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CIVIL CODE - CIV

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 4. LOAN [1884 - 1923.10] (*Title 4 enacted 1872.)*

CHAPTER 3.5. Shared Appreciation Loans [1917 - 1917.006] (*Chapter 3.5 added by Stats. 1987, Ch. 652, Sec. 1.)*

1917. For purposes of this chapter:

(a) "Contingent deferred interest" means the sum a borrower is obligated to pay to a lender pursuant to the documentation of a shared appreciation loan as a share of (1) the appreciation in the value of the security property (2) rents and profits attributable to the subject property, or (3) both.

(b) A "shared appreciation loan" means any loan made upon the security of an interest in real property which additionally obligates the borrower to pay to the lender contingent deferred interest pursuant to the loan documentation. "Shared appreciation loan" does not include any loan made upon the security of an interest in real property containing one to four residential units at least one of which at the time the loan is made is or is to be occupied by the borrower.

(*Added by Stats. 1987, Ch. 652, Sec. 1.*)

1917.001. The relationship of the borrower and the lender in a shared appreciation loan transaction is that of debtor and creditor and shall not be, or be construed to be, a joint venture, equity venture, partnership, or other relationship.

(*Added by Stats. 1987, Ch. 652, Sec. 1.*)

1917.002. A shared appreciation loan shall not be subject to any provisions of this code or the Financial Code which limits the interest rate or change of interest rate of variable, adjustable, or renegotiable interest instruments, or which requires particular language or provisions in security instruments securing variable, adjustable, or renegotiable rate obligations or in evidences of such debts except for those specifically imposed by Chapter 4 (commencing with Section 1917.010) or Chapter 7 (commencing with Section 1917.320) for loans subject to those chapters. This section is declaratory of existing law.

(*Added by Stats. 1987, Ch. 652, Sec. 1.*)

1917.003. The lien or liens of a deed or deeds of trust securing a shared appreciation loan shall include and secure the principal amount of the shared appreciation loan, and all interest, whether accrued or to be accrued, including all amounts of contingent deferred interest.

(*Amended by Stats. 1989, Ch. 1416, Sec. 5.*)

1917.004. (a) The lien of a shared appreciation loan, including the principle amount and all interest, whether accrued or to be accrued, and all amounts of contingent deferred interest, shall attach from the time of the recordation of the deed of trust securing the loan, and the lien, including the lien of the interest accrued, or to be accrued, and of the contingent deferred interest, shall have priority over any other lien or encumbrance affecting the property encumbered by the shared appreciation deed of trust which is recorded after the time of recordation of the shared appreciation deed of trust. Nothing in this section shall preclude a junior or subordinate lien to the deed of trust securing the shared appreciation loan.

(b) Any deed of trust that acts as security for a shared appreciation loan shall indicate on the document that the deed of trust secures a shared appreciation loan.

(*Added by Stats. 1987, Ch. 652, Sec. 1.*)

1917.005. Lenders shall be exempt from the usury provisions of Article XV of the California Constitution with respect to shared appreciation loan transactions. This section is declaratory of existing law.

1917.006. For purposes of this chapter:

(a) "Shared appreciation loan" means, in addition to the meaning defined in Section 1917, a loan that obligates the borrower to pay to the lender contingent deferred interest pursuant to the loan documentation and that is made upon the security of an interest in real property that is an owner-occupied residence in compliance with all of the following conditions:

(1) The loan is made by, and all contingent deferred interest paid with respect to the loan is used by, a local public entity to provide financial assistance in the acquisition of housing that is affordable to persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

(2) The loan is made or acquired with assets of the local public entity other than the proceeds of a bond meeting the requirements of Section 143 of the United States Internal Revenue Code of 1986.

(3) The loan documentation assures that the obligation to pay contingent deferred interest is subject to a superior right of the borrower, upon termination of the loan, to receive repayment of money paid by the borrower for purchase of the security property (including downpayment, installment payments of mortgage principal, escrow fees, transfer taxes, recording fees, brokerage commissions and similar costs of acquisition actually paid by the borrower) and money paid by the borrower for capital improvements to the security property, plus not less than the legal rate of interest on those cash payments.

(4) The loan documentation assures that the amount of contingent deferred interest shall not exceed that percentage of the appreciation in appraised fair market value of the security property that equals the local public entity's proportionate share of the total initial equity in the security property. The amount of the total initial equity and of the local public entity's share of the initial equity shall be agreed upon by the borrower and the local public entity at the time of executing the shared appreciation loan and shall include the local public entity's cash investment, the difference between the price of land provided by the local public entity and the fair market value of the land, the amount of fees waived by the local public entity, and the value of in-kind contributions made by or on behalf of the local public entity. Funds borrowed by the borrower, the repayment of which are secured by the security property, shall not be included in the calculation of total initial equity of the borrower.

(5) At least 30 days in advance of executing the loan documentation, the borrower receives full disclosure of the terms and conditions of the loan, including the economic consequences to the borrower of the obligation to pay contingent deferred interest.

(b) "Local public entity" means a city and county, or a housing authority or redevelopment agency of a city and county.

(c) "Owner-occupied residence" means real property containing one to four residential units at least one of which at the time the loan is made is, or is to be, occupied by the borrower.