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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 6. Notices and Disclosures [1917.710 - 1917.714] (*Article 6 added by Stats. 1984, Ch. 1701, Sec. 1.)*

1917.710. (a) The disclosures made pursuant to this chapter, as required, shall be the only disclosures required to be made pursuant to state law for shared appreciation loans for seniors, notwithstanding any contrary provision applicable to loans not made under this chapter, except those, if any, that may be required by reason of the application of Division 1 (commencing with Section 25000) of the Corporations Code, or Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code. However, a lender shall not be precluded from supplementing the disclosures required by this chapter with additional disclosures that are not inconsistent with the disclosures required by this chapter.

(b) Whenever specific language is prescribed by this chapter, substantially the same language shall be utilized if possible, but reasonably equivalent language may be used to the extent necessary or appropriate to achieve a clearer or more accurate disclosure.

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

1917.711. (a) Each lender offering shared appreciation loans for seniors shall furnish to a prospective borrower, on the earlier of the dates on which the lender first provides written information concerning shared appreciation loans for seniors by the lender or provides a loan application form to the prospective borrower, a written disclosure as provided in this section, in type of not less than 10 point.

(b) The disclosure shall be entitled "INFORMATION ABOUT THE (Name of Lender) SHARED APPRECIATION LOAN FOR SENIORS," and shall describe the operation and effect of the shared appreciation loan for seniors, including a brief summary of its terms and conditions, together with a statement consisting of substantially the following language, to the extent applicable to such loan:

INFORMATION ABOUT THE SHARED APPRECIATION LOANS FOR SENIORS

Your lender is pleased to offer you the opportunity to borrow against the equity in your home through a Shared Appreciation Loan for Seniors.

Because the Shared Appreciation Loan for Seniors differs from the usual mortgage loan, the law requires that you have a detailed explanation of the special features of the loan before you apply. Before you sign your particular Shared Appreciation Loan for Seniors documents, you will receive more information about your particular Shared Appreciation Loan for Seniors, which you should read and understand before you sign the loan documents.

Receipt of shared appreciation loan proceeds could be considered income, thereby reducing payments received under government benefit programs, such as Supplemental Security Income (SSI). If this income is accumulated, the payments will be considered a resource, and could terminate your eligibility for SSI or Medi-Cal. See your legal adviser for more information.

I
GENERAL TERMS

A Shared Appreciation Loan for Seniors will provide you with funds to pay off any existing indebtedness on your home and to pay the closing costs for the loan, and will then advance funds to you each month (monthly annuity) (1) for so long as you or your spouse who is a coborrower live; or (2) until you sell the house; or (3) until you decide to refinance the property and pay off your Shared

Appreciation Loan for Seniors; or (4) until you cease to occupy the property as your residence, meaning either that the property has been rented out for exclusive use by a nonborrower, or the abandonment by all coborrowers of the property as their residence. Any of these four events are considered "maturity events," and will constitute the end of the obligation to advance funds to you. The maturity events are described more fully in the promissory note. Your monthly annuity is calculated according to the method described in Section II, below. You will also be required to fulfill any customary terms or conditions included in the deed of trust encumbering your property.

Each advance of funds you receive, including both initial advances (net original loan) and each monthly annuity, will be considered outstanding principal on your loan and will bear a stated interest rate which will be not more than 80 percent of the prevailing rate of interest in the locality in which you live. No payments on your total loan obligation need be made by you until the occurrence of one of the four maturity events described above.

In exchange for a stated interest rate which is below the prevailing rate, you will be obligated to pay us additional interest later, in the form of a share of the appreciation of your home between the time you execute the promissory note and the occurrence of a maturity event. This additional interest is called "actual contingent interest" and is described more fully below at Section III. Once a maturity event has occurred, interest at the prevailing rate compounded not more often than monthly shall accrue on the entire outstanding loan balance, including the actual contingent interest, until repayment in full of the loan.

Balloon Payment of Principal. If you do not sell the property before the occurrence of a maturity event, you or your successors will need to refinance or pay this loan at that time. The term of this loan is until occurrence of a maturity event. However, if the maturity event is cessation of occupancy or death of the borrowers, the term shall be extended until the earlier of the sale or refinancing of the property, or 12 months after occurrence of the maturity event. We will not refinance either the unpaid balance of the loan or the contingent interest at that time; you or your successors alone will be responsible for obtaining refinancing. If you refinance this loan, your monthly payments may increase substantially if the property has appreciated significantly or if the interest rate on the refinancing loan is much higher than today's prevailing rates. In general, the more your property appreciates, the larger will be the amount of the actual contingent interest that you will have an obligation to pay or refinance.

