



| | | | | | | |
|------|------------------|----------------|--------------|-----------------|------------------|--------------|
| Home | Bill Information | California Law | Publications | Other Resources | My Subscriptions | My Favorites |
|------|------------------|----------------|--------------|-----------------|------------------|--------------|

AB-3108 Business: mortgage fraud. (2023-2024)

SHARE THIS:  

Date Published: 09/25/2024 02:00 PM

Assembly Bill No. 3108

CHAPTER 517

An act to amend Section 4973 of the Financial Code, and to amend Section 532f of the Penal Code, relating to business.

[Approved by Governor September 24, 2024. Filed with Secretary of State September 24, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3108, Jones-Sawyer. Business: mortgage fraud.

(1) Existing law makes it a criminal offense to commit mortgage fraud. This includes filing or causing to be filed with the county recorder in connection with a mortgage loan transaction any document that the person knows to contain a deliberate misstatement, misrepresentation, or omission, and with the intent to defraud.

This bill would prohibit the filing of any document with the recorder of any county that the person knows to contain, instead, a material misstatement, misrepresentation, or omission.

This bill would also provide that a mortgage broker or person who originates a loan commits mortgage fraud if, with the intent to defraud, the person takes specified actions relating to instructing or deliberately causing a borrower to sign documents reflecting certain loan terms with knowledge that the borrower intends to use the loan proceeds for other uses.

By expanding the scope of a crime, this bill would impose a state-mandated local program.

(2) Existing law generally regulates the provision of covered loans, including by prohibiting a person who originates a covered loan from avoiding, or attempting to avoid, the application of that law by, among other things, structuring a loan transaction as an open-end credit plan for the purpose of evading that law if the loan would have been a covered loan if the loan had been structured as a closed end loan. Existing law defines "covered loan" to mean a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association in the case of a mortgage or deed of trust, as specified. Existing law also prohibits a person who originates a covered loan from acting in a manner that constitutes fraud.

This bill would additionally prohibit a person who originates a covered loan from avoiding, or attempting to avoid, the application of the law regulating the provision of covered loans by committing mortgage fraud.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4973 of the Financial Code is amended to read:

4973. The following are prohibited acts and limitations for covered loans:

(a) (1) A covered loan shall not include a prepayment fee or penalty after the first 36 months after the date of consummation of the loan.

(2) A covered loan may include a prepayment fee or penalty up to the first 36 months after the date of consummation of the loan if:

(A) The person who originates the covered loan has also offered the consumer a choice of another product without a prepayment fee or penalty.

(B) The person who originates the covered loan has disclosed in writing to the consumer at least three business days prior to loan consummation the terms of the prepayment fee or penalty to the consumer for accepting a covered loan with the prepayment penalty and the rates, points, and fees that would be available to the consumer for accepting a covered loan without a prepayment penalty.

(C) The person who originates the covered loan has limited the amount of the prepayment fee or penalty to an amount not to exceed the payment of six months' advance interest, at the contract rate of interest then in effect, on the amount prepaid in any 12-month period in excess of 20 percent of the original principal amount.

(D) A covered loan will not impose the prepayment fee or penalty if the covered loan is accelerated as a result of default.

(E) The person who originates the covered loan will not finance a prepayment penalty through a new loan that is originated by the same person.

(b) (1) A covered loan with a term of five years or less may not provide at origination for a payment schedule with regular periodic payments that when aggregated do not fully amortize the principal balance as of the maturity date of the loan.

(2) For a payment schedule that is adjusted to account for the seasonal or irregular income of the consumer, the total installments in any year shall not exceed the amount of one year's worth of payments on the loan. This prohibition does not apply to a bridge loan. For purposes of this paragraph, "bridge loan" means a loan with a maturity of less than 18 months that only requires payments of interest until the time when the entire unpaid balance is due and payable.

(c) A covered loan shall not contain a provision for negative amortization such that the payment schedule for regular monthly payments causes the principal balance to increase, unless the covered loan is a first mortgage and the person who originates the loan discloses to the consumer that the loan contains a negative amortization provision that may add principal to the balance of the loan.

(d) A covered loan shall not include terms under which periodic payments required under the loan are consolidated and paid in advance from the loan proceeds.

(e) A covered loan shall not contain a provision that increases the interest rate as a result of a default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration for the indebtedness.

(f) (1) A person who originates covered loans shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan. In the case of a covered loan that is structured to increase to a specific designated rate, stated as a number or formula, at a specific predetermined date not exceeding 37 months from the date of application, this evaluation shall be based upon the fully indexed rate of the loan calculated at the time of application.

The consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, do not exceed 55 percent of the consumer's monthly gross income, as verified by the credit application, the consumer's financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other reasonable means.

(2) No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the loan is consummated, the consumer's total monthly debts, including amounts owed under the loan, exceed 55

percent of the consumer's monthly gross income.

