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

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.*)

TITLE 14. LIEN [2872 - 3081] (*Title 14 enacted 1872.*)

CHAPTER 2. Mortgage [2920 - 2968] (*Chapter 2 enacted 1872.*)

ARTICLE 3. Disclosures on Purchase Money Liens on Residential Property [2956 - 2967] (*Article 3 added by Stats. 1982, Ch. 968, Sec. 1.*)

2956. In a transaction for the purchase of a dwelling for not more than four families in which there is an arranger of credit, which purchase includes an extension of credit by the vendor, a written disclosure with respect to that credit transaction shall be made, as required by this article:

- (a) To the purchaser, by the arranger of credit and the vendor (with respect to information within the knowledge of the vendor).
- (b) To the vendor, by the arranger of credit and the purchaser (with respect to information within the knowledge of the purchaser).

If there is more than one arranger of credit and one of those arrangers has obtained the offer by the purchaser to purchase the property, that arranger shall make the disclosure, unless the parties designate another person in writing.

(*Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.*)

2957. The following definitions shall apply for the purposes of this article:

(a) "Arranger of credit" means:

(1) A person, other than a party to the credit transaction (except as provided in paragraph (2)), who is involved in developing or negotiating credit terms, participates in the completion of the credit documents, and directly or indirectly receives compensation for arrangement of the credit or from any transaction or transfer of the real property which is facilitated by that extension of credit. As used in this paragraph, "arranger of credit" does not apply to an attorney who is representing one of the parties to the credit transaction.

(2) A party to the transaction who is either a real estate licensee, licensed under provisions of Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, or is an attorney licensed under Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code if neither party to the transaction is represented by an agent who is a real estate licensee. In any transaction in which disclosure is required solely by the provisions of this paragraph, the obligations of this article shall apply only to a real estate licensee or attorney who is a party to the transaction, and not to any other party.

(3) An arranger of credit does not include a person acting in the capacity as an escrow in the transaction.

(4) Persons described in paragraph (2) who are acting in the capacity as an escrowholder in the transaction shall nevertheless be deemed arrangers of credit where such persons act on behalf of a party to the transaction or an agent of such party in the development or negotiation of credit terms. Neither the completion of credit documents in accordance with instructions of a party or his or her agent nor the furnishing of information regarding credit terms to a party or his or her agent shall be considered to be the development or negotiation of credit terms.

(b) "Balloon payment note" means a note which provides for a final payment as originally scheduled which is more than twice the amount of any of the immediately preceding six regularly scheduled payments or which contains a call provision; provided, however, that if the call provision is not exercised by the holder of the note, the existence of the unexercised call provision shall not cause the note to be deemed to be a balloon payment note.

(c) "Call provision" means a note contract term that provides the holder of the note with the right to call the note due and payable either after a specified period has elapsed following closing or after a specified date.

(d) "Credit" means the right granted by a vendor to a purchaser to purchase property and to defer payment therefore.

The credit involved must be subject to a finance charge or payable by written agreement in more than four installments, whether providing for payment of principal and interest, or interest only, not including a downpayment.

(e) "Credit documents" are those documents which contain the binding credit terms, and include a note or a contract of sale if the contract spells out terms upon which a vendor agrees to provide financing for a purchaser.

(f) "Purchase" includes acquisition of equitable title by a real property sales contract as defined in Section 2985, or lease with an option to purchase, where the facts demonstrate intent to transfer equitable title.

(g) "Security documents" include a mortgage, deed of trust, real property sales contract as defined in Section 2985, or lease with an option to purchase, where the facts demonstrate an intent to transfer equitable title.

(h) "All inclusive trust deed" is an instrument which secures indebtedness owed by the trustor to the beneficiary, which indebtedness includes a debt or debts owed by that beneficiary to the beneficiary of another security document secured by the same property which is senior in priority.

(Amended by Stats. 1986, Ch. 1360, Sec. 2.)