Tax and Estate Consequences. USE OF THE SHARED APPRECIATION LOAN FOR SENIORS WILL HAVE INCOME TAX OR ESTATE PLANNING CONSEQUENCES WHICH WILL DEPEND UPON YOUR OWN FINANCIAL AND TAX SITUATION. FOR FURTHER INFORMATION, YOU ARE URGED TO CONSULT YOUR OWN ACCOUNTANT, ATTORNEY, OR OTHER FINANCIAL ADVISER.

THE QUESTIONS YOU SHOULD DISCUSS INCLUDE THE TAX DEDUCTIBILITY OF THE CONTINGENT INTEREST PAYMENT, YOUR RIGHT TO UTILIZE THAT DEDUCTION IN YEARS OTHER THAN THE YEAR IT IS PAID, AND THE EFFECT OF THE LOSS OF TAX BENEFITS BEFORE THAT TIME. BECAUSE YOU WILL BE BORROWING A SIGNIFICANT AMOUNT OF THE EQUITY IN YOUR HOME, WHEN A MATURITY EVENT OCCURS AND YOUR LOAN IS REPAID, LITTLE OR NO EQUITY MAY REMAIN FOR YOU OR YOUR HEIRS.

Determining Fair Market Value. If you sell your property, the gross sale price will be the fair market value of the property, unless appraisals are requested by us and the appraisals average more than the gross sale price. However, at your request, we also will tell you what we consider to be the fair market value of the property. If you sell for cash for a gross sale price that equals or exceeds that amount, the gross sale price will control and appraisals will not be needed.

Fair market value is determined by appraisals in the event of sales involving a consideration other than cash, prepayment of the loan in full, or any other maturity event.

When appraisals are required, fair market value is determined by averaging two independent appraisals of the property. You may select one of the two appraisers from a list approved by the Federal National Mortgage Association. If appraisals are requested by us, we will provide you with full information on how to select an appraiser.

In lieu of appraisals, we may establish fair market value at an agreed amount if an agreement can be reached between you and us.

Determining Value of Capital Improvements. Capital improvements with a value exceeding one thousand dollars (\$1,000) (but no maintenance or repair costs) may be added to the value of the property for the purpose of determining the net appreciated value, but only if the procedures set forth in the shared appreciation loan documents are followed. It is important to note that capital improvements completed and claimed in any 12-month period must add more than one thousand dollars (\$1,000) in value to the property and must generally also cost more than one thousand dollars (\$1,000). However, if you have performed at least one-half the value of the labor or other work involved, then the cost of the improvements will not be considered. The appraised value of the improvements will be the increase in the value of the property resulting from the improvements. You will receive no credit for minor or major repairs or for improvements that are not appraised at more than one thousand dollars (\$1,000), but the lender will acquire a share of any resulting appreciation in the value of the property.

II

CALCULATION OF MONTHLY ANNUITY

Your Shared Appreciation Loan for Seniors consists of two components: first, an initial advance to cover the cost of paying off any existing liens which you wish to pay off, and to cover closing costs; and second, a monthly annuity.

Your Shared Appreciation Loan for Seniors is designed to provide a monthly stream of funds for the remainder of the lives of the borrowers, with no payments on the loan due at any time during the lives of the borrowers unless the property is sold or the loan is refinanced or repaid in full or until you cease to occupy the property. In determining the amount that it is able to lend, the lender estimates what at least 75 percent of the value of the borrower's home is likely to be at the end of the borrower's life expectancy, based on a reasonable projected appreciation rate per year. Borrowers' estimated life spans are predicted on the basis of "actuarial tables" prepared by the government and the insurance industry; and are based only upon estimated female life span, plus up to five years, to avoid any discriminatory effect between the sexes in determining loan amounts and for conservative lending practices. Once the maximum amount which may be loaned has been determined, the amount necessary to pay off existing liens and for closing costs, plus interest at the stated interest rate on that amount for the borrower's life expectancy, is subtracted. The "projected contingent interest" that is predicted to have been earned at the end of the estimated life span is also subtracted. A monthly annuity is then calculated on the remaining amount, based on the stated interest and the borrower's life expectancy.

