

AMENDED IN SENATE MARCH 19, 2013

**SENATE BILL**

**No. 179**

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**Introduced by Senator ~~Correa Roth~~**

February 6, 2013

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An act to amend ~~Section 799.2 of the Civil Code, relating to mobilehome parks. Sections 22013 and 50003.5 of the Financial Code, relating to mortgage loan originators.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 179, as amended, ~~Correa Roth. Mobilehome parks. Mortgage loan originators.~~

*The California Finance Lenders Law and the California Residential Mortgage Lending Act define a "mortgage loan originator" as an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. The acts except certain individuals from the definition of mortgage loan originator. Existing law requires that mortgage loan originators be licensed and fulfill certain educational and other requirements.*

*This bill would except from the definition of mortgage loan originator an individual who originates 5 or fewer residential mortgage loans secured by a manufactured home or mobilehome, as defined, in any 12-consecutive-month period.*

~~Existing law provides for the rights of a resident who has an ownership interest in the subdivision, cooperative, or condominium for mobilehomes, or a resident-owned mobilehome park in which his or her mobilehome is located or installed. Existing law prohibits the ownership or management of the subdivision, cooperative, or condominium for mobilehomes or a resident-owned mobilehome park~~

~~from showing or listing for sale a mobilehome owned by a resident without first obtaining the resident’s written authorization.~~

~~This bill would make a technical, nonsubstantive changes to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

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

1     SECTION 1. Section 22013 of the Financial Code is amended  
2 to read:

3     22013. (a) “Mortgage loan originator” means an individual  
4 who, for compensation or gain, or in the expectation of  
5 compensation or gain, takes a residential mortgage loan application  
6 or offers or negotiates terms of a residential mortgage loan.

7     (b) Mortgage loan originator does not include any of the  
8 following:

9     (1) An individual who performs purely administrative or clerical  
10 tasks on behalf of a person meeting the definition of a mortgage  
11 loan originator, except as provided in subdivision (c) of Section  
12 22014. The term “administrative or clerical tasks” means the  
13 receipt, collection, and distribution of information common for  
14 the processing or underwriting of a loan in the mortgage industry  
15 and communication with a consumer to obtain information  
16 necessary for the processing or underwriting of a residential  
17 mortgage loan, to the extent that the communication does not  
18 include offering or negotiating loan rates or terms, or counseling  
19 consumers about residential mortgage loan rates or terms.

20     (2) An individual who solely renegotiates terms for existing  
21 mortgage loans held or serviced by his or her employer and who  
22 does not otherwise act as a mortgage loan originator, unless the  
23 United States Department of Housing and Urban Development or  
24 a court of competent jurisdiction determines that the SAFE Act  
25 requires such an employee to be licensed as a mortgage loan  
26 originator under state laws implementing the SAFE Act.

27     (3) An individual that is solely involved in extensions of credit  
28 relating to timeshare plans, as that term is defined in Section  
29 101(53D) of Title 11 of the United States Code.

30     (4) An individual licensed as a mortgage loan originator pursuant  
31 to the provisions of Article 2.1 (commencing with Section

1 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and  
2 Professions Code and the SAFE Act.

3 (5) An individual who is an employee of a federal, state, or local  
4 government agency or housing finance agency and who acts as a  
5 loan originator only pursuant to his or her official duties as an  
6 employee of the federal, state, or local government agency or  
7 housing finance agency.

8 (A) For purposes of this paragraph, the term “employee” means  
9 an individual whose manner and means of performance of work  
10 are subject to the right of control of, or are controlled by, a person,  
11 and whose compensation for federal income tax purposes is  
12 reported, or required to be reported, on a W-2 form issued by the  
13 controlling person.

14 (B) For purposes of this paragraph, the term “housing finance  
15 agency” means any authority:

16 (i) That is chartered by a state to help meet the affordable  
17 housing needs of the residents of the state.

18 (ii) That is supervised directly or indirectly by the state  
19 government.

20 (iii) That is subject to audit and review by the state in which it  
21 operates.

22 (6) (A) An employee of a bona fide nonprofit organization who  
23 exclusively originates residential mortgage loans for a bona fide  
24 nonprofit organization, and who acts as a mortgage loan originator  
25 only with respect to residential mortgage loans with terms that are  
26 favorable to the borrower.

27 (B) To qualify for the exemption under this paragraph, the bona  
28 fide nonprofit organization under this paragraph ~~must~~ *shall* register  
29 with the department on a form prescribed by the commissioner,  
30 along with documentation of all of the following by December 31  
31 of each year:

32 (i) Status of a tax-exempt organization under Section 501(c)(3)  
33 of the Internal Revenue Code of 1986.

34 (ii) That the organization promotes affordable housing or  
35 provides home ownership education or similar services.

