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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 Shared Appreciation Loans [1917.110 - 1917.175] (*Chapter 5 repealed and added by Stats. 1982, Ch. 466, Sec. 12.)*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 3. Terms and Conditions [1917.130 - 1917.135] (*Article 3 added by Stats. 1982, Ch. 466, Sec. 12.)*

1917.130. Lenders may make shared appreciation loans pursuant to this chapter for the purchase of real property improved with one- to four-dwelling units, including structures ancillary to such dwelling units and including attached single-family dwelling units, single-family mobilehome units placed upon permanent foundations, residential condominium units, and dwelling units within a planned unit development. Shared appreciation loans shall be made to finance only owner-occupied dwelling units, but in the case of two- to four-unit dwellings financed under this chapter only one of the units need be owner-occupied. A dwelling unit shall be conclusively deemed to be owner-occupied for purposes of this chapter if an original recipient of the shared appreciation loan certifies in writing to the lender at the time the loan is made that he or she will occupy the property.

(Repealed and added by Stats. 1982, Ch. 466, Sec. 12.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

1917.131. A shared appreciation loan shall include the following terms and conditions:

(a) The term of the loan, excluding any refinancing under Section 1917.133, shall be at least seven years, but not more than 30 years.

(b) The repayment schedule for the loan, excluding any refinancing under Section 1917.133, shall be cast so that full amortization of the principal amount of the loan would occur in not less than 30 nor more than 40 years, regardless of the actual term of the loan. Any principal balance remaining at maturity shall be due and payable at that time, unless refinanced as provided in Section 1917.133. Monthly installment payments shall be equal in amount, except for the final payment when a principal balance is remaining at maturity, and in addition to amortization of principal shall include fixed interest pursuant to subdivision (d).

(c) The loan shall be secured by a deed of trust on the real property financed.

(d) The loan shall bear interest at a fixed rate, which shall be established in relation to the prevailing rate (1) in effect 90 days prior to the loan closing, (2) in effect at another date between that date and the loan closing if and as mutually agreed by the lender and borrower, or (3) in effect at the time of the lender's loan commitment given to the borrower or to the person from whom the borrower purchases the property. The percentage by which the fixed interest rate is reduced below the applicable prevailing rate shall be at least one-half the lender's percentage share of net appreciated value which is contingent deferred interest, except that if the shared appreciation loan is for less than 80 percent of the borrower's purchase price of the property, the percentage by which the fixed interest rate is reduced below the applicable prevailing rate shall be at least two-thirds the lender's percentage share of net appreciated value which is contingent deferred interest.

(e) The borrower shall additionally be obligated to pay to the lender contingent deferred interest (1) at the time of sale of the property if the lender accelerates the principal balance of the loan in accordance with a provision in the shared appreciation loan authorized by Section 1917.162, (2) at the time the loan is prepaid in full, upon acceleration of the loan upon default, or (3) upon the maturity of the loan, whichever first occurs.

(f) The aggregate amount of any fee charged to the borrower by the lender for processing an application, preparing any necessary documents, obtaining a credit report, or any other costs incurred by the lender in connection with originating a shared appreciation loan shall not exceed two percent of the principal amount of the loan or five hundred dollars (\$500), whichever is greater. 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 purchase such commitments and who will not be the ultimate borrower.

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

1917.132. (a) The borrower shall have the right to prepay, at any time, in full or in part, the principal loan balance of the shared appreciation loan, together with accrued interest, including contingent deferred interest.

(b) Nothing in this chapter shall prevent a borrower from obligating himself or herself, by an agreement in writing, to pay a prepayment charge upon prepayment of the loan, in full or in part, made within five years of the date of execution of the shared appreciation loan.

(c) Any prepayment charge imposed upon the prepayment of a shared appreciation loan shall not exceed the amount authorized and specified in subdivision (b) of Section 2954.9.

(d) No prepayment charge shall be imposed as to any portion of the contingent deferred interest.

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

1917.133. (a) If a shared appreciation loan with an original term of less than 10 years is not prepaid in full or the property is not sold or transferred prior to maturity of the loan, and provided the borrower is not then in default, the lender shall offer or arrange for refinancing of the unpaid balance of the loan upon maturity and all contingent deferred interest. The refinancing may be provided directly by the lender or another mortgage lender, or the lender may arrange at the time of making the shared appreciation loan for the refinancing to be provided by a federally or state chartered bank or savings and loan association doing business in this state or by a qualified mortgage banker. As used in this section "qualified mortgage banker" means a lender (1) meeting the criteria established by the Government National Mortgage Association for lenders selling over ten million dollars (\$10,000,000) in mortgage loans to that organization annually and (2) which either has conducted an ongoing business of mortgage lending in this state for not less than five years immediately preceding the making of the shared appreciation loans, or made over fifty million dollars (\$50,000,000) in mortgage loans in this state during the 12 months immediately preceding the making of the shared appreciation loan. If a refinancing commitment is arranged by the lender upon origination of the shared appreciation loan, this fact shall be fully and fairly disclosed to the borrower, a copy of the lender's contract with the bank, savings and loan association or qualified mortgage banker making the commitment shall be supplied to the borrower at such time, and the contract shall be fully enforceable by the borrower as a third-party beneficiary thereto, but the lender shall not be a guarantor of the obligation of the bank, savings and loan association, or qualified mortgage banker to provide refinancing.

If the original lender is a bank or savings and loan association doing business in this state or a qualified mortgage banker, it may provide the refinancing commitment to the borrower required by this section and assignees or successors in interest of the original lender shall not be guarantors of the refinancing obligation, provided the shared appreciation loan contains this limitation, which is fully and fairly disclosed to the borrower, and the original lender's refinancing commitment is fully enforceable by the borrower.

(b) The term of the loan for refinancing shall be established so that the borrower's repayment schedule provides for the final installment payment not less than 30 years from the date of origination of the shared appreciation loan. However, if loans at that duration are not available, within the meaning of subdivision (d), the lender or other obligor shall give the borrower a choice of any form of loan and maturity for that type of loan which is available at the time of refinancing, within the meaning of subdivision (d). The lender or other obligor shall inform the borrower of the types of loans (and maturities) available for refinancing under this section not less than 60 days prior to maturity of the shared appreciation loan.

(c) The interest rate for the refinancing loan shall not exceed rates generally available in the market for the type of loan instrument provided under subdivision (d) at the time of maturity of the shared appreciation loan. No loan origination fees shall be required of the borrower, either as prepaid interest or for processing services, as a condition of obtaining a refinancing loan pursuant to this section, but the borrower may be required to pay the costs of obtaining a policy of title insurance in accordance with the lender's requirements. The refinancing loan need not be a fixed interest rate loan, subject to the limitations of subdivision (d).

(d) The refinancing loan may be any form of loan which, at the time of refinancing, is generally offered to and utilized by the public for financing housing like the borrower's property by banks or savings and loan associations doing business in this state.

(e) The lender may require as a condition of the refinancing loan that it be secured by a deed of trust having a lien of first priority.

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

1917.134. Except as provided in this article, the terms and conditions of the refinancing loan shall be subject to all laws applicable to loans in effect on the date of refinancing.

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

1917.135. Nothing in this chapter shall preclude the borrower from obtaining any other financing, in lieu of the refinancing provided for in Section 1917.133, including refinancing on other terms mutually agreeable to the borrower and lender.

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