This complex calculation is illustrated by the following example:

Mr. and Mrs. Smith, who are 73 and 71 years of age, respectively, live in a home with a current value of one hundred fifty thousand dollars (\$150,000), and apply for a Shared Appreciation Loan for Seniors. According to acceptable actuarial tables, Mrs. Smith, the younger of the two, has a remaining actuarial life span of 18 years. At the end of the 18 years, at a 4 percent per year projected appreciation rate, the house would be worth three hundred thousand dollars (\$300,000), 80 percent of which equals two hundred forty thousand dollars (\$240,000) (the lender could have based the calculation on as little as 75 percent of the three hundred thousand dollar (\$300,000) projected value). The house currently has a fifteen thousand dollar (\$15,000) first mortgage, and closing costs will be approximately two thousand dollars (\$2,000), and the Smiths' wish to receive an initial advance to pay off the mortgage and to cover closing costs.

At the time the Smiths apply, the average of the 30-year fixed interest rate for home mortgages of the Federal Home Loan Mortgage Corporation is 13 percent, which is the "prevailing rate." The "stated interest rate" on the Smiths' loan will be 75 percent of the "prevailing rate," or $9\frac{3}{4}$ percent (the lender could have charged up to 80 percent of the prevailing rate).

The Smiths' payments will be calculated so that at the end of the projected loan term of 18 years, the total of all payments owed to the lender will be two hundred forty thousand dollars (\$240,000), 80 percent of the estimated value of the Smiths' home after 18 years.

Two items must be subtracted from the two hundred forty thousand dollar (\$240,000) future value before the Smiths' payment can be calculated:

(a) Since the Smiths' are requesting an advance of seventeen thousand dollars (\$17,000) to pay off their existing mortgage and for closing costs, seventeen thousand dollars (\$17,000), plus interest on seventeen thousand dollars (\$17,000) at $9\frac{3}{4}$ percent for 18 years, for a total of ninety-six thousand fifty-seven dollars (\$96,057), must be subtracted from the two hundred forty thousand dollars (\$240,000) available for lending. This leaves one hundred forty-three thousand nine hundred forty-three dollars (\$143,943).

(b) The lender's share of appreciation of the value of the home is also subtracted before calculating the monthly payment. Since the home is projected to increase in value by one hundred fifty thousand dollars (\$150,000), the lender's share, 25 percent, equals thirty-seven thousand five hundred dollars (\$37,500). When subtracted from one hundred forty-three thousand nine hundred forty-three dollars (\$143,943), this leaves one hundred six thousand four hundred forty-three dollars (\$106,443) for monthly payments.

The monthly payment is calculated on the basis of one hundred six thousand four hundred forty-three dollars (\$106,443), over an 18-year term with interest at $9\frac{3}{4}$ percent. This equals one hundred eighty-four dollars (\$184) per month. The Smiths' will receive one hundred eighty-four dollars (\$184) per month until a maturity event occurs.

At the time of occurrence of a maturity event, the Smiths, or their successors, if they are both deceased, will owe the seventeen thousand dollars (\$17,000) advanced initially, plus the sum of all the monthly payments of one hundred eighty-four dollars (\$184) received by them until the occurrence of the maturity event, plus interest at $9\frac{3}{4}$ percent on all of the above from the time the funds were advanced until occurrence of the maturity event, plus actual contingent interest calculated as described in Section III below. Interest, compounded no more often than monthly, on all of the above shall accrue at the prevailing rate from the date of any maturity event until the loan is paid in full.

Because interest accumulates rapidly, when a large initial advance is received, or the projected loan term is relatively long, the monthly payment is significantly lower. For instance, if the Smiths' were 80 years old, and received no lump-sum advance, their monthly payment would be seven hundred forty-nine dollars (\$749) per month.

The longer the loan has been in effect, of course, the greater the amount that will be owed, as monthly payments and interest accumulate, and as the home appreciates in value. Unless the borrowers choose to sell the home or refinance the loan, monthly payments will continue until both are deceased, no matter how long they live so long as they continue to occupy the property. Thus, the total loan obligation is not limited to the projected life span of the borrowers, nor to any set dollar amount, regardless of the

projected maximum. Regardless of how much principal has been advanced by Shared Appreciation Loans for Seniors, and regardless of how much stated interest and actual contingent interest have accumulated or been earned, payments will continue. If the borrower lives substantially longer than the actuarial prediction, it is possible that the total of principal and acquired stated interest plus actual contingent interest, may exceed the value of the home. IN NO EVENT, HOWEVER, WILL A BORROWER OR A BORROWER'S ESTATE BE LIABLE ON THE SHARED APPRECIATION LOAN FOR SENIORS IN AN AMOUNT GREATER THAN THE VALUE OF THE HOME.