(3) In the case of a stated income loan, the reasonable belief requirement in paragraph (1) shall apply, however, for stated income loans that belief may be based on the income stated by the consumer, and other information in the possession of the person originating the loan after the solicitation of all information that the person customarily solicits in connection with loans of this type. A person shall not knowingly or willfully originate a covered loan as a stated income loan with the intent, or effect, of evading the provisions of this subdivision.

(g) A person who originates a covered loan shall not pay a contractor under a home-improvement contract from the proceeds of a covered loan other than by an instrument payable to the consumer or jointly to the consumer and the contractor or, at the election of the consumer, to a third-party escrow agent for the benefit of the contractor in accordance with terms and conditions established in a written escrow agreement signed by the consumer, the person who originates a covered loan, and the contractor prior to the disbursement of funds. No payments, other than progress payments for home-improvement work that the consumer certifies is completed, shall be made to an escrow account or jointly to the consumer and the contractor unless the person who originates the loan is presented with a signed and dated completion certificate by the consumer showing that the home-improvement contract was completed to the satisfaction of the consumer.

(h) It is unlawful for a person who originates a covered loan to recommend or encourage a consumer to default on an existing consumer loan or other debt in connection with the solicitation or making of a covered loan that refinances all or any portion of the existing consumer loan or debt.

(i) A covered loan shall not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness. This prohibition does not apply if repayment of the loan has been accelerated in accordance with the terms of the loan documents (1) as a result of the consumer's default, (2) pursuant to a due-on-sale provision, or (3) due to fraud or material misrepresentation by a consumer in connection with the loan or the value of the security for the loan.

(j) A person who originates a covered loan shall not refinance or arrange for the refinancing of a consumer loan such that the new loan is a covered loan that is made for the purpose of refinancing, debt consolidation or cash out, that does not result in an identifiable benefit to the consumer, considering the consumer's stated purpose for seeking the loan, fees, interest rates, finance charges, and points.

(k) (1) A covered loan shall not be made unless the following disclosure, written in 12-point font or larger, has been provided to the consumer no later than three business days prior to signing of the loan documents of the transaction:

CONSUMER CAUTION AND HOME OWNERSHIP COUNSELING NOTICE

If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan.

Mortgage loan rates and closing costs and fees vary based on many other factors, including your particular credit and financial circumstances, your earnings history, the loan-to-value requested, and the type of property that will secure your loan. Higher rates and fees may be justified depending on the individual circumstances of a particular consumer's application. You should shop around and compare loan rates and fees.

This particular loan may have a higher rate and total points and fees than other mortgage loans and is, or may be, subject to the additional disclosure and substantive protections under Division 1.7 (commencing with Section 4970) of the Financial Code. You should consider consulting a qualified independent credit counselor or other experienced financial adviser regarding the rate, fees, and provisions of this mortgage loan before you proceed. For information on contacting a qualified credit counselor, ask your lender or call the United States Department of Housing and Urban Development's counseling hotline at 1-888-995-HOPE (4673) or go to hud4.my.site.com/housingcounseling/ for a list of HUD-approved housing counseling agencies.

You are not required to complete any loan agreement merely because you have received these disclosures or have signed a loan application.

If you proceed with this mortgage loan, you should also remember that you may face serious financial risks if you use this loan to pay off credit card debts and other debts in connection with this transaction and then subsequently incur significant new credit card charges or other debts. If you continue to accumulate debt after this loan is closed and then experience financial difficulties, you could lose your home and any equity you have in it if you do not meet your mortgage loan obligations.

Property taxes and homeowner's insurance are your responsibility. Not all lenders provide escrow services for these payments. You should ask your lender about these services.

Your payments on existing debts contribute to your credit ratings. You should not accept any advice to ignore your regular payments to your existing creditors.

(2) It shall be a rebuttable presumption that a licensed person has met its obligation to provide this disclosure if the consumer provides the licensed person with a signed acknowledgment of receipt of a copy of the notice set forth in paragraph (1).

(l) (1) A person who originates a covered loan shall not steer, counsel, or direct any prospective consumer to accept a loan product with a risk grade less favorable than the risk grade that the consumer would qualify for based on that person's then current underwriting guidelines, prudently applied, considering the information available to that person, including the information provided by the consumer.

A person shall not be deemed to have violated this section if the risk grade determination applied to a consumer is reasonably based on the person's underwriting guidelines if it is an appropriate risk grade category for which the consumer qualifies with the person.

(2) If a broker originates a covered loan, the broker shall not steer, counsel, or direct any prospective consumer to accept a loan product at a higher cost than that for which the consumer could qualify based on the loan products offered by the persons with whom the broker regularly does business.

(m) A person who originates a covered loan shall not avoid, or attempt to avoid, the application of this division by doing the following:

(1) Structuring a loan transaction as an open-end credit plan for the purpose of evading this division if the loan would have been a covered loan if the loan had been structured as a closed-end loan.

(2) Dividing any loan transaction into separate parts for the purpose of evading this division.

(3) Committing mortgage fraud, as defined by Section 532f of the Penal Code.

