred thousand dollars (\$500,000) or 1 per cent of the net worth of the seller; and

(3) In the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the seller, the resources of the seller, the number of persons adversely affected, and the extent to which the seller's failure of compliance was intentional. In connection with the disclosures referred to in Section 128 of the act, a seller shall have a liability determined under paragraph (2) of this subdivision only for failing to comply with the requirements of paragraph (2) (insofar as it requires a disclosure of the "amount financed"), (3), (4), (5), (6), or (9) of Section 128(a) of the act. With respect to any failure to make disclosures required under this section, liability shall be imposed only upon the seller required to make disclosure, except as provided in subdivision (k).

(d) A seller or assignee has no liability under this section for any failure to comply with any requirement imposed under this section if within 60 days after discovering an error, whether through the seller's or assignee's own procedures or pursuant to procedures permissible under the act, and prior to the institution of an action under this section or the receipt of written notice of the error from the buyer, the seller or assignee notifies the buyer concerned of the error and makes whatever adjustments as are necessary to assure that the buyer will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(e) A seller or assignee may not be held liable in any action brought under this section if the seller or assignee 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. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(f) When there are multiple buyers in a transaction, there shall be no more than one recovery of damages under paragraph (2) of subdivision (c).

(g) Any action under this section may be brought within one year from the date of the occurrence of the violation. This subdivision does not bar a person from asserting a violation of this section in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by law. No action may be brought under this section if an action relating to the transaction or a defense thereto has been brought or asserted under the act.

(h) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board of Governors of the Federal Reserve System to issue such interpretations or approvals under such procedures as the Board of Governors of the Federal Reserve System may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

(i) The multiple failure to disclose to any person any information required under this section shall entitle the buyer to a single recovery.

(j) A buyer may not take any action to offset any amount for which a seller or assignee is potentially liable to such buyer under paragraph (2) of subdivision (c) against any amount owed by such buyer, unless the amount of the seller's or assignee's liability under this section has been determined by judgment of a court of competent jurisdiction in an action to which such buyer was a party. This subdivision does not bar a buyer then in default on the obligation from asserting a violation of this section as an original action, or as a defense or counterclaim to an action to collect amounts owed by the buyer brought by a person liable under this title.

(k) Except as otherwise specifically provided in this section, any civil action for a violation of this section which may be brought against a seller may be maintained against any assignee of such seller only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, provided, however, that no civil action may be brought against such assignee for such violation if the assignment was involuntary. For purposes of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to, (1) a disclosure which can be determined to be incomplete or inaccurate from the

face of the disclosure statement or other documents assigned, or (2) a disclosure which does not use the terms required to be used in Regulation Z.

(l) In any action or proceeding by or against any assignee of the seller without knowledge to the contrary by the assignee when the assignee acquires the obligation, written acknowledgment of receipt by a buyer to whom disclosures are required to be given pursuant to this section shall be conclusive proof of the delivery thereof and, except as provided in subdivision (k), of compliance with this section. This subdivision does not affect the rights of the buyer in any action against the original seller.

(m) No final judgment shall be entered in an action brought pursuant to this section in favor of a buyer until the later of (1) the expiration of one year after the occurrence of the violation, or (2) the entry of judgment in an action for the violation brought under Section 130 of the act and filed within such one-year period. A buyer who has recovered any amount by way of judgment, settlement, or otherwise under Section 130 or 131 of the act shall not be entitled to any damages or other relief for the violation under this section.

(Amended by Stats. 1983, Ch. 1124, Sec. 22. Operative July 1, 1984, by Sec. 57 of Ch. 1124.)

18037. Notwithstanding any agreement to the contrary, the holder of a conditional sale contract for which Regulation Z disclosures are required pursuant to Section 18036.5 is subject to all equities and defenses of the buyer against the seller, except as provided by Section 18036.5. However, the assignee's liability may not exceed the amount of the debt owing to the assignee at the time of assignment. The assignee shall have recourse against the seller to the extent of any liability incurred by the assignee pursuant to this section whether the assignment was with or without recourse except to the extent of any written agreement between the seller and assignee which expressly references this section and modifies its effect.

(Amended by Stats. 1983, Ch. 1124, Sec. 23. Operative July 1, 1984, by Sec. 57 of Ch. 1124.)

