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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 7.5. Mortgage Loans [1918.5 - 1921] (*Heading of Chapter 7.5 renumbered from Chapter 6 (as renumbered by Stats. 1982, Ch. 466) by Stats. 1986, Ch. 248, Sec. 16.*)

1918.5. As used in this chapter:

- (a) "Evidence of debt" means a note or negotiable instrument.
- (b) "Secretary" means the Secretary of the Business, Consumer Services, and Housing.
- (c) "Secretary's designee" means the director of a department within the agency that licenses or regulates the institutions, organizations, or persons engaged in a business related to or affecting compliance with this chapter.
- (d) "Security document" means a mortgage contract, deed of trust, real estate sales contract, or any note or negotiable instrument issued in connection therewith, when its purpose is to finance the purchase or construction of real property occupied or intended to be occupied by the borrower, containing four or fewer residential units or on which four or fewer residential units are to be constructed.

(Amended by Stats. 2013, Ch. 353, Sec. 11. (SB 820) Effective September 26, 2013. Operative July 1, 2013, by Sec. 129 of Ch. 353.)

1920. Any mortgage instrument that is made pursuant to the provisions of this chapter shall meet the following requirements:

- (a) Standards for the adjustment of interest rates or monthly payments shall consider factors which can reasonably be deemed to affect the ability of borrowers to meet their mortgage obligations.
- (b) No change in interest provided for in any provision for a variable interest rate contained in a security document, or evidence of debt issued in connection therewith, shall be valid unless the provision is set forth in the security document, and in any evidence of debt issued in connection therewith, and the document or documents contain the following provisions:
 - (1) A statement attached to the security document and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10-point bold type, consisting of language authorized by the secretary or the secretary's designee notifying the borrower that the mortgage may provide for changes in interest, principal loan balance, payment, or the loan term.
 - (2) Before the due date of the first monthly installment following each change in the interest rate, notice shall be mailed to the borrower of the following:
 - (A) The base index.
 - (B) The most recently published index at the date of the change in the rate.
 - (C) The interest rate in effect as a result of the change.
 - (D) Any change in the monthly installment.
 - (E) The amount of the unpaid principal balance.
 - (F) If the interest scheduled to be paid on the due date exceeds the amount of the installment, a statement to that effect and the amount of the excess, and the address and telephone number of the office of the lender to which inquiries may be made.

(c) The borrower is permitted to prepay the loan in whole or in part without a prepayment charge at any time, and no fee or other charge may be required by the lender of the borrower as a result of any change in the interest rate, the payment, the outstanding principal loan balance, or the loan term.

(d) Changes in the rate of interest on the loan shall reflect the movement of an index, which shall be authorized by the secretary or the secretary's designee.

(e) To the extent that any monthly installment is less than the amount of interest accrued during the month with respect to which the installment is payable, the borrower shall be notified of such instance in a form and manner prescribed by the secretary or the secretary's designee. Such notice shall include, but not be limited to, the amount of interest exceeding the monthly installment, and any borrower options under these circumstances.

(f) The lender shall provide to the borrower, prior to the execution by the borrower of any mortgage payment instrument authorized pursuant to this chapter, full and complete disclosure, as specified by the secretary or the secretary's designee, of the nature and effect of the mortgage payment instrument, and all costs or savings attributed to the mortgage instrument.

(Amended by Stats. 1997, Ch. 232, Sec. 24. Effective January 1, 1998.)

1921. (a) As used in this section:

(1) "Adjustable-rate residential mortgage loan" means any loan or credit sale which is primarily for personal, family, or household purposes which bears interest at a rate subject to change during the term of the loan, whether predetermined or otherwise, and which is made upon the security of real property containing not less than one nor more than four dwelling units.

(2) "Lender" means any person, association, corporation, partnership, limited partnership, or other business entity making, in any 12-month period, more than 10 loans or credit sales upon the security of residential real property containing not less than one nor more than four dwelling units.

(b) Any lender offering adjustable-rate residential mortgage loans shall provide to prospective borrowers a copy of the most recent available publication of the Federal Reserve Board that is designed to provide the public with descriptive information concerning adjustable-rate mortgages (currently entitled "Consumer Handbook on Adjustable Rate Mortgages"), either upon the prospective borrower's request or at the same time the lender first provides written information, other than direct-mail advertising, concerning any adjustable-rate residential mortgage loan or credit sale to the prospective borrower, whichever is earlier. Any lender who fails to comply with the requirements of this section may be enjoined by any court of competent jurisdiction and shall be liable for actual damages, the costs of the action, and reasonable attorney's fees as determined by the court. The court may make those orders as may be necessary to prevent future violations of this section.

(c) A lender that makes adjustable-rate mortgage loan disclosures pursuant to either Part 29 of Chapter I of, or Part 563 of Chapter V of, Title 12 of the Code of Federal Regulations, may comply with this section by providing the descriptive information required by subdivision (b) at the same time and under the same circumstances that it makes disclosures in accordance with those federal regulations. Such a lender shall also display and make the descriptive information available to the public in an area of the lender's office that is open to the public.

(Amended by Stats. 1987, Ch. 56, Sec. 19.)