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

CHAPTER 5. Shared Appreciation Loans [1917.110 - 1917.175] (*Chapter 5 repealed and added by Stats. 1982, Ch. 466, Sec. 12.)*

ARTICLE 2. Definitions [1917.120- 1917.120.] (*Article 2 added by Stats. 1982, Ch. 466, Sec. 12.)*

1917.120. For purposes of this chapter:

(a) "Borrower" means the recipient or recipients of a shared appreciation loan and includes any successor in interest to the borrower under a shared appreciation loan, to the extent such succession is permitted by law or by the terms of the shared appreciation loan.

(b) "Borrower's cost of the property" means the price paid by the borrower for the purchase of the property to be financed with a shared appreciation loan and also includes documentary transfer taxes, escrow and recording fees, title insurance premiums, and any other fees directly paid by the borrower as a necessary or customary cost of consummating acquisition of the property. However, if the purchase price to be paid for the property does not reasonably reflect the true value of the property, the borrower may request that, in lieu of the actual price paid, the "borrower's cost of the property" be established at an amount mutually agreed by the lender and borrower or be established by averaging two appraisals in the same manner as specified in Section 1917.142 for determination of fair market value. Nothing in this subdivision shall be construed to require a lender to make shared appreciation loans with the borrower's cost of the property established on the basis of appraisals.

(c) "Contingent deferred interest" means the lender's share of net appreciated value, calculated as the sum resulting upon multiplying the net appreciated value by a percentage agreed by the lender and borrower, not to exceed 50 percent.

(d) "Fair market value" means the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

Fair market value shall be determined pursuant to Article 4 (commencing with Section 1917.140).

(e) "Lender" means any person who makes a shared appreciation loan or the successor in interest to any such person.

(f) "Net appreciated value" means the fair market value less the sum of the borrower's cost of the property and the value of capital improvements. Nothing in this chapter shall, however, preclude a shared appreciation loan from additionally including a provision requiring deduction of any or all of the borrower's costs of selling the property from fair market value in determining, "net appreciated value," and if such a provision is included, the disclosures required by Section 1917.171 shall be modified accordingly.

(g) "Prevailing rate" means the weighted average yield accepted by the Federal National Mortgage Association in its most recent free market system auction for four-month conventional mortgage commitments. In the event that the Federal National Mortgage Association discontinues or substantially alters its free market system auction for conventional mortgages then the "prevailing rate" shall be the average yield established at the most recent immediate delivery auction of the Federal Home Loan Mortgage Corporation, or if the auction has been discontinued, then the "prevailing rate" shall be specified in the shared appreciation loan as either (1) the most recently published Federal Home Loan Bank Board mortgage contract rate or (2) the average single-family home mortgage rate for the 10 largest savings and loan associations with principal offices in this state.

(h) "Property" means the property financed by the shared appreciation loan.

(i) "Sale" means any transfer of title to the property and additionally includes the execution of an installment sale contract giving the purchaser a right to possess the property before transfer of title, refinancing, judicial sale on execution or other legal process of foreclosure or trustee's sale (regardless of whether initiated by the lender), but "sale" does not include a transfer specified in Section 2924.6.

(j) "Shared appreciation loan" means any loan made pursuant to this chapter upon the security of owner-occupied real property of a type specified in Section 1917.130, and in connection with which the lender has a right to receive a share of the appreciation in the value of the security property. "Shared appreciation loan" includes a deed of trust and any evidence of debt issued in connection with the loan.

(k) "Value of capital improvements" means the amount of the credit or credits for capital improvements, if any, determined pursuant to Article 5 (commencing with Section 1917.150).

(Repealed and added by Stats. 1982, Ch. 466, Sec. 12. Inoperative January 1, 1987, by Stats. 1982, Ch. 466, Sec. 12.5.)