

## Assembly Bill No. 313

### CHAPTER 554

An act to amend Section 2948.5 of the Civil Code, and to amend Section 50204 of, and to repeal Section 50707 of, the Financial Code, relating to mortgage lending.

[Approved by Governor September 28, 2003. Filed with Secretary of State September 29, 2003.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 313, Dutra. Mortgage lending.

(1) Existing law provides that a borrower under a note secured by a mortgage or deed of trust on one to four residential units is not required to pay interest on a principal obligation for more than one day prior to recording of the mortgage or deed of trust.

This bill would instead provide that a borrower under these circumstances would not be required to pay interest for more than one day prior to the date that the loan proceeds are disbursed out of escrow or disbursed to the borrower or to another party on behalf of the borrower. The bill would make other conforming changes.

(2) The California Residential Mortgage Lending Act provides for licensing and regulation of residential mortgage lenders by the Commissioner of Corporations. These provisions will be repealed on June 30, 2005.

This bill would delete the repeal provision, thereby extending the act indefinitely.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2948.5 of the Civil Code is amended to read:  
2948.5. (a) A borrower shall not be required to pay interest on a principal obligation under a promissory note secured by a mortgage or deed of trust on real property improved with between one to four residential dwelling units for any period that meets any of the following requirements:

(1) Is more than one day prior to the date that the loan proceeds are disbursed from escrow.

(2) In the event of no escrow, if a request for recording is made in connection with the disbursement, is more than one day prior to the date the loan proceeds are disbursed to the borrower, to a third party on behalf



of the borrower, or to the lender to satisfy an existing obligation of the borrower.

(3) In all other circumstances where there is no escrow and no request for recording, is prior to the date funds are disbursed to the borrower, to a third party on behalf of the borrower, or to the lender to satisfy an existing obligation of the borrower.

(b) Interest may commence to accrue on the business day immediately preceding the day of disbursement, for obligations described in paragraphs (1) and (2) of subdivision (a) if both of the following occur:

(1) The borrower affirmatively requests, and the lender agrees, that the disbursement will occur on Monday, or a day immediately following a bank holiday.

(2) The following information is disclosed to the borrower in writing: (A) the amount of additional per diem interest charged to facilitate disbursement on Monday or the day following a holiday, as the case may be, and (B) that it may be possible to avoid the additional per diem interest charge by disbursing the loan proceeds on a day immediately following a business day. This disclosure shall be provided to the borrower and acknowledged by the borrower by signing a copy of the disclosure document prior to placing funds in escrow.

(c) This section does not apply to a loan that is subject to subdivision (c) of Section 10242 of the Business and Professions Code.

SEC. 2. Section 50204 of the Financial Code is amended to read: 50204. A licensee may not do any of the following:

(a) Disburse the mortgage loan proceeds in a form other than direct deposit to the borrower's or borrower's designee's account, wire, bank or certified check, ACH funds transfer, or attorney's check drawn on a trust account. An entity may apply to the commissioner for a waiver of the requirements of this subdivision by demonstrating, in a letter application, that it has adopted or will adopt another method of disbursement of loan proceeds that will satisfy the purposes of this subdivision.

(b) Fail to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant.

(c) Accept fees at closing that are not disclosed to the borrower on the federal HUD-1 Settlement Statement.

(d) Commit an act in violation of Section 2941 of the Civil Code.

(e) Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.

(f) Intentionally delay closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(g) Engage in fraudulent home mortgage underwriting practices.



(h) Make payment of any kind, whether directly or indirectly, to an in-house or fee appraiser of a government or private money lending agency, with which an application for a home mortgage has been filed, for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by the home mortgage.

(i) Engage in any acts in violation of Section 17200 or 17500 of the Business and Professions Code.

(j) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which it is a party.

(k) Do an act, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealings.

(l) Sell more than eight loans in a calendar year made under the authority of this license to a person who is not an institutional investor.

(m) Commit an act in violation of Section 1695.13 of the Civil Code.

(n) Make or service a loan that is not a residential mortgage loan under the authority of the license.

(o) Commit an act in violation of Section 2948.5 of the Civil Code. Evidence of compliance with Section 2948.5 of the Civil Code may be evidenced by (1) a certification executed by the licensee, at no cost to the borrower, pursuant to Section 2015.5 of the Code of Civil Procedure, or (2) other evidence in the loan file acceptable to the commissioner.

SEC. 3. Section 50707 of the Financial Code is repealed.