2958. A disclosure is not required under this article, to a purchaser when that purchaser is entitled to receive, a disclosure pursuant to the Federal Truth-In-Lending Act (15 U.S. Code 1604, as amended), the Real Estate Settlement Procedures Act (12 U.S. Code 2601, as amended), or Section 10240 of the Business and Professions Code; or to a vendor if the vendor is entitled to receive, a disclosure pursuant to Sections 10232.4 and 10232.5 of the Business and Professions Code, or disclosure pursuant to a qualification under Section 25110 of the Corporations Code or disclosure pursuant to regulations of the Department of Corporations granting an exemption from Section 25110 of the Corporations Code.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

2959. The disclosures required by this article shall be made as soon as practicable, but before execution of any note or security documents. If any disclosure is made after the execution of credit documents by the purchaser, such documents shall be contingent on the purchaser's approval of the disclosures prior to execution of the security documents. The disclosure statement shall be receipted for by the purchaser and the vendor. The disclosure shall be signed by the arranger of credit and a copy shall be delivered respectively to the purchaser and the vendor and the arranger shall retain a true copy of the executed statements for three years.

The provisions of this section do not apply to the disclosures required by Section 2966.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

2960. If information disclosed in accordance with this article is subsequently rendered inaccurate as a result of any act, occurrence, or agreement between the parties to the transaction subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom shall not constitute a violation of this article. If, at the time disclosure is to be made, an item of information required to be disclosed is unknown or not available to the vendor, purchaser, or arranger of credit, and the arranger of credit has made a reasonable effort to ascertain it, the disclosure may employ an approximation of the information, provided the approximation is clearly identified as such, is reasonable, is based on the best information available to the arranger, and is not used for the purpose of circumventing or evading the provisions of this article.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

2961. Every disclosure required by this article and every act which is to be performed in making that disclosure shall be made in good faith. For the purposes of this article, "good faith" means honesty in fact in the conduct of the transaction.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

2962. Any disclosure made pursuant to this article may be amended in writing by the person making the disclosure, provided that any amendment shall be subject to the provisions of Section 2959.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

2963. The disclosures required to both purchaser and vendor by this article are:

(a) An identification of the note or other credit documents or security documents and of the property which is the security for the transaction.

(b) A description of the terms of the promissory note or other credit documents or a copy of the note or other credit documents.

(c) Insofar as available, the principal terms and conditions of each recorded encumbrance which constitutes a lien upon the property which is or will be senior to the financing being arranged, including the original balance, the current balance, the periodic payment, any balloon payment, the interest rate (and any provisions with respect to variations in the interest rate), the maturity date, and whether or not there is any current default in payment on that encumbrance.

(d) A warning that, if refinancing would be required as a result of lack of full amortization under the terms of any existing or proposed loans, such refinancing might be difficult or impossible in the conventional mortgage marketplace.

(e) If negative amortization is possible as a result of any variable or adjustable rate financing being arranged, a clear disclosure of this fact and an explanation of its potential effect.

(f) In the event that the financing involves an all inclusive trust deed, the disclosure shall indicate whether the credit or security documents specify who is liable for payment or responsible for defense in the case of an attempted acceleration by a lender or other obligee under a prior encumbrance, and whether or not the credit or security documents specify the responsibilities and rights of the parties in the event of a loan prepayment respecting a prior encumbrance which may result in a requirement for refinancing, a prepayment penalty, or a prepayment discount and, if such specification occurs, a recital of the provisions which apply.

(g) If the financing being arranged or any of the financing represented by a prior encumbrance could result in a balloon payment, or in a right in the lender or other obligee under such financing to require a prepayment of the principal balance at or after a stipulated date, or upon the occurrence of a stipulated event, a disclosure of the date and amount of any balloon payment or the amount which would be due upon the exercise of such right by the lender or obligee, and a statement that there is no assurance that new financing or loan extension will be available at the time of such occurrence.

(h) If the financing being arranged involves an all inclusive trust deed or real property sales contract, a disclosure of the party to whom payments will be made and who will be responsible for remitting these funds to payees under prior encumbrances and vendors under this transaction and a warning that, if that person is not a neutral third party, the parties may wish to agree to have a neutral third party designated for these purposes.

(i) A disclosure on the identity, occupation, employment, income, and credit data about the prospective purchaser, as represented to the arranger by the prospective purchaser; or, specifically, that no representation as to the credit-worthiness of the specific prospective purchaser is made by the arranger. A warning should also be expressed that Section 580b of the Code of Civil Procedure may limit any recovery by the vendor to the net proceeds of the sale of the security property in the event of foreclosure.

(j) A statement that loss payee clauses have been added to property insurance protecting the vendor, or that instructions have been or will be directed to the escrowholder, if any, in the transaction or the appropriate insurance carriers for addition of such loss payee clauses, or a statement that, if such provisions have not been made, that the vendor should consider protecting himself or herself by securing such clauses.

