

Assembly Bill No. 1979

CHAPTER 939

An act to amend Section 1916.5 of the Civil Code, and to amend Section 677 of the Insurance Code, relating to financial transactions.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1979, Wiggins. Financial transactions.

Existing law requires a lender to set forth provisions for variable interest rates in security documents and evidence of the debt that are issued in this connection and to include specified provisions in these documents regarding variable interest rates. Existing law exempts supervised financial organizations from these requirements, and defines this term to include various entities, including state or federally regulated banks, savings associations, savings banks, or credit unions.

This bill would revise this definition to also exempt licensed finance lenders and licensed residential mortgage lenders.

Existing law sets forth the process for cancellation of a policy of insurance and requires a notice of cancellation to be in writing and to identify the grounds for cancellation.

This bill would provide that a lienholder's copy of this notice shall be deemed mailed if, with the lienholder's consent, it is delivered by electronic transmittal, facsimile, or personal delivery.

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

SECTION 1. Section 1916.5 of the Civil Code is amended to read:

1916.5. (a) No increase 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, by a lender other than a supervised financial organization is valid unless that 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 requirement that when an increase in the interest rate is required or permitted by a movement in a particular direction of a prescribed standard an identical decrease is required in the interest rate by a movement in the opposite direction of the prescribed standard.



(2) The rate of interest shall not change more often than once during any semiannual period, and at least six months shall elapse between any two changes.

(3) The change in the interest rate shall not exceed one-fourth of 1 percent in any semiannual period, and shall not result in a rate more than 2.5 percentage points greater than the rate for the first loan payment due after the closing of the loan.

(4) The rate of interest shall not change during the first semiannual period.

(5) The borrower is permitted to prepay the loan in whole or in part without a prepayment charge within 90 days of notification of any increase in the rate of interest.

(6) 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 the following language:

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE.

(b) (1) This section shall be applicable only to 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 containing four or fewer residential units or on which four or fewer residential units are to be constructed.

(2) This section does not apply to unamortized construction loans with an original term of two years or less or to loans made for the purpose of the purchase or construction of improvements to existing residential dwellings.

(c) Regulations setting forth the prescribed standard upon which variations in the interest rate shall be based may be adopted by the Commissioner of Financial Institutions with respect to savings associations and by the Insurance Commissioner with respect to insurers. Regulations adopted by the Commissioner of Financial Institutions shall apply to all loans made by savings associations pursuant to this section prior to January 1, 1990.

(d) As used in this section:

(1) "Supervised financial organization" means a state or federally regulated bank, savings association, savings bank, or credit union, or state regulated industrial loan company, a licensed finance lender under the California Finance Lenders Law, a licensed residential mortgage lender under the California Residential Mortgage Lending Act, or holding company, affiliate, or subsidiary thereof, or institution of the Farm Credit System, as specified in 12 U.S.C. Sec. 2002.



(2) “Insurer” includes, but is not limited to, a nonadmitted insurance company.

(3) “Semiannual period” means each of the successive periods of six calendar months commencing with the first day of the calendar month in which the instrument creating the obligation is dated.

(4) “Security document” means a mortgage contract, deed of trust, or real estate sales contract.

(5) “Evidence of debt” means a note or negotiable instrument.

(e) This section shall be applicable only to instruments executed on and after the effective date of this section.

(f) This section does not apply to nonprofit public corporations.

(g) This section is not intended to apply to a loan made where the rate of interest provided for is less than the then current market rate for a similar loan in order to accommodate the borrower because of a special relationship, including, but not limited to, an employment or business relationship, of the borrower with the lender or with a customer of the lender and the sole increase in interest provided for with respect to the loan will result only by reason of the termination of that relationship or upon the sale, deed, or transfer of the property securing the loan to a person not having that relationship.

SEC. 2. Section 677 of the Insurance Code is amended to read:

677. (a) All notices of cancellation shall be in writing, mailed to the named insured at the address shown in the policy, or to his or her last known address, and shall state, with respect to policies in effect after the time limits specified in Section 676, (1) which of the grounds set forth in Section 676 is relied upon, and (2) that, upon written request of the named insured, mailed or delivered to the insurer within 15 days of the date of cancellation, the insurer shall specify the reason for the cancellation except where the reason is for nonpayment of premium and is so stated in the cancellation notice.

(b) For purposes of this section, a lienholder’s copy of those notices shall be deemed mailed if, with the lienholder’s consent, it is delivered by electronic transmittal, facsimile, or personal delivery.

