

## Senate Bill No. 946

### CHAPTER 564

An act to amend Sections 10145, 10232, and 17511.1 of the Business and Professions Code, to amend Section 2945.1 of, and to amend and repeal Section 2955 of, the Civil Code, to amend Sections 50005, 50120, 50122, 50130, 50201, 50202, 50203, 50204, 50205, 50320, and 50401 of, to add Sections 22060 and 50128 to, and to repeal and add Section 50504 of, the Financial Code, relating to lending.

[Approved by Governor October 4, 1995. Filed  
with Secretary of State October 4, 1995.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 946, Johnston. Lending: residential mortgages.

Existing law permits real estate brokers to deposit funds received in trust with an out-of-state depository institution in certain instances. Under existing law, these provisions will be repealed on January 1, 1996.

This bill would delete the repeal of these provisions, and would make related changes.

Under existing law, a real estate broker who meets specified criteria, including making loans or sales in excess of certain amounts, is required to file annual reports and periodic trust fund status reports with the Real Estate Commissioner.

This bill would provide that in determining the applicability of loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, if the broker is a licensed residential mortgage lender acting under the authority of that license and meets specified criteria, certain loans and sales are not counted.

Under the California Finance Lenders Law, a person who engages in the business of negotiating or performing an act as a broker in connection with loans made by a finance lender is subject to regulation, as specified.

This bill would provide that this regulation does not apply to a loan made or arranged by a licensed residential mortgage lender or servicer when acting under the authority of that license.

Existing law, the California Residential Mortgage Lender Act, which will become operative January 1, 1996, if certain conditions are met, requires persons making or servicing residential loans to be licensed, unless exempt.

The bill would require an applicant for a license to submit a copy of the fidelity bond currently in effect.

The bill would permit a licensee to place funds in an interest-bearing account at the request of the owner.

The bill would revise licensee bond requirements, and increase from \$500 to \$5,000 the amount payable by a licensee to the Commissioner of Corporations for support of regulatory functions in lieu of a pro rata assessment amount, as specified, and would limit the total amount of any assessment imposed to pay for costs of regulation.

Existing law regulates the solicitation of sales by telephonic sellers, as defined, and specifies those representations by a telephonic seller to a prospective purchaser that constitute a telephonic solicitation for purposes of this law. Existing law exempts various persons from the definition of a telephonic seller.

This bill would additionally exempt from that definition a person licensed as a residential mortgage lender or servicer when acting under the authority of that license.

Existing law provides for the regulation of mortgage foreclosure consultants. For those purposes, various persons are exempt from the definition of foreclosure consultant.

This bill would additionally exempt from the definition of foreclosure consultant a person licensed as a residential mortgage lender or servicer when acting under the authority of that license.

The bill would make related changes.

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

SECTION 1. Section 10145 of the Business and Professions Code, as amended by Section 2 of Chapter 994 of the Statutes of 1994, is amended to read:

10145. (a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

(2) Notwithstanding the provisions of paragraph (1), a real estate broker collecting payments or performing services for investors or note owners in connection with loans secured by a first lien on real property may deposit funds received in trust in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, if the investor or note owner is any one of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veteran's Administration.



(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, or insurance company doing business under the authority of, and in accordance with, the laws of this state, another state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser specified in subparagraphs (A) to (G), inclusive, of this subdivision.

(3) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with the provisions of paragraph (2) shall make available, in this state, the books, records, and files pertaining to the trust accounts to the commissioner or the commissioner's representatives, or pay the reasonable expenses for travel and lodging incurred by the commissioner or the commissioner's representatives in order to conduct an examination at an out-of-state location.

(b) A real estate broker acting as a principal pursuant to Section 10131.1 or Article 6 (commencing with Section 10237) of this part shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall place the funds into the hands of the broker's principal,



into a neutral escrow depository, or shall deposit the funds into the broker's trust fund account.

(d) If not otherwise expressly prohibited by a provision of this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company whose accounts are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the specified beneficiary or specified principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the federal government.

(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received and to a beneficiary whose identity is known to the broker at the time of establishing the account the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker nor to a person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met; nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Nothing in subdivision (d) shall preclude the commissioner from prescribing by regulation circumstances in which and conditions under which a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial



records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section “neutral escrow” means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in subdivision (a) of Section 17006 and subdivision (c) of Section 17006 of that code.

SEC. 2. Section 10232 of the Business and Professions Code is amended to read:

10232. (a) Except as otherwise expressly provided, the provisions of Sections 10232.2 and 10232.25 are applicable to every real estate broker who intends or reasonably expects in a successive 12 months to do any of the following:

(1) Negotiate a combination of 20 or more of the following transactions pursuant to subdivision (d) or (e) of Section 10131 or Section 10131.1 in an aggregate amount of more than two million dollars (\$2,000,000):

(A) Loans secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(B) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(C) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property as the owner of those notes or contracts.

