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DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.)*

PART 2. CONTRACTS [1549 - 1701] (*Part 2 enacted 1872.)*

TITLE 4.5. LIQUIDATED DAMAGES [1671 - 1681] (*Heading of Title 4.5 added by Stats. 1977, Ch. 198.)*

CHAPTER 2. Default on Real Property Purchase Contract [1675 - 1681] (*Chapter 2 added by Stats. 1977, Ch. 198.)*

1675. (a) As used in this section, "residential property" means real property primarily consisting of a dwelling that meets both of the following requirements:

(1) The dwelling contains not more than four residential units.

(2) At the time the contract to purchase and sell the property is made, the buyer intends to occupy the dwelling or one of its units as his or her residence.

(b) A provision in a contract to purchase and sell residential property that provides that all or any part of a payment made by the buyer shall constitute liquidated damages to the seller upon the buyer's failure to complete the purchase of the property is valid to the extent that payment in the form of cash or check, including a postdated check, is actually made if the provision satisfies the requirements of Sections 1677 and 1678 and either subdivision (c) or (d) of this section.

(c) If the amount actually paid pursuant to the liquidated damages provision does not exceed 3 percent of the purchase price, the provision is valid to the extent that payment is actually made unless the buyer establishes that the amount is unreasonable as liquidated damages.

(d) If the amount actually paid pursuant to the liquidated damages provision exceeds 3 percent of the purchase price, the provision is invalid unless the party seeking to uphold the provision establishes that the amount actually paid is reasonable as liquidated damages.

(e) For the purposes of subdivisions (c) and (d), the reasonableness of an amount actually paid as liquidated damages shall be determined by taking into account both of the following:

(1) The circumstances existing at the time the contract was made.

(2) The price and other terms and circumstances of any subsequent sale or contract to sell and purchase the same property if the sale or contract is made within six months of the buyer's default.

(f) (1) Notwithstanding either subdivision (c) or (d), for the initial sale of newly constructed attached condominium units, as defined pursuant to Section 783, that involves the sale of an attached residential condominium unit located within a structure of 10 or more residential condominium units and the amount actually paid to the seller pursuant to the liquidated damages provision exceeds 3 percent of the purchase price of the residential unit in the transaction both of the following shall occur in the event of a buyer's default:

(A) The seller shall perform an accounting of its costs and revenues related to and fairly allocable to the construction and sale of the residential unit within 60 calendar days after the final close of escrow of the sale of the unit within the structure.

(B) The accounting shall include any and all costs and revenues related to the construction and sale of the residential property and any delay caused by the buyer's default. The seller shall make reasonable efforts to mitigate any damages arising from the default. The seller shall refund to the buyer any amounts previously retained as liquidated damages in excess of the greater of either 3 percent of the originally agreed-upon purchase price of the residential property or the amount of the seller's losses resulting from the buyer's default, as calculated by the accounting.

(2) The refund shall be sent to the buyer's last known address within 90 days after the final close of escrow of the sale or lease of all the residential condominium units within the structure.

(3) If the amount retained by the seller after the accounting does not exceed 3 percent of the purchase price, the amount is valid unless the buyer establishes that the amount is unreasonable as liquidated damages pursuant to subdivision (e).

(4) Subdivision (d) shall not apply to any dispute regarding the reasonableness of any amount retained as liquidated damages pursuant to this subdivision.

(5) Notwithstanding the time periods regarding the performance of the accounting set forth in paragraph (1), if a new qualified buyer has entered into a contract to purchase the residential property in question, the seller shall perform the accounting within 60 calendar days after a new qualified buyer has entered into a contract to purchase.

(6) As used in this subdivision, "structure" means either of the following:

(A) Improvements constructed on a common foundation.

(B) Improvements constructed by the same owner that must be constructed concurrently due to the design characteristics of the improvements or physical characteristics of the property on which the improvements are located.

(7) As used in this subdivision, "new qualified buyer" means a buyer who either:

(A) Has been issued a loan commitment, which satisfies the purchase agreement loan contingency requirement, by an institutional lender to obtain a loan for an amount equal to the purchase price less any downpayment possessed by the buyer.

(B) Has contracted to pay a purchase price that is greater than or equal to the purchase price to be paid by the original buyer.

(g) This section shall become operative on July 1, 2014.

(Repealed (in Sec. 1) and added by Stats. 2008, Ch. 665, Sec. 2. Effective January 1, 2009. Section operative July 1, 2014, by its own provisions.)

1676. Except as provided in Section 1675, a provision in a contract to purchase and sell real property liquidating the damages to the seller if the buyer fails to complete the purchase of the property is valid if it satisfies the requirements of Section 1677 and the requirements of subdivision (b) of Section 1671.

(Repealed and added by Stats. 1977, Ch. 198.)

1677. A provision in a contract to purchase and sell real property liquidating the damages to the seller if the buyer fails to complete the purchase of the property is invalid unless:

(a) The provision is separately signed or initialed by each party to the contract; and

(b) If the provision is included in a printed contract, it is set out either in at least 10-point bold type or in contrasting red print in at least eight-point bold type.

(Added by Stats. 1977, Ch. 198.)

1678. If more than one payment made by the buyer is to constitute liquidated damages under Section 1675, the amount of any payment after the first payment is valid as liquidated damages only if (1) the total of all such payments satisfies the requirements of Section 1675 and (2) a separate liquidated damages provision satisfying the requirements of Section 1677 is separately signed or initialed by each party to the contract for each such subsequent payment.

(Added by Stats. 1977, Ch. 198.)

1679. This chapter applies only to a provision for liquidated damages to the seller if the buyer fails to complete the purchase of real property. The validity of any other provision for liquidated damages in a contract to purchase and sell real property shall be determined under Section 1671.

(Added by Stats. 1977, Ch. 198.)

1680. Nothing in this chapter affects any right a party to a contract for the purchase and sale of real property may have to obtain specific performance.

(Added by Stats. 1977, Ch. 198.)

1681. This chapter does not apply to real property sales contracts as defined in Section 2985.

(Added by Stats. 1977, Ch. 198.)

