
Introduced by Senator Calderon

February 15, 1995

An act to amend Sections 50003, 50120, 50130, and 50504 of the Financial Code, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

SB 411, as introduced, Calderon. Residential mortgage lending.

The California Residential Mortgage Lending Act regulates the making of residential mortgage loans by specified entities. The act provides, in part, that if charges on a residential mortgage loan greater than those authorized by the act are willfully charged, contracted for, or received, the loan contract is void. No person may collect any amounts under the loan contract.

This bill would provide, instead, that if prohibited charges are made, the borrower may recover treble damages plus costs and attorney's fees. If the prohibited charges are due to a bona fide error, the borrower may collect only the amount overpaid. The bill would also make changes related to restrictions on where loans may be made or serviced, and would change the definition of "service" under the act.

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

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

1 SECTION 1. Section 50003 of the Financial Code is
2 amended to read:

1 50003. (a) “Annual audit” means a certified audit of
2 the licensee’s books, records, and systems of internal
3 control performed by an independent certified public
4 accountant in accordance with generally accepted
5 accounting principles and generally accepted auditing
6 standards.

7 (b) “Borrower” means the loan applicant.

8 (c) “Commissioner” means the Commissioner of
9 Corporations.

10 (d) “Control” means the possession, directly or
11 indirectly, of the power to direct, or cause the direction
12 of, the management and policies of a licensee under this
13 division, whether through voting or through the
14 ownership of voting power of an entity that possesses
15 voting power of the licensee, or otherwise. Control is
16 presumed to exist if a person, directly or indirectly, owns,
17 controls, or holds 10 percent or more of the voting power
18 of a licensee or of an entity that owns, controls, or holds,
19 with power to vote, 10 percent or more of the voting
20 power of a licensee. No person shall be deemed to control
21 a licensee solely by reason of his or her status as an officer
22 or director of the licensee.

23 (e) “Engage in the business” means the dissemination
24 to the public, or any part of the public, by means of
25 written, printed, or electronic communication or any
26 communication by means of recorded telephone
27 messages or spoken on radio, television, or similar
28 communications media, of any information relating to the
29 making of residential mortgage loans, the servicing of
30 residential mortgage loans, or both. “Engage in the
31 business” also means, without limitation, making
32 residential mortgage loans or servicing residential
33 mortgage loans, or both.

34 (f) “Exempt person” means any of the following:

35 (1) Any bank, trust company, or industrial loan
36 company doing business under the authority of or in
37 accordance with a license, certificate, or charter issued by
38 the United States or any state, district, territory, or
39 commonwealth of the United States.



1 (2) A federally chartered savings and loan association,
2 federal savings bank, or federal credit union that is
3 authorized to transact business in this state.

4 (3) A savings and loan association, savings bank, or
5 credit union organized under the laws of this or any other
6 state that is authorized to transact business in this state.

7 (4) A person engaged solely in commercial mortgage
8 lending.

9 (5) A wholly owned service corporation of a savings
10 and loan association or savings bank organized under the
11 laws of this state or the wholly owned service corporation
12 of a federally chartered savings and loan association or
13 savings bank.

14 (6) Any person making residential mortgage loans
15 with his, her, or its own funds for his, her, or its own
16 investment without intent to resell more than eight
17 residential loans in any one calendar year.

18 (7) An agency, or other instrumentality of the federal
19 government, or state or municipal government.

20 (8) An employee or employer pension plan making
21 loans only to its participants.

22 (9) A person acting in a fiduciary capacity conferred
23 by the authority of a court.

24 (10) A real estate broker licensed under California
25 law, when making, arranging, selling, or servicing a
26 residential loan.

27 (11) A consumer finance lender or commercial
28 finance lender licensed under California law, when
29 acting under the authority of that license.

30 (g) "In this state" means any activity of a person
31 relating to making or servicing a residential mortgage
32 loan that originates from this state and is directed to
33 persons outside this state, or that originates from outside
34 this state and is directed to persons inside this state, or
35 that originates inside this state and is directed to persons
36 inside this state, or that leads to the formation of a
37 contract and the offer or acceptance thereof is directed
38 to a person in this state (whether from inside or outside
39 this state and whether the offer was made inside or
40 outside the state).



