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

ARTICLE 5. General Provisions [1917.610 - 1917.619] (*Article 5 added by Stats. 1984, Ch. 1701, Sec. 1.*)

1917.610. The relationship of the borrower and the lender of a shared appreciation loan for seniors is that of debtor and creditor and shall not be, or be construed to be, a joint venture, an equity venture, a partnership, or other relationship.

(*Added by Stats. 1984, Ch. 1701, Sec. 1.*)

1917.611. Any waiver of any right of a borrower under the provisions of this chapter shall be void and unenforceable.

(*Added by Stats. 1984, Ch. 1701, Sec. 1.*)

1917.612. This chapter facilitates one method of making shared appreciation loans to senior citizens in this state. The terms and conditions of any shared appreciation loan for seniors 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 made pursuant to other provisions of law, or which is not otherwise unlawful. Nothing in this chapter shall be construed in any way to affect shared appreciation financing of residential property of senior citizens not meeting the criteria specified in this chapter.

(*Added by Stats. 1984, Ch. 1701, Sec. 1.*)

1917.613. A shared appreciation loan for seniors 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 interest rate or renegotiable interest instruments, or which requires particular language or provisions in security instruments securing variable or renegotiable rate obligations or in evidences of those debts.

This section is declaratory of existing law.

(*Added by Stats. 1984, Ch. 1701, Sec. 1.*)

1917.614. The lien of a deed of trust securing a shared appreciation loan for seniors shall include and secure the total loan obligation of the shared appreciation loan for seniors.

(*Added by Stats. 1984, Ch. 1701, Sec. 1.*)

1917.615. The lien of a shared appreciation loan for seniors, including the total loan obligation, shall attach from the time of the recordation of the deed of trust securing the loan, and the lien, including the lien of the total loan obligation accrued or to be accrued, shall have priority over any other lien or encumbrance affecting the property secured by the shared appreciation instrument and recorded after the time of recordation of the shared appreciation instrument. However, nothing in this section or Section 1917.614 shall preclude a junior lien or encumbrance subordinate to the total loan obligation of the shared appreciation loan for seniors. In no case may a junior lien achieve priority over the lien securing the total loan obligation of the shared appreciation loan, provided that nothing in this section shall be construed to supersede Section 8450.

(*Amended by Stats. 2010, Ch. 697, Sec. 12. (SB 189) Effective January 1, 2011. Operative July 1, 2012, by Sec. 105 of Ch. 697.*)

1917.616. A shared appreciation loan for seniors which bears a fixed interest rate complying with the usury provisions of Article XV of the California Constitution shall not be deemed to become usurious by reason of the payment of actual contingent interest pursuant to this chapter; provided, however, that in no event may the amount of actual contingent interest received by the lender,

plus the stated interest received by the lender, result in an annual percentage rate in excess of 1.5 times the applicable usury rate calculated pursuant to Article XV of the California Constitution, when all of such interest is applied over the actual term of the loan.

(Added by Stats. 1984, Ch. 1701, Sec. 1.)

1917.617. The qualification requirements of Sections 25110, 25120, and 25130 of the Corporations Code do not apply to a shared appreciation loan for seniors to the extent the exemption afforded by subdivision (p) of Section 25100 of that code is applicable.

(Added by Stats. 1984, Ch. 1701, Sec. 1.)

1917.618. Any loan made pursuant to this chapter shall be subject to Section 580b of the Code of Civil Procedure.

(Added by Stats. 1984, Ch. 1701, Sec. 1.)

1917.619. Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligation of any loan made by any lender pursuant to this chapter.

This section creates and authorizes lenders under this chapter as an exempt class of persons pursuant to Section 1 of Article XV of the Constitution.

(Added by Stats. 1984, Ch. 1701, Sec. 1.)