The Smith example can be illustrated as follows:		
A.	\$150,000 =	Value of home at time of loan.
B.	\$300,000 =	Estimated value of home at end of life expectancy (18 years, 4% annual appreciation).
C.	\$240,000 =	Loan (80% of B).
D.	\$150,000 =	Total appreciation (B less A).
E.	\$ 37,500 =	Lender's share of appreciation (25% × D).
F.	\$ 96,057 =	Payoff of preexisting mortgage, plus interest.
G.	\$106,443 =	Amount from which monthly payment is calculated (C less E less F).
H.	\$ 184 =	Monthly payment (based on G) to the Smiths. At death or other maturity event, the sum of all monthly payments, plus interest, plus the lender's share of appreciation, plus the amount owing from payoff of the old mortgage, must be paid to the lender.

III ACTUAL CONTINGENT INTEREST

This Shared Appreciation Loan for Seniors provides that you, as borrower, must pay to the lender, as actual contingent interest, a share of up to 25 percent of the net appreciated value of the real property which secures the loan. This actual contingent interest is due and payable whenever a maturity event occurs. The dollar amount of actual contingent interest, if any, which you will be required to pay cannot be determined at this time. If the property does not appreciate, you will owe us nothing as actual contingent interest, and will only have to repay principal and stated interest. Actual contingent interest will not become due if title to the property is transferred on your death to a spouse who is a coborrower, or where a transfer results from a decree of dissolution of a marriage and a spouse who is a coborrower becomes the sole owner.

Your obligation to pay actual contingent interest and stated interest will reduce the amount of the appreciation, if any, that you will realize on the property over and above its value today. Appreciation will not produce a real gain in your equity in the property unless the appreciation rate exceeds the general inflation rate, but you will be required to pay a portion of the appreciation as actual contingent interest without regard to whether the appreciation has resulted in a real gain.

When your home is sold or refinanced, you normally will receive enough cash to pay the total loan obligation. However, if you sell and provide financing to the buyer, you may possibly not receive enough cash to pay the actual contingent interest, and, in that event, it will be necessary for you to provide cash from other funds. In no event, however, will your total loan obligation exceed the value of your home at the time of occurrence of a maturity event, unless you have willfully caused damage to the property.

Calculating the actual contingent interest. Actual contingent interest will be calculated as follows:

	FAIR MARKET VALUE OF THE PROPERTY ON DATE OF MATURITY EVENT (Sale Price or Appraised Value)
–(less)	CURRENT VALUE OF THE PROPERTY
–(less)	VALUE OF CAPITAL IMPROVEMENTS MADE BY YOU (Must exceed \$1,000 in cost.)
×(times)	LENDER'S APPRECIATION SHARE (up to 25%)

=(equals)	ACTUAL CONTINGENT INTEREST
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Below are answers to two frequently asked questions about the Shared Appreciation Loans for Seniors program. If you have any further questions, feel free to call the lender at _____, or write to the lender at _____.

Question. What if I marry, or my spouse is not a coborrower?

Answer. Your Shared Appreciation Loan for Seniors will be due upon the death of the last surviving coborrower. Your lender will be happy to include a new or present spouse as a coborrower, provided the new spouse is over age ____ at the time he or she becomes a coborrower. Because the monthly payment annuity is based upon the projected life span of the youngest coborrower, the annuity will be readjusted if a new, younger coborrower is added. The annuity will be adjusted to reflect the annuity that would have existed had the new coborrower been a coborrower from the beginning of the loan period. Since the monthly annuity is based on a fixed "lendable amount" derived from projected appreciation of the home (see Section II, above), a longer projected loan period, because of the younger age of the new coborrower, will result in a decrease in the size of the monthly annuity.

Question. Can I obtain an additional advance for home improvements?

Answer. Yes, provided your lender approves of the improvement. Your lender will act reasonably in reviewing your request. At the time the advance is made, your lender will calculate the amount of interest at the stated interest rate that will accrue through the projected life of the loan, as it was determined at the time the loan was made. This amount will be deducted from the original lendable amount, and a new annuity calculated, based upon the calculations described in Section II. The effect is the same as if the advance had been made at the outset of the loan, except, of course, you will not be responsible for any interest until the funds are actually advanced. Your annuity will, however, be smaller.

(Amended by Stats. 1988, Ch. 1406, Sec. 4.)