36 (iii) That the organization conducts its activities in a manner  
37 that serves public or charitable purposes, rather than commercial  
38 purposes.

1 (iv) That the organization receives funding and revenue, and  
2 charges fees in a manner that does not incentivize the organization  
3 or its employees to act other than in the best interests of its clients.

4 (v) That the organization compensates employees in a manner  
5 that does not incentivize employees to act other than in the best  
6 interests of its clients.

7 (vi) That the organization provides to, or identifies for, the  
8 borrower residential mortgage loans with terms favorable to the  
9 borrower and comparable to mortgage loans and housing assistance  
10 provided under government housing assistance programs.

11 (vii) That the organization is certified by the United States  
12 Department of Housing and Urban Development as a housing  
13 counselor who engages solely in traditional housing counseling  
14 services, if applicable.

15 (C) The commissioner may periodically require reports  
16 regarding the activities of the bona fide nonprofit organization,  
17 and shall examine the nonprofit organization's books and records  
18 in accordance with the regulations of the United States Department  
19 of Housing and Urban Development, or any successor guidance  
20 or requirement by the Consumer Financial Protection Bureau. If  
21 the nonprofit organization fails to provide documentation as  
22 required by subparagraph (B), or if it does not continue to meet  
23 the criteria under subparagraph (B), the commissioner may revoke  
24 the nonprofit organization's status as a registered bona fide  
25 nonprofit organization.

26 (D) For residential mortgage loans to have terms that are  
27 favorable to the borrower, the terms shall be consistent with loan  
28 origination in a public or charitable context, rather than a  
29 commercial context.

30 (E) In making its determinations and examinations, the  
31 commissioner may rely on the receipt and review of:

32 (i) Reports filed with federal, state, or local housing agencies  
33 and authorities.

34 (ii) Reports and attestations prescribed by the commissioner by  
35 rule or order.

36 (7) *An individual who originates five or fewer residential*  
37 *mortgage loans secured by a manufactured home, as defined in*  
38 *Section 18007 of the Health and Safety Code, or a mobilehome,*  
39 *as defined in Section 18008 of the Health and Safety Code, in any*  
40 *12-consecutive-month period.*

1 (c) “Registered mortgage loan originator” means any individual  
2 who is all of the following:

3 (1) Meets the definition of mortgage loan originator.

4 (2) Is an employee of a depository institution, a subsidiary that  
5 is owned and controlled by a depository institution and regulated  
6 by a federal banking agency, or an institution regulated by the  
7 Farm Credit Administration.

8 (3) Is registered with, and maintains a unique identifier through,  
9 the Nationwide Mortgage Licensing System and Registry.

10 (d) “Loan processor or underwriter” means an individual who  
11 performs clerical or support duties as an employee at the direction  
12 of, and subject to the supervision and instruction of, a mortgage  
13 loan originator licensed by the state or a registered mortgage loan  
14 originator.

15 *SEC. 2. Section 50003.5 of the Financial Code is amended to*  
16 *read:*

17 50003.5. (a) “Mortgage loan originator” means an individual  
18 who, for compensation or gain, or in the expectation of  
19 compensation or gain, takes a residential mortgage loan application  
20 or offers or negotiates terms of a residential mortgage loan.

21 (b) Mortgage loan originator does not include any of the  
22 following:

23 (1) An individual who performs purely administrative or clerical  
24 tasks on behalf of a person meeting the definition of a mortgage  
25 loan originator, except as provided in subdivision (c) of Section  
26 50003.6. The term “administrative or clerical tasks” means the  
27 receipt, collection, and distribution of information common for  
28 the processing or underwriting of a loan in the mortgage industry  
29 and communication with a consumer to obtain information  
30 necessary for the processing or underwriting of a residential  
31 mortgage loan, to the extent that the communication does not  
32 include offering or negotiating loan rates or terms, or counseling  
33 consumers about residential mortgage loan rates or terms.

34 (2) An individual who solely renegotiates terms for existing  
35 mortgage loans held or serviced by his or her employer and who  
36 does not otherwise act as a mortgage loan originator, unless the  
37 United States Department of Housing and Urban Development or  
38 a court of competent jurisdiction determines that the SAFE Act  
39 requires that employee to be licensed as a mortgage loan originator  
40 under state laws implementing the SAFE Act.

1 (3) An individual that is solely involved in extensions of credit  
2 relating to timeshare plans, as that term is defined in Section  
3 101(53D) of Title 11 of the United States Code.

4 (4) An individual licensed as a mortgage loan originator pursuant  
5 to Article 2.1 (commencing with Section 10166.01) of Chapter 3  
6 of Part 1 of Division 4 of the Business and Professions Code and  
7 the SAFE Act.