1 (h) “Institutional investor” means the following:

2 (1) The United States or any state, district, territory, or
3 commonwealth thereof, or any city, county, city and
4 county, public district, public authority, public
5 corporation, public entity, or political subdivision of a
6 state, district, territory, or commonwealth of the United
7 States, or any agency or other instrumentality of any one
8 or more of the foregoing.

9 (2) Any bank, trust company, savings bank or savings
10 and loan association, credit union, industrial bank or
11 industrial loan company, personal property broker,
12 consumer finance lender, commercial finance lender, or
13 insurance company doing business under the authority of
14 or in accordance with a license, certificate, or charter
15 issued by the United States or any state, district, territory,
16 or commonwealth of the United States.

17 (3) Trustees of pension, profit-sharing, or welfare
18 funds, if the pension, profit-sharing, or welfare fund has
19 a net worth of not less than fifteen million dollars
20 (\$15,000,000), except pension, profit-sharing, or welfare
21 funds of a licensee or its affiliate, self-employed individual
22 retirement plans, or individual retirement accounts.

23 (4) Any corporation with outstanding securities
24 registered under Section 12 of the Securities Exchange
25 Act of 1934 or any wholly owned subsidiary of that
26 corporation, provided the purchaser represents that it is
27 purchasing for its own account for investment and not
28 with a view to, or for sale in connection with, any
29 distribution of a promissory note.

30 (5) Any syndication or other combination of any of the
31 foregoing that is organized to purchase a promissory note.

32 (6) A person licensed to make residential mortgage
33 loans under this law.

34 (7) Any person who is licensed as a securities broker or
35 securities dealer under any law of this state, or of the
36 United States, or any employee, officer or agent of that
37 person, if that person is acting within the scope of
38 authority granted by that license in connection with a
39 transaction involving the offer, sale, purchase, or
40 exchange of a security representing an ownership



1 interest in a pool of promissory notes secured directly or
2 indirectly by liens on real property, if the transaction is
3 subject to any law of this state or the United States
4 regulating the offer or sale of securities.

5 (8) A licensed real estate broker selling the loan to an
6 institutional investor specified in paragraphs (1) to (7),
7 inclusive.

8 (i) “Institutional lender” means the following:

9 (1) The United States or any state, district, territory, or
10 commonwealth thereof, or any city, county, city and
11 county, public district, public authority, public
12 corporation, public entity, or political subdivision of a
13 state, district, territory, or commonwealth of the United
14 States, or any agency or other instrumentality of any one
15 or more of the foregoing.

16 (2) Any bank, trust company, savings bank or savings
17 and loan association, credit union, or insurance company
18 doing business under the authority of and in accordance
19 with a license, certificate, or charter issued by the United
20 States or any state, district, territory, or commonwealth
21 of the United States.

22 (3) Any corporation with outstanding securities
23 registered under Section 12 of the Securities Exchange
24 Act of 1934 or any wholly owned subsidiary of that
25 corporation.

26 (4) A person licensed to make residential mortgage
27 loans under this law.

28 (j) “Law” means the California Residential Mortgage
29 Lending Act.

30 (k) “Lender” means a person that (1) is an approved
31 lender for the Federal Housing Administration, Veterans
32 Administration, Farmers Home Administration, Federal
33 Government National Mortgage Association, Federal
34 National Mortgage Association, or Federal Home Loan
35 Mortgage Corporation, (2) directly makes residential
36 mortgage loans, and (3) makes the credit decision in the
37 loan transactions.

38 (l) “Licensee” means, depending on the context, a
39 person licensed under either Chapter 2 (commencing



1 with Section 50120) or Chapter 3 (commencing with
2 Section 50130).

3 (m) “Makes or making residential mortgage loans” or
4 “mortgage lending” means processing, underwriting, or
5 as a lender using or advancing one’s own funds, or making
6 a commitment to advance one’s own funds, to a loan
7 applicant for a residential mortgage loan.

