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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 4. Shared Appreciation Loans of E.R.I.S.A. Pension Funds [1917.010 - 1917.075] (Chapter 4 repealed and added by Stats. 1982, Ch. 466, Sec. 11.)

ARTICLE 6. General Provisions [1917.060 - 1917.069] (Article 6 added by Stats. 1982, Ch. 466, Sec. 11.)

1917.060. The relationship of the borrower and the lender, as to a shared appreciation loan, is that of debtor and creditor and shall not be, or be construed to be, a joint venture, equity venture, partnership, or other relationship.

(Repealed and added by Stats. 1982, Ch. 466, Sec. 11. Inoperative January 1, 1990, by Stats. 1982, Ch. 466, Sec. 11.5.)

1917.061. Any waiver of any right of a borrower under the provisions of this chapter shall be void and unenforceable.

(Repealed and added by Stats. 1982, Ch. 466, Sec. 11. Inoperative January 1, 1990, by Stats. 1982, Ch. 466, Sec. 11.5.)

1917.062. (a) Notwithstanding Section 711, a provision in a shared appreciation loan (not including the refinancing obligation) permitting the lender to accelerate the maturity date of the principal and accrued interest on the loan upon a sale or other transfer of the property, as specified in subdivision (e) of Section 1917.031, shall be valid and enforceable against the borrower, except as may be precluded by Section 2924.6.

(b) The Legislature finds and declares that potential exposure to liability for enforcement of a "due-on-sale" clause consistent with Section 711, as interpreted by the courts, makes use of such a provision impractical. Moreover, the additional risks to the lender inherent in shared appreciation financing are greater with longer loan terms (which are more desirable from the standpoint of housing affordability), but this risk is reduced with an enforceable "due-on-sale" clause. Therefore, in order to facilitate shared appreciation financing, it is necessary to establish the exception specified in subdivision (a).

(Repealed and added by Stats. 1982, Ch. 466, Sec. 11. Inoperative January 1, 1990, by Stats. 1982, Ch. 466, Sec. 11.5.)

1917.063. This chapter facilitates the making of shared appreciation financing in this state which conforms to the provisions of this chapter. The terms and conditions of any shared appreciation loan made pursuant to this chapter shall be consistent with this chapter. This chapter does not, however, apply to or limit shared appreciation financing of real property of a type specified in Section 1917.030 that is made pursuant to other provisions of law, or which is not otherwise unlawful. Nothing in this chapter shall be construed to in any way affect shared appreciation financing of commercial property or residential property not meeting the criteria specified in Section 1917.030.

Nothing in this chapter precludes a pension fund specified in Section 1917.030 from providing shared appreciation financing pursuant to Chapter 5 (commencing with Section 1917.110) or any other provision of law, or which is not otherwise unlawful.

(Repealed and added by Stats. 1982, Ch. 1346, Sec. 5. Inoperative January 1, 1990, by Stats. 1982, Ch. 466, Sec. 11.5.)

1917.064. A shared appreciation loan shall not be subject to any provision 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.

This section is declaratory of existing law.

(Repealed and added by Stats. 1982, Ch. 466, Sec. 11. Inoperative January 1, 1990, by Stats. 1982, Ch. 466, Sec. 11.5.)

1917.065. The lien of a deed 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.

(Repealed and added by Stats. 1982, Ch. 466, Sec. 11. Inoperative January 1, 1990, by Stats. 1982, Ch. 466, Sec. 11.5.)

1917.066. The lien of a shared appreciation loan, including the principal 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 secured by the shared appreciation instrument which is recorded after the time of recordation of the shared appreciation instrument. However, nothing in this section or Section 1917.165 shall preclude a junior lien or encumbrance subordinate to the obligation of the shared appreciation loan.

(Repealed and added by Stats. 1982, Ch. 466, Sec. 11. Inoperative January 1, 1990, by Stats. 1982, Ch. 466, Sec. 11.5.)

1917.067. Lenders shall be exempt from the usury provisions of Article XV of the California Constitution with respect to shared appreciation loans made pursuant to this chapter.

This section is declaratory of existing law.

(Amended by Stats. 1983, Ch. 557, Sec. 1. Inoperative January 1, 1990, by Stats. 1982, Ch. 466, Sec. 11.5.)

1917.068. The qualification requirements of Sections 25110, 25120, and 25130 of the Corporations Code shall not apply to a shared appreciation loan, provided (1) the loan obligation is evidenced by one promissory note secured by a deed of trust which is not one of a series of notes secured by interests in the same real property and (2) the loan obligation is not evidenced by fractional undivided interests in one promissory note secured by interests in the same real property.

(Repealed and added by Stats. 1982, Ch. 466, Sec. 11. Inoperative January 1, 1990, by Stats. 1982, Ch. 466, Sec. 11.5.)

1917.069. The aggregate amount of any fee charged to the borrower for processing an application and preparing any necessary documents in connection with originating a shared appreciation loan shall not exceed the reasonable cost of providing the service. No prepaid interest shall be charged to the borrower, but nothing in this chapter shall preclude a lender from requiring a fee for providing commitments for shared appreciation loans to builders or others who will not be the ultimate borrower.

(Repealed and added by Stats. 1982, Ch. 466, Sec. 11. Inoperative January 1, 1990, by Stats. 1982, Ch. 466, Sec. 11.5.)