(n) A person who originates a covered loan shall not act in a manner, whether specifically prohibited by this section or of a different character, that constitutes fraud.

SEC. 2. Section 532f of the Penal Code is amended to read:

532f. (a) A person commits mortgage fraud if, with the intent to defraud, the person does any of the following:

(1) Deliberately makes any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.

(2) Deliberately uses or facilitates the use of any misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.

(3) Receives any proceeds or any other funds in connection with a mortgage loan closing that the person knew resulted from a violation of paragraph (1) or (2) of this subdivision.

(4) Files or causes to be filed with the recorder of any county in connection with a mortgage loan transaction any document the person knows to contain a material misstatement, misrepresentation, or omission.

(b) In addition to those offenses listed in subdivision (a), a mortgage broker or person who originates a loan commits mortgage fraud if, with the intent to defraud, the person does either of the following:

(1) Instructs or otherwise deliberately causes a borrower to sign documents reflecting the terms of a business, commercial, or agricultural loan, with knowledge that the borrower intends to use the loan proceeds primarily for personal, family, or household use.

(2) Instructs or otherwise deliberately causes a borrower to sign documents reflecting the terms of a bridge loan, with knowledge that the loan proceeds will be not used to acquire or construct a new dwelling. For purposes of this subdivision, a bridge loan is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

(c) An offense involving mortgage fraud shall not be based solely on information lawfully disclosed pursuant to federal disclosure laws, regulations, or interpretations related to the mortgage lending process.

(d) (1) Notwithstanding any other provision of law, an order for the production of any or all relevant records possessed by a real estate recordholder in whatever form and however stored may be issued by a judge upon a written ex parte application made under penalty of perjury by a peace officer stating that there are reasonable grounds to believe that the records sought are relevant and material to an ongoing investigation of a felony fraud violation.

(2) The ex parte application shall specify with particularity the records to be produced, which shall relate to a party or parties in the criminal investigation.

(3) Relevant records may include, but are not limited to, purchase contracts, loan applications, settlement statements, closing statements, escrow instructions, payoff demands, disbursement reports, or checks.

(4) The ex parte application and any subsequent judicial order may be ordered sealed by the court upon a sufficient showing that it is necessary for the effective continuation of the investigation.

(5) The records ordered to be produced shall be provided to the peace officer applicant or their designee within a reasonable time period after service of the order upon the real estate recordholder.

(e) (1) Nothing in this section shall preclude the real estate recordholder from notifying a customer of the receipt of the order for production of records, unless a court orders the real estate recordholder to withhold notification to the customer upon a finding that this notice would impede the investigation.

(2) If a court has made an order to withhold notification to the customer under this subdivision, the peace officer who or law enforcement agency that obtained the records shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(f) (1) Nothing in this section shall preclude the real estate recordholder from voluntarily disclosing information or providing records to law enforcement upon request.

(2) This section shall not preclude a real estate recordholder, in its discretion, from initiating contact with, and thereafter communicating with and disclosing records to, appropriate state or local agencies concerning a suspected violation of any law.

(g) No real estate recordholder, or any officer, employee, or agent of the real estate recordholder, shall be liable to any person for either of the following:

(1) Disclosing information in response to an order pursuant to this section.

(2) Complying with an order under this section not to disclose to the customer the order, or the dissemination of information pursuant to the order.

(h) Any records required to be produced pursuant to this section shall be accompanied by an affidavit of a custodian of records of the real estate recordholder or other qualified witness which states, or includes in substance, all of the following:

(1) The affiant is the duly authorized custodian of the records or other qualified witness and has authority to certify the records.

(2) The identity of the records.

(3) A description of the mode of preparation of the records.

(4) The records were prepared by the personnel of the business in the regular course of business at or near the time of an act, condition, or event.

(5) Any copies of records described in the order are true copies.

(i) A person who violates this section is guilty of a public offense punishable by imprisonment in a county jail for not more than one year or by imprisonment pursuant to subdivision (h) of Section 1170.

(j) For the purposes of this section, the following terms shall have the following meanings:

(1) "Person" means any individual, partnership, firm, association, corporation, limited liability company, or other legal entity.

(2) "Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including, but not limited to, solicitation, application, origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

(3) "Mortgage loan" means a loan or agreement to extend credit to a person that is secured by a deed of trust or other document representing a security interest or lien upon any interest in real property, including the renewal or refinancing of the loan.

(4) "Real estate recordholder" means any person, licensed or unlicensed, that meets any of the following conditions:

(A) Is a title insurer that engages in the "business of title insurance" as defined by Section 12340.3 of the Insurance Code, an underwritten title company, or an escrow company.

(B) Functions as a broker or salesperson by engaging in any of the type of acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6 of the Business and Professions Code.

(C) Engages in the making or servicing of loans secured by real property.

(k) Fraud involving a mortgage loan may only be prosecuted under this section when the value of the alleged fraud meets the threshold for grand theft as set out in subdivision (a) of Section 487.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.