(2) Make collections of payments in an aggregate amount of five hundred thousand dollars (\$500,000) or more on behalf of owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.

(3) Make collections of payments in an aggregate amount of five hundred thousand dollars (\$500,000) or more on behalf of obligors of promissory notes secured directly or collaterally by liens on real property, lenders of real property sales contracts, or both.

Persons under common management, direction or control in conducting the activities enumerated above shall be considered as one person for the purpose of applying the above criteria.

(b) The negotiation of a combination of five or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than five hundred thousand dollars (\$500,000) in any three successive months or a combination of 10 or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than one million dollars (\$1,000,000) in any successive six months shall create a rebuttable presumption that the broker intends to negotiate new loans and sales and exchanges of an aggregate amount that will meet the criteria of subdivision (a).



(c) In determining the applicability of Sections 10232.2 and 10232.25, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is any of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veteran's Administration.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, commercial finance lender, personal property broker, consumer finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit sharing, or welfare fund, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) A licensed real estate broker selling all or part of the loan, the note, or the contract to a lender or purchaser specified in subparagraphs (A) through (G) of this subdivision.

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to the provisions of Article 6 (commencing with Section 10237) or applicable provisions of the Corporate Securities Law of 1968 (Section 25000 and following of the Corporations Code).

(d) If two or more real estate brokers who are not under common management, direction, or control, cooperate in the negotiation of a



loan or the sale or exchange of a promissory note or real property sales contract and share in the compensation for their services, the dollar amount of the transaction shall be allocated according to the ratio that the compensation received by each broker bears to the total compensation received by all brokers for their services in negotiating the loan or sale or exchange.

(e) A real estate broker who on the effective date of this section satisfies the criteria of subdivision (a) or (b) shall, within 30 days thereafter, notify the Department of Real Estate in writing of that fact. A broker who first meets any of the criteria of subdivision (a) or (b) after January 1, 1982, shall notify the department in writing within 30 days after that determination is made.

SEC. 3. Section 17511.1 of the Business and Professions Code is amended to read:

17511.1. As used in this article, “telephonic seller” or “seller” means a person who, on his or her own behalf or through salespersons or through the use of an automatic dialing-announcing device, as defined in Section 2871 of the Public Utilities Code, causes a telephone solicitation or attempted telephone solicitation to occur which meets the criteria specified in subdivision (a), (b), (c), or (d) and who is not exempted by subdivision (e), as follows:

(a) A telephone solicitation or attempted telephone solicitation wherein the telephonic seller initiates telephonic contact with a prospective purchaser and represents or implies one or more of the following:

(1) That a prospective purchaser who buys one or more items will also receive additional or other items, whether or not of the same type as purchased, without further cost. For purposes of this subdivision, “further cost” does not include actual postage or common carrier delivery charges, if any.

(2) That a prospective purchaser will receive a prize or gift, if the person also encourages the prospective purchaser to do either of the following:

(A) Purchase or rent any goods or services.

(B) Pay any money, including, but not limited to, a delivery or handling charge.

(3) That a prospective purchaser is able to obtain any item or service at a price which the seller states or implies is below the regular price of the item or service offered. This paragraph shall not apply to retailers who, within the previous 12 months, have sold a majority of their goods or services through in-person sales at retail stores.

(4) That a prospective purchaser who buys office equipment or supplies will, because of some unusual event or imminent price increase, be able to buy these items at prices which are below those that are usually charged or will be charged for the items.

(5) That the seller is a person other than the person he or she is.



(6) That the items for sale are manufactured or supplied by a person other than the actual manufacturer or supplier.

(7) That the seller is offering to sell the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.

(8) That the seller is offering to make a loan, or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(9) That a prospective purchaser will receive a credit card, as defined in subdivision (a) of Section 1747.02 of the Civil Code, if the purchaser pays an up front or preapplication fee for the credit card to the telephonic seller.

(b) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by unrequested notifications sent by the seller to persons who have not previously purchased goods or services from the seller or who have not previously requested credit from the seller, to a prospective purchaser wherein the seller represents or implies to the recipient of the notification that any of the following applies to the recipient:

(1) That the recipient has in any manner been specially selected to receive the notification or the offer contained in the notification.

(2) That the recipient will receive a prize or gift if the recipient calls the seller.

(3) That if the recipient buys one or more items from the seller, the recipient will also receive additional or other items, whether or not of the same type as purchased, without further cost or at a cost which the seller states or implies is less than the regular price of such items.

However, this subdivision does not apply to the solicitation of sales by a catalog seller who periodically issues and delivers catalogs to potential purchasers by mail or by other means. This exception only applies if the catalog includes a written description or illustration and the sales price of each item of merchandise offered for sale, includes at least 24 full pages of written material or illustrations, is distributed in more than one state, and has an annual circulation of not less than 250,000 customers.