18037.5. (a) In the event of default under the provisions of any security agreement relating to a loan or conditional sale contract which, according to its terms, gives the secured party the right to foreclose its security interest in a manufactured home, mobilehome, truck camper, or floating home subject to registration under this part which is not inventory of a dealer, including the right to repossess the property, notwithstanding any contrary provisions in the security agreement or conditional sale contract or in any other agreement entered into prior to default, the secured party may foreclose its security interest only by satisfying the requirements of this section.

(1) Unless the registered owner of the manufactured home, mobilehome, truck camper, or floating home has abandoned the property or has voluntarily surrendered possession of the property to the foreclosing creditor, the foreclosing creditor shall deposit or cause to be deposited in the United States mail an envelope addressed to each registered owner as shown on the current registration of the manufactured home, mobilehome, truck camper, or floating home, registered or certified with postage prepaid, containing a notice in substantially the following form and in at least 10-point type, which notice shall be signed by the foreclosing creditor:

NOTICE OF DEFAULT
To: _____ (names of all registered owners) _____
You (if the registered owner is not the person who is in default, substitute name of defaulting person(s)) are in default under the terms of the
_____ (identify security agreement by title or caption and date) _____
in that _____ (describe default) _____ .
This default gives the creditor named below the right to sell your manufactured home, mobilehome, truck camper, or floating home which is registered with the Department of Housing and Community Development under registration number(s)
_____ (give registration number(s)) _____ , located at
_____ (give location of property as shown on current registration)

unless the default is promptly cured.
You may cure the default by _____ (describe conditions _____

_____ precedent to reinstatement required to cure default) _____
or by entirely repaying the outstanding secured indebtedness on or before
(state final date available for cure, which date shall be no earlier than 45 days after mailing of the notice)
To cure the default you may also be required to reimburse the creditor for its reasonable attorney's fees and legal expenses and for any other sums to which the creditor may have become entitled under the terms of your credit agreement after the date of this notice. You may entirely repay the outstanding obligation by paying the creditor
(state dollar amount required to obtain release of security interest, and if the amount may increase due to passage of time, state that fact)
plus any amount necessary to reimburse the creditor for its reasonable attorney's fees and legal expenses and any other sums to which the creditor may have become entitled after the date of this notice under the terms of your agreement.

(2) Within five days following the mailing of the notice of default required by paragraph (1), the foreclosing creditor shall forward a copy thereof to the legal owner shown on the current registration card, if different than the foreclosing creditor, and to each junior lienholder shown on the current registration card, if different than the foreclosing creditor, and, effective July 1, 1985, to the department. The notice shall be forwarded to each party in the same manner as provided for mailing the original notice to the registered owner.

(3) In the event of default under the provisions of any security agreement relating to a loan or conditional sale contract which, according to its terms, gives the secured party the right to foreclose its security interest in a manufactured home, mobilehome, truck camper, or floating home, each registered owner and each junior lienholder having a security interest which is subordinate to the security interest of the foreclosing creditor shall have the right to cure the default by the methods and in the manner prescribed in the notice within 45 days after mailing of the notice to the registered owner required by paragraph (1).

(4) If the default is not cured within the time indicated on the notice required by paragraph (1), or if the property has been abandoned by the registered owner or voluntarily surrendered by the registered owner to the foreclosing creditor, the creditor may proceed to sell the property at private or public sale pursuant to the provisions of Section 9610 of the Commercial Code, except as provided in paragraph (5) and subdivision (c). The notice of sale required by Sections 9610, 9611, 9617, 9618, and 9624 of the Commercial Code shall not be mailed or delivered before expiration of the period for the right to cure the default, as stated in the notice required by paragraph (1), unless the property has been abandoned by the registered owner or voluntarily surrendered by the registered owner to the foreclosing creditor.

(5) Notwithstanding any contrary provisions of Sections 9610, 9611, 9615, 9617, 9618, and 9624 of the Commercial Code, the foreclosing creditor shall deposit or cause to be deposited in the United States mail, registered or certified with postage prepaid, an envelope containing the notice of sale addressed to each party to whom the notice of default was mailed pursuant to paragraph (2). The notice of sale shall be given at least 10 days before the date fixed for a public sale or on or after which any private sale is to be made.