8 (n) “Mortgage loan,” “residential mortgage loan,” or
9 “home mortgage loan” means a federally regulated
10 mortgage loan as defined in Section 3500.2 of Title 24 of
11 the Code of Federal Regulations.

12 (o) “Mortgage servicer” or “residential mortgage loan
13 servicer” means a person that (1) is an approved servicer
14 for the Federal Housing Administration, Veterans
15 Administration, Farmers Home Administration,
16 Government National Mortgage Association, Federal
17 National Mortgage Association, or Federal Home Loan
18 Mortgage Corporation, and (2) directly services or offers
19 to service mortgage loans.

20 (p) “Net worth” has the meaning set forth in Section
21 50201.

22 (q) “Own funds” means (1) cash, corporate capital, or
23 warehouse credit lines at commercial banks, savings
24 banks, savings and loan associations, or other sources that
25 are liability items on a lender’s financial statements,
26 whether secured or unsecured, or (2) a lender’s affiliate’s
27 cash, corporate capital, or warehouse credit lines at
28 commercial banks or other sources that are liability items
29 on the affiliate’s financial statements, whether secured or
30 unsecured. “Own funds” does not include funds provided
31 by a third party to fund a loan on condition that the third
32 party will subsequently purchase or accept an assignment
33 of that loan.

34 (r) “Person” means a natural person, a sole
35 proprietorship, a corporation, a partnership, a limited
36 liability company, an association, a trust, a joint venture,
37 an unincorporated organization, a joint stock company, a
38 government or a political subdivision of a government,
39 and any other entity.



1 (s) “Residential real property” or “residential real
2 estate” means real property located in this state that is
3 improved by a one-to-four family dwelling.

4 (t) “Service” or “servicing” means receiving more
5 than three installment payments of principal, interest, or
6 other amounts placed in escrow, pursuant to the terms of
7 a mortgage loan, *and performing services relating to that*
8 *receipt, or its nonreceipt, on behalf of the holder of the*
9 *note evidencing that loan. “Service” or “servicing” does*
10 *not include performance of services by a trustee under a*
11 *deed of trust pursuant to the Civil Code.*

12 SEC. 2. Section 50120 of the Financial Code is
13 amended to read:

14 50120. (a) A residential mortgage lender shall file an
15 application for licensure under this chapter with the
16 commissioner to make or service residential mortgage
17 loans in this state.

18 (b) No licensee shall engage in the business as a
19 residential mortgage lender under a name other than the
20 name that appears on the license, or a legally assumed
21 name disclosed either in the application or in an
22 amendment to the application, which shall be reflected
23 on the license.

24 (c) No licensee shall make or service residential
25 mortgage loans secured by real property pursuant to the
26 authority of a license, or an exemption from licensure,
27 under the Real Estate Law.

28 (d) No licensee shall conduct the business of making
29 or servicing loans under this division within any office,
30 room, or place of business in which any other business is
31 solicited or engaged in, or in association or conjunction
32 with any other business, *unless one of the following*
33 *exceptions applies:*

34 (1) *The other business is conducted by the licensee, or*
35 *by or in association or in conjunction with a holding*
36 *company, owner, subsidiary, or affiliate of the licensee,*
37 *which is subject to the provisions of subdivision (c) of*
38 *Section 50302.*

39 (2) The commissioner ~~may exempt~~ *exempts* a licensee
40 from this provision ~~if~~ *because* the commissioner finds that



1 the character of the other business is such that the
2 granting of the authority would not facilitate evasions of
3 this division or of the rules adopted pursuant to this
4 division. An authorization shall remain in effect until
5 revoked by the commissioner.

6 (e) A license for a business location outside this state
7 may be issued if the licensee agrees in writing, and subject
8 to the sole discretion of the commissioner, to either (1)
9 make the licensee's books, accounts, papers, records, and
10 files available to the commissioner or the commissioner's
11 representatives in this state within 10 calendar days of any
12 request from the commissioner or, (2) pay the reasonable
13 expenses for travel, meals, and lodging of the
14 commissioner or the commissioner's representatives
15 incurred during any investigation or examination made
16 at the licensee's location outside this state.