(k) A statement that a request for notice of default under Section 2924b has been recorded, or that, if it has not been recorded, the vendor should consider recording a request for notice of default.

(l) That a policy of title insurance has been obtained or will be obtained and be furnished to the vendor and purchaser, insuring the respective interests of the vendor and purchaser, or that the vendor and purchaser individually should consider obtaining a policy of title insurance.

(m) That a tax service has been arranged to report to the vendor whether property taxes have been paid on the property, and who will be responsible for the continued retention and compensation of tax service; or that the vendor should otherwise assure for himself or herself that the taxes on the property have been paid.

(n) A disclosure whether the security documents on the financing being arranged have been or will be recorded pursuant to Section 27280 of the Government Code, or a statement that the security of the vendor may be subject to intervening liens or judgments which may occur after the note is executed and before any resort to security occurs if the security documents are not recorded.

(o) If the purchaser is to receive any cash from the proceeds of the transaction, a statement of that fact, the amount, the source of the funds, and the purpose of the disbursement as represented by the purchaser.

(p) A statement that a request for notice of delinquency under Section 2924e has been made, or that, if it has not been made, the vendor should consider making a request for a notice of delinquency.

(Amended (as amended by Stats. 1984, Ch. 1331) by Stats. 1990, Ch. 788, Sec. 2.)

2964. The specification of items for disclosure in this article does not limit or abridge any obligation for disclosure created by any other provision of law or which may exist in order to avoid fraud, misrepresentation, or deceit in the transaction.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

2965. The validity of any credit document or of any security document subject to the provisions of this article shall not be invalidated solely because of the failure of any person to comply with this article. However, any person who willfully violates any provision of this article shall be liable in the amount of actual damages suffered by the vendor or purchaser as the proximate result of the violation.

No person may be held liable in any action under this article if it is shown by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)

2966. (a) In a transaction regulated by this article, which includes a balloon payment note when the term for repayment is for a period in excess of one year, the holder of the note shall, not less than 90 nor more than 150 days before the balloon payment is due, deliver or mail by first-class mail, with a certificate of mailing obtained from the United States Postal Service, to the trustor, or his or her successor in interest, at the last known address of such person a written notice, to include:

- (1) A statement of the name and address of the person to whom the balloon payment is required to be paid.
- (2) The date on or before which the balloon payment was or is required to be paid.
- (3) The amount of the balloon payment, or if its exact amount is unknown a good faith estimate of the amount thereof, including unpaid principal, interest, and any other charges (assuming payment in full of all scheduled installments coming due between the date of the notice and the date when the balloon payment is due).
- (4) A description of the trustor's right, if any, to refinance the balloon payment, including a summary of the actual terms of the refinancing or an estimate or approximation thereof, to the extent known.

If the due date of the balloon payment of a note subject to this subdivision is extended prior to the time notice is otherwise required under this subdivision, this notice requirement shall apply only to the due date as extended (or as subsequently extended).

(b) Failure to provide notice as required by subdivision (a) does not extinguish any obligation of payment by the trustor, except that the due date for any balloon payment shall be the date specified in the note, or 90 days from the date the delivery or mailing of the notice, or the date specified in the notice, whichever date is later. If the operation of this section acts to extend the term of any such note, interest shall continue to accrue for the extended term at the contract rate and payments shall continue to be due at any periodic interval and on any scheduled payment schedule specified in the note and shall be credited to principal or interest under terms of the note. Default in any extended periodic payment shall be considered a default under terms of the note or security instrument.

(c) Any failure to comply with the provisions of this section shall not affect the validity of a sale in favor of a bona fide purchaser or the rights of an encumbrancer for value and without notice.

(d) Every note subject to the provisions of this section shall include the following statement:

"This note is subject to Section 2966 of the Civil Code, which provides that the holder of this note shall give written notice to the trustor, or his successor in interest, of prescribed information at least 90 and not more than 150 days before any balloon payment is due."

Failure to include this notice shall not invalidate the note.

(e) The provisions of this section shall apply to any note executed on or after July 1, 1983.

(Amended by Stats. 1986, Ch. 1360, Sec. 3.)

2967. Any action arising under this article may be brought within two years from the date on which the liability arises, except that where any material disclosure under this article has been materially and willfully misrepresented, the action may be brought within two years of discovery of the misrepresentation.

(Added by Stats. 1982, Ch. 968, Sec. 1. Operative July 1, 1983, by Sec. 2 of Ch. 968.)