1917.712. (a) Each lender making a shared appreciation loan for seniors shall also furnish to the prospective borrower, prior to the consummation of the loan, the disclosures required by Subpart C of Federal Reserve Board Regulation Z (12 C.F.R. Part 226), including 12 C.F.R. Section 226.18(f), to the extent applicable to the transaction.

(b) The disclosure made pursuant to subdivision (a) and Regulation Z shall be based on the fixed interest rate of the shared appreciation loan for seniors, and shall include a description of the shared appreciation feature, including (1) the conditions for its imposition, the time at which it would be collected, and the limitations on the lender's share, as required by the Federal Reserve Board in the information published by the board in 46 Federal Register 20877-78 (April 7, 1981), and (2) the lender's share of the appreciated value and the prevailing interest rate as defined in Section 1917.320.

(c) The disclosure made pursuant to subdivision (a) and Regulation Z shall be accompanied by (1) several transaction-specific examples of the operation and effect of the shared appreciation loan and (2) the following charts comparing the shared appreciation loan and a conventional loan made at the prevailing interest rate, and illustrating the possible increase in the monthly payments, and the possible annual percentage rate of finance charge, on the assumptions therein stated:

Chart 1

CONVENTIONAL MORTGAGE AT _____%

If the same loan balance were financed under a conventional, 30-year, fixed-rate, level-payment mortgage, your monthly payments would be:

Years 1-30

\$ _____/mo.

Chart 2

IF YOU REFINANCE THIS TRANSACTION AT _____%

If your property appreciates at 10% per year, and if your loan obligation (including contingent interest due) at the end of ____ years is refinanced at ____% (the prevailing market interest rate now), your monthly payments will be:

Years 1— _____ Refinancing loan

\$ _____ /mo. _____ \$ _____ /mo.*

* Refinancing loan, assuming a conventional, 30-year, fixed-rate, level-payment mortgage. Other mortgage instruments, e.g., graduated-payment or shared-appreciation, if available, may result in lower payments.

Chart 3

APR IF PROPERTY APPRECIATES AT 10%

If your property appreciates at 10% per year, the total finance charge on your shared appreciation loan for seniors (including contingent interest) will equal \$ _____, and the annual percentage rate of the total finance charge (including actual contingent interest) will equal _____%.

(d) The disclosures required by subdivision (c) shall be separate from the disclosures required by Regulation Z, and may be presented in the document containing the disclosures required by Regulation Z or in one or more separate documents.

(e) Except to the extent that this section requires disclosure of additional information not required by Regulation Z, compliance with the applicable credit disclosure requirements of Regulation Z shall constitute compliance with the requirements of this section.

(f) The disclosure prescribed in Section 1917.711 shall be physically attached to the disclosures required by this section and Regulation Z at the time the Regulation Z disclosures are furnished to the borrower.

(g) In the event federal law is amended so that this section is inconsistent therewith, the federal law shall prevail as to the disclosures required by this section.

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

1917.713. Each lender making a shared appreciation loan for seniors shall additionally furnish to the prospective borrower, prior to consummation of the loan, a statement containing the following information:

IMPORTANT INFORMATION ABOUT YOUR SHARED APPRECIATION LOAN FOR SENIORS

You are being offered a shared appreciation loan. Before you decide to accept this loan, read this statement, which is designed to provide important information you should consider.

1. Prevailing interest rate: ____%.
2. Stated interest rate on this loan: ____%.
3. Projected contingent interest: ____%.
4. Initial amount of this loan: \$____.
5. Amount of the monthly annuity payments you will receive: \$____.
6. Projected term of this loan: ____ years.
7. Projected total loan obligation you will have to pay, assuming the loan continues to the end of the "borrower's" life expectancy: \$____.

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

1917.714. Each deed of trust and evidence of debt executed in connection with a shared appreciation loan for seniors shall contain a statement, printed or written in a size equal to at least 12-point bold type, consisting of substantially the following language: "THIS IS A [DURATION] SHARED APPRECIATION LOAN FOR SENIORS. THE LENDER'S INTEREST INCLUDES [PERCENT] OF THE NET APPRECIATED VALUE OF THE PROPERTY. A BALLOON PAYMENT OF PRINCIPAL WILL BE REQUIRED. FOR FURTHER INFORMATION, READ THE FLYER ENTITLED " INFORMATION ABOUT THE [NAME OF LENDER] SHARED APPRECIATION LOAN FOR SENIORS." The notice required by this section shall be completed to state the terms of the shared appreciation loan and the lender's share of the net appreciated value.

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