17 SEC. 3. Section 50130 of the Financial Code is
18 amended to read:

19 50130. (a) A mortgage servicer shall file an
20 application for licensure under this chapter with the
21 commissioner to service mortgage loans in this state by
22 satisfying the requirements of this chapter and the
23 applicable provisions, as determined by the
24 commissioner, of Chapter 2 (commencing with Section
25 50120).

26 (b) A mortgage servicer may apply for licensure by
27 doing all of the following:

28 (1) Filing with the commissioner an application
29 containing the information required by Section 50122,
30 and any additional information the commissioner may
31 require by rule.

32 (2) Paying the investigation and application fees
33 required by Section 50121.

34 (3) Submitting the statements required by Section
35 50124.

36 (4) Complying with the applicable provisions of
37 Chapter 2 (commencing with Section 50120).

38 (c) No licensee shall make or service loans secured by
39 real property pursuant to the authority of a license, or
40 exemption from licensure, under the Real Estate Law.



1 (d) No licensee shall conduct the business of making
2 or servicing loans under this division within any office,
3 room, or place of business in which any other business is
4 solicited or engaged in, or in association or conjunction
5 with any other business, *unless one of the following*
6 *exceptions applies:*

7 (1) *The other business is conducted by the licensee, or*
8 *by or in association or in conjunction with a holding*
9 *company, owner, subsidiary, or affiliate of the licensee,*
10 *which is subject to the provisions of subdivision (c) of*
11 *Section 50302.*

12 (2) The commissioner ~~may exempt~~ *exempts* a licensee
13 from this provision ~~if because~~ the commissioner finds that
14 the character of the other business is such that the
15 granting of the authority would not facilitate evasions of
16 this division or of the rules adopted pursuant to this
17 division. An authorization shall remain in effect until
18 revoked by the commissioner.

19 (e) A license for a business location outside this state
20 may be issued if the licensee agrees in writing, and subject
21 to the sole discretion of the commissioner, to either (1)
22 make the licensee's books, accounts, papers, records, and
23 files available to the commissioner or the commissioner's
24 representatives in this state within 10 calendar days of any
25 request from the commissioner or, (2) pay the reasonable
26 expenses for travel, meals, and lodging of the
27 commissioner or the commissioner's representatives
28 incurred during any investigation or examination made
29 at the licensee's location outside this state.

30 (f) The commissioner shall license a mortgage servicer
31 upon completion of the investigation and issuance of the
32 findings required by Section 50121, subject to Sections
33 50123, 50125, 50126, and 50127.

34 (g) A mortgage servicer licensed to service mortgage
35 loans shall comply with all applicable requirements of
36 California and federal law, including the Civil Code and
37 Section 2609 of the Real Estate Settlement Procedures
38 Act of 1974, as amended (12 U.S.C.A. Sec. 2601 et seq.).

39 (h) A license shall remain in effect until suspended,
40 surrendered, or revoked.



1 SEC. 4. Section 50504 of the Financial Code is
2 amended to read:

3 50504. (a) ~~If any amount other than or in excess of~~
4 ~~the charges permitted by this division is willfully charged,~~
5 ~~contracted for, or received, the contract of loan is void,~~
6 ~~and no person has any right to collect or receive any~~
7 ~~principal, charges, or recompense in connection with the~~
8 ~~transaction.~~

9 (b) ~~If any provision of this division is willfully violated~~
10 ~~in the making or collection of a loan, the contract of loan~~
11 ~~is void, and no person has any right to collect or receive~~
12 ~~any principal, charges, or recompense in connection with~~
13 ~~the transaction~~ *the borrower may recover, from the*
14 *person who has taken or received the prohibited amount,*
15 *three times the amount of the prohibited amount, plus*
16 *costs and reasonable attorney's fees. Any action for*
17 *recovery shall be brought within two years of the date*
18 *that the prohibited amount was received. However, if the*
19 *excess or prohibited amount is the result of a bona fide*
20 *error, the borrower may only recover the prohibited*
21 *amount.*