(6) For purposes of this subdivision, a manufactured home, mobilehome, truck camper, or floating home shall be deemed abandoned if the foreclosing creditor gives written notice of its belief of abandonment to the registered owner as provided in this paragraph and the registered owner fails to give the foreclosing creditor written notice, prior to the appropriate date specified in the foreclosing creditor's notice, stating that the registered owner has not abandoned and does not intend to abandon the manufactured home, mobilehome, truck camper, or floating home and stating an address at which the registered owner may be served by certified mail with a summons in connection with any legal action which the foreclosing creditor may appropriately initiate. The foreclosing creditor may give a notice of belief of abandonment only where it reasonably believes that the registered owner has abandoned the manufactured home, mobilehome, truck camper, or floating home. The notice of belief of abandonment shall be personally delivered to the registered owner or sent by registered or certified mail, with postage prepaid, to the registered owner at his or her last known address and, if there is reason to believe that the notice sent to that address will not be received by the registered owner, to any other address, if any, known to the foreclosing creditor where the registered owner may reasonably be expected to receive the notice. The notice of belief of abandonment shall be in substantially the following form in at least 10-point type:

NOTICE OF BELIEF OF ABANDONMENT	
To:	
(names of all registered owners)	
This notice is given pursuant to Section 18037.5 of the Health and Safety Code concerning your manufactured home, mobilehome, truck camper, or floating home located at	
.	
(address of manufactured home, mobilehome, truck camper, or floating home as shown on current registration)	
You	
	(if the registered owner is not the person who is in default, substitute name of defaulting person(s))
are in default under the terms of the	
(identify security agreement or conditional sale contract by title or caption and date)	
in that	.
	(describe default)
This default gives the foreclosing creditor named below the right to sell your manufactured home, mobilehome, truck camper, or floating home which is registered with the Department of Housing and Community Development under number(s)	
(give registration number(s))	
unless the default is promptly cured. Unless the foreclosing creditor receives a written notice from you to the contrary by	
,	
(insert a date not less than 15 days after this notice is served personally or, if mailed, not less than 18 days after this notice is deposited in the mail)	
your manufactured home, mobilehome, truck camper, or floating home will be deemed abandoned, which means that the foreclosing creditor may sell your manufactured home, mobilehome, truck camper, or floating home sooner than would otherwise be permitted by law. The written notice you must send to the foreclosing creditor shall be sent to	
(address of foreclosing creditor)	
and shall state both of the following:	
1. Your intent not to abandon the manufactured home, mobilehome, truck camper, or floating home.	
2. An address at which you may be served by certified mail with a summons in connection with any legal action which the foreclosing creditor may appropriately initiate.	

To: _____ (names of all registered owners) _____

This notice is given pursuant to Section 18037.5 of the Health and Safety Code concerning your manufactured home, mobilehome, truck camper, or floating home located at

(address of manufactured home, mobilehome, truck camper, or floating home as shown on current registration)

You

(if the registered owner is not the person who is in default, substitute name of defaulting person(s))

are in default under the terms of the

(identify security agreement or conditional sale contract by title or caption and date)

in that (describe default).

This default gives the foreclosing creditor named below the right to sell your manufactured home, mobilehome, truck camper, or floating home which is registered with the Department of Housing and Community Development under number(s)

_____ (give registration number(s)) _____

unless the default is promptly cured. Unless the foreclosing creditor receives a written notice from you to the contrary by

,

(insert a date not less than 15 days after this notice is served personally or, if mailed, not less than 18 days after this notice is deposited in the mail)

your manufactured home, mobilehome, truck camper, or floating home will be deemed abandoned, which means that the foreclosing creditor may sell your manufactured home, mobilehome, truck camper, or floating home sooner than would otherwise be permitted by law. The written notice you must send to the foreclosing creditor shall be sent to

_____ (address of foreclosing creditor) _____

and shall state both of the following:

1. Your intent not to abandon the manufactured home, mobilehome, truck camper, or floating home.

2. An address at which you may be served by certified mail with a summons in connection with any legal action which the foreclosing creditor may appropriately initiate.

	(name of foreclosing creditor)
	(signature of foreclosing creditor)

(b) In the event of default under the provisions of any security agreement relating to a loan or a conditional sale contract in which the collateral is a manufactured home, mobilehome, truck camper, or floating home subject to registration under this part which is inventory of a dealer or a commercial coach, the secured party may repossess and dispose of the collateral in accordance with the provisions of the security agreement or conditional sale contract and applicable law, including the provisions of Division 9 (commencing with Section 9101) of the Commercial Code. Upon repossession of a manufactured home, mobilehome, truck camper, or floating home subject to registration under this part which is inventory of a dealer or a commercial coach subject to registration under this part, the secured creditor shall prepare and forward to the department a notice of repossession on the form prescribed by the department.

(c) The proceeds of the sale of a manufactured home, mobilehome, commercial coach, truck camper, or floating home shall be applied, in the following order, to:

(1) The reasonable and necessary expenses incurred for preparing for and conducting the sale and, if the foreclosing creditor has obtained possession of the collateral prior to the disposition, the reasonable and necessary expenses for the retaking and holding of the collateral and to the extent provided for in the agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the foreclosing creditor in retaking the property from any person not a party to the credit contract.

(2) The satisfaction of the indebtedness secured by the security interest of the foreclosing creditor under which the disposition is made.

(3) The satisfaction of indebtedness secured by any subordinate liens or encumbrances on the property in the order of their priority as provided in Section 18105, if with respect to a junior creditor written notification of demand therefor is received before distribution of the proceeds is completed, and to the satisfaction of any subordinate attachment lien or execution lien pursuant to subdivision (b) of Section 701.040 of the Code of Civil Procedure if notice of the levy of attachment or execution is received before distribution of the proceeds is completed. If requested by the foreclosing creditor, the holder of a subordinate lien or encumbrance shall furnish reasonable proof of his or her interest, and unless it does so, the foreclosing creditor need not comply with its demand.

(4) The satisfaction of indebtedness secured by all senior liens or encumbrances in the order of their priority as provided in Section 18105, if with respect to a senior creditor written demand therefor is received by the foreclosing creditor before distribution of the proceeds is completed. If requested by the foreclosing creditor, the holder of a senior lien or encumbrance shall furnish reasonable proof of his or her interest, and unless he or she does so, the foreclosing creditor need not comply with his or her demand.

(5) To the registered owner within 45 days after the sale is conducted if a surplus remains.

(d) Unless automatically provided to the registered owner within 45 days after the sale of a manufactured home, mobilehome, truck camper, or floating home if a request for an accounting is made within one year of the sale, the foreclosing creditor shall provide to the registered owner a written accounting containing the gross sales proceeds and its allocation pursuant to subdivision (c). In the event any surplus is paid to the registered owner pursuant to paragraph (5) of subdivision (c), the foreclosing creditor shall furnish such an accounting whether or not requested by the registered owner.

(Amended by Stats. 1999, Ch. 991, Sec. 49. Effective January 1, 2000. Operative July 1, 2001, by Sec. 75 of Ch. 991.)

18038.7. No deficiency judgment shall lie in any event, after the sale of any manufactured home, mobilehome, commercial coach, truck camper, or floating home subject to registration pursuant to this part, for failure of the purchaser to complete his or her sale contract given to the seller to secure payment of the balance of the purchase price of the manufactured home, mobilehome, commercial coach, truck camper, or floating home. This section shall not apply in the event there is substantial damage to the manufactured home, mobilehome, commercial coach, truck camper, or floating home other than wear and tear from normal usage.

In addition, no deficiency judgment shall lie in any event under a deed of trust or mortgage or note on a floating home serving as a dwelling for not more than four families given to a lender to secure payment of a loan which was in fact used to pay for all or part of the purchase price of that dwelling occupied, entirely or in part, by the purchaser.

(Amended by Stats. 1991, Ch. 942, Sec. 13.)

18039. No agreement entered into pursuant to this chapter shall contain any provision by which the buyer waives his or her rights under this chapter, and any waiver shall be deemed contrary to public policy and shall be void and unenforceable.

(Added by Stats. 1981, Ch. 975, Sec. 3.)

18039.1. Notwithstanding any other provision of law to the contrary, if a manufactured home or mobilehome is affixed to a permanent foundation pursuant to Section 18551, or security for the manufactured home or mobilehome loan includes the real property it is affixed to or installed upon, procedures for notice of default and sale shall be governed by Chapter 2 (commencing with Section 2920) of Title 14 of the Civil Code and shall not be governed by the provisions of this chapter.

(Amended by Stats. 1983, Ch. 1076, Sec. 28.)

18039.5. (a) The provisions of this chapter, except Section 18037.5, shall not apply to any loan or credit sale secured by a manufactured home or mobilehome subject to registration under this part unless the loan or credit sale was made under circumstances which required disclosures under Regulation Z, as defined by Section 18036.5.

(b) In no respect shall the sale or financing of a manufactured home or mobilehome subject to this chapter and of any goods or services sold in conjunction with the sale of the manufactured home or mobilehome be subject to the Retail Installment Sales Act,

Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code or the Automobile Sales Finance Act, Chapter 2b (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code.

(Added by Stats. 1983, Ch. 1124, Sec. 26. Operative July 1, 1984, by Sec. 57 of Ch. 1124.)