(c) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to sell to the prospective purchaser any gold, silver, or other metals, including coins, diamonds, rubies, sapphires, or other stones, coal or other minerals, or any interest in oil, gas, or mineral fields, wells, or exploration sites, or any other investment opportunity of any type whatsoever.



(d) A solicitation or attempted solicitation which is made by telephone in response to inquiries generated by advertisements on behalf of the telephonic seller wherein it is represented or implied that the seller is offering to make a loan or to arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, unless no payment of any kind is made until the loan proceeds are disbursed to the borrower.

(e) For purposes of this article, “telephonic seller” or “seller” does not include any of the following:

(1) A person offering or selling a security qualified under Section 25110, 25120, or 25130 of the Corporations Code or exempt from qualification under Chapter 1 (commencing with Section 25100) of Part 2 of Division 1 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Corporate Securities Law of 1968 is filed with the Department of Corporations does not create an exemption under this paragraph.

(2) A person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4, when the solicited transaction is governed by that law.

(3) A person licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3, when the solicited transaction is governed by that law.

(4) A person licensed or certificated pursuant to Part 2 (commencing with Section 680) of Division 1 of the Insurance Code, including a person licensed pursuant to Chapter 5 (commencing with Section 1621) thereof, when the solicited transaction is governed by that law.

(5) A person offering or selling a franchise registered pursuant to Section 31110 of the Corporations Code or exempt from registration under Chapter 1 (commencing with Section 31100) of Part 2 of Division 5 of Title 4 of the Corporations Code. The fact that a notice claiming an exemption under the Franchise Investment Law is filed with the Department of Corporations does not create an exemption under this paragraph.

(6) A person soliciting the sale of a seller assisted marketing plan, as defined in Title 2.7 (commencing with Section 1812.200) of Part 4 of Division 3 of the Civil Code, who has filed with the Attorney General the documents required by Section 1812.203 of the Civil Code.

(7) A person primarily soliciting the sale of a newspaper of general circulation, as defined in Article 1 (commencing with Section 6000) of Chapter 1 of Division 7 of Title 1 of the Government Code, a magazine, or membership in a book or record club whose program operates in conformity with the requirements of Section 1584.5 of the Civil Code.



(8) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.

(9) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation but completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(10) Any supervised financial institution or parent, subsidiary, or subsidiary of parent thereof. As used in this paragraph, “supervised financial institution” means any commercial bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or of the United States.

(11) A person soliciting the sale of a preneed funeral arrangement regulated by Article 9 (commencing with Section 7735) of Chapter 12 of Division 3.

(12) A person licensed pursuant to Chapter 19 (commencing with Section 9600) of Division 3 when acting pursuant to that licensure.

(13) A person soliciting the sale of services provided by a cable television system licensed or franchised pursuant to Section 53066 of the Government Code or any other authority.

(14) A person or an affiliate of a person whose business is regulated by the Public Utilities Commission.

(15) A person soliciting the sale of a commodity pursuant to Part 2 (commencing with Section 58601) of Division 21 of the Food and Agricultural Code, if the solicitation neither intends to, nor actually results in, a sale which costs the purchaser in excess of one hundred dollars (\$100).

(16) An issuer or subsidiary of an issuer that has a security listed on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the Commissioner of Corporations under subdivision (o) of Section 25100 of the Corporations Code. A subsidiary of an issuer that qualifies for exemption under this paragraph is not itself exempt unless not less than 60 percent of the voting power of its shares is owned by the qualifying issuer or issuers.

(17) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person’s employer.



(18) A person soliciting a transaction regulated by the Commodity Futures Trading Commission if the person is registered or temporarily licensed for this activity with the Commodity Futures Trading Commission under the Commodity Exchange Act, (7 U.S.C. Sec. 1 et seq.) and the registration or license has not expired or been suspended or revoked.

(19) A person who sells coins or bullion at a price which is not more than 25 percent more than the price at which the seller is concurrently buying the same coins or bullion, if: (A) the seller has had a retail location in California from which he or she has been selling coins or bullion to the public in person for at least three years; (B) the telephonic solicitations are not the person's primary business and sales made telephonically make up less than 20 percent of the person's total retail sales; and (C) the person claiming an exemption pursuant to this subdivision complies with Section 17511.3, as applicable, and subdivision (p) of Section 17511.4.

(20) A person licensed pursuant to Chapter 14 (commencing with Section 1800) of Division 1 of the Financial Code to receive money for transmittal to foreign countries if the license has not expired or been suspended or revoked.

(21) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.

(f) In any civil proceeding alleging a violation of this article, the burden of proving an exemption or an exception from a definition is upon the person claiming it, and in any criminal proceeding alleging a violation of this article, the burden of producing evidence to support a defense based upon an exemption or an exception from a definition is upon the person claiming it.

(g) Compliance with this article does not satisfy nor substitute for any requirements for license, registration, or regulation mandated by other laws.

SEC. 4. Section 2945.1 of the Civil Code is amended to read:

2945.1. The following definitions apply to this chapter:

(a) "Foreclosure