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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 7. Shared Appreciation Loans for Seniors [1917.320 - 1917.714] (*Chapter 7 added by Stats. 1984, Ch. 1701, Sec. 1.*)

ARTICLE 1. Definitions [1917.320- 1917.320.] (*Article 1 added by Stats. 1984, Ch. 1701, Sec. 1.*)

1917.320. For the purposes of this chapter:

(a) "Actual contingent interest" means the lender's appreciation share of the net appreciated amount. In no event, however, shall the rate of appreciation upon which actual contingent interest is calculated at the end of the loan term exceed $2\frac{1}{2}$ times the rate at which projected contingent interest had been calculated.

(b) "Actual life expectancy" shall be calculated based upon actuarial tables for women only, regardless of the sex of the borrower, and acceptable to both the state and the insurance industry.

(c) "Annuity base amount" means the projected loan amount less (1) the initial advance and (2) the projected contingent interest based on the reasonable appreciation rate used in calculating the projected loan amount.

(d) "Borrower" means the recipient or recipients of a shared appreciation loan for seniors who is obligated by execution of a promissory note and who is at least 65 years of age.

(e) "Borrower's life expectancy" means the actual life expectancy of the borrower plus no more than five years. In the case of a loan executed by two borrowers, the actual life expectancy shall be based upon the youngest of the two.

(f) "Cessation of occupancy" means the rental to a third party of the right of exclusive occupancy of the subject property, or the abandonment by all coborrowers of the property as his or her residence.

(g) "Lender" means any corporation organized as a public benefit corporation pursuant to the Nonprofit Corporation Law (Part 2 commencing with Section 5110), Div. 2, Title 1, Corp. C.).

(h) "Lender's appreciation share" means a proportion not to exceed 25 percent of the appreciation of the property securing the loan calculated in accordance with this chapter.

(i) "Shared appreciation loan for seniors" means any loan made pursuant to this chapter upon the security of owner-occupied real property of a type specified in Section 1917.330, 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.

(j) "Maturity event" means the earliest of any of the following:

(1) The death of the borrower. In the case of a married couple who are coborrowers, the death of the surviving spouse.

(2) The date of sale.

(3) The date a loan made pursuant to this chapter is refinanced or repaid in full.

(4) Cessation of occupancy.

(k) "Monthly annuity" means an amount paid in equal monthly installments to the borrower which, together with interest calculated at the stated rate, shall exhaust the annuity base amount during the borrower's life expectancy.

In the event that the calculated monthly annuity exceeds the cap or ceiling determined in accordance with this subdivision, the lender may limit the actual monthly annuity payment to an amount not lower than the cap. If the cap is imposed, the lender's appreciation

share shall be limited to 25 percent times the ratio between the actual capped monthly payment and the monthly payment calculated in accordance with the first sentence of this subdivision. For example, if the monthly payment calculated in the first sentence is five thousand dollars (\$5,000), but the lender applies a two thousand five hundred dollar (\$2,500) ceiling, the lender's share of the home's appreciation shall be likewise reduced by 50 percent.

The minimum cap shall be two thousand five hundred dollars (\$2,500) for loans made during the calendar year 1989. In subsequent calendar years, the minimum cap shall be two thousand five hundred dollars (\$2,500) increased to reflect the proportional increase in the Consumer Price Index for the State of California, as determined by the United States Bureau of Labor Statistics, for the period from January 1, 1989, until the November monthly index figure for the year prior to the year in which the loan agreement is entered into.

(l) "Net advance" means any lump-sum advance of funds by the lender to the borrower made at the time of the loan closing. Net advance shall not exceed 15 percent of the projected loan amount.

(m) "Net appreciated value" means the difference between the fair market value of the property securing the loan at the time the loan is made and the fair market value of the property securing the loan at the time of the maturity event, less any credit for approved improvements made during the term of the loan.

(n) "Prevailing rate" means the yield of a 30-year mortgage commitment for delivery within 30 days for a standard conventional fixed rate mortgage of the Federal Home Loan Mortgage Corporation.

(o) "Projected contingent interest" means the lender's appreciation share of the projected appreciation of the property securing the loan from the date of the loan until the end of the borrower's life expectancy, using the same reasonable projection of annual appreciation used in determining the projected loan amount.

(p) "Projected loan amount" means not less than 75 percent of the estimated fair market value of the borrower's home at the end of the borrower's life expectancy, calculated by applying to the fair market value a reasonable projection of appreciation over the borrower's life expectancy based on a reasonable projected annual appreciation rate of the fair market value of the home.

(q) "Sale" means any transfer of title to the property and 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, but "sale" does not include a transfer specified in Section 2924.6 if any spouse to whom the property is transferred is also a coborrower.

(r) "Stated interest rate" means a total interest rate of not more than four-fifths of the prevailing rate.

(s) "Total loan obligation" means the net original loan and the sum total of all monthly annuity payments received by the borrower, with interest on all outstanding amounts calculated no more often than monthly at the stated interest rate, and actual contingent interest plus interest at the prevailing rate as disclosed to the borrower at the time the loan was entered into on all of the above amounts from the date of any maturity event until the outstanding loan obligation is repaid in full. In no event shall the total loan obligation exceed the actual fair market value of the home on the date of the maturity event.

(Amended by Stats. 1988, Ch. 1406, Sec. 1.)