8 (5) An individual who is an employee of a federal, state, or local  
9 government agency or housing finance agency and who acts as a  
10 loan originator only pursuant to his or her official duties as an  
11 employee of the federal, state, or local government agency or  
12 housing finance agency.

13 (A) For purposes of this paragraph, the term “employee” means  
14 an individual whose manner and means of performance of work  
15 are subject to the right of control of, or are controlled by, a person,  
16 and whose compensation for federal income tax purposes is  
17 reported, or required to be reported, on a W-2 form issued by the  
18 controlling person.

19 (B) For purposes of this paragraph, the term “housing finance  
20 agency” means any authority:

21 (i) That is chartered by a state to help meet the affordable  
22 housing needs of the residents of the state.

23 (ii) That is supervised directly or indirectly by the state  
24 government.

25 (iii) That is subject to audit and review by the state in which it  
26 operates.

27 (6) (A) An employee of a bona fide nonprofit organization who  
28 exclusively originates residential mortgage loans for a bona fide  
29 nonprofit organization, and who acts as a mortgage loan originator  
30 only with respect to residential mortgage loans with terms that are  
31 favorable to the borrower.

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33 fide nonprofit organization under this paragraph ~~must~~ *shall* register  
34 with the department on a form prescribed by the commissioner,  
35 along with documentation of all of the following by December 31  
36 of each year:

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38 of the Internal Revenue Code of 1986.

39 (ii) That the organization promotes affordable housing or  
40 provides home ownership education or similar services.

1 (iii) That the organization conducts its activities in a manner  
2 that serves public or charitable purposes, rather than commercial  
3 purposes.

4 (iv) That the organization receives funding and revenue, and  
5 charges fees in a manner that does not incentivize the organization  
6 or its employees to act other than in the best interests of its clients.

7 (v) That the organization compensates employees in a manner  
8 that does not incentivize employees to act other than in the best  
9 interests of its clients.

10 (vi) That the organization provides to, or identifies for, the  
11 borrower residential mortgage loans with terms favorable to the  
12 borrower and comparable to mortgage loans and housing assistance  
13 provided under government housing assistance programs.

14 (vii) That the organization is certified by the United States  
15 Department of Housing and Urban Development as a housing  
16 counselor who engages solely in traditional housing counseling  
17 services, if applicable.

18 (C) The commissioner may periodically require reports  
19 regarding the activities of the bona fide nonprofit organization,  
20 and shall examine the nonprofit organization's books and records  
21 in accordance with the regulations of the United States Department  
22 of Housing and Urban Development, or any successor guidance  
23 or requirement by the Consumer Financial Protection Bureau. If  
24 the nonprofit organization fails to provide documentation as  
25 required by subparagraph (B), or if it does not continue to meet  
26 the criteria under subparagraph (B), the commissioner may revoke  
27 the nonprofit organization's status as a registered bona fide  
28 nonprofit organization.

29 (D) For residential mortgage loans to have terms that are  
30 favorable to the borrower, the terms shall be consistent with loan  
31 origination in a public or charitable context, rather than a  
32 commercial context.

33 (E) In making its determinations and examinations, the  
34 commissioner may rely on the receipt and review of:

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36 and authorities.

37 (ii) Reports and attestations prescribed by the commissioner by  
38 rule or order.

39 (7) *An individual who originates five or fewer residential*  
40 *mortgage loans secured by a manufactured home, as defined in*

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2 *as defined in Section 18008 of the Health and Safety Code, in any*  
3 *12-consecutive-month period.*

4 (c) “Registered mortgage loan originator” means any individual  
5 who is all of the following:

- 6 (1) Meets the definition of mortgage loan originator.
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8 is owned and controlled by a depository institution and regulated  
9 by a federal banking agency, or an institution regulated by the  
10 Farm Credit Administration.
- 11 (3) Is registered with, and maintains a unique identifier through,  
12 the Nationwide Mortgage Licensing System and Registry.

13 (d) “Loan processor or underwriter” means an individual who  
14 performs clerical or support duties as an employee at the direction  
15 of, and subject to the supervision and instruction of, a mortgage  
16 loan originator licensed by the state or a registered mortgage loan  
17 originator.

18 ~~SECTION 1. Section 799.2 of the Civil Code is amended to~~  
19 ~~read:~~

20 ~~799.2. (a) The ownership or management shall not show or~~  
21 ~~list for sale a mobilehome owned by a resident without first~~  
22 ~~obtaining the resident’s written authorization. The authorization~~  
23 ~~shall specify the terms and conditions regarding the showing or~~  
24 ~~listing.~~

25 ~~(b) Nothing contained in this section shall be construed to affect~~  
26 ~~the provisions of the Health and Safety Code governing the~~  
27 ~~licensing of a mobilehome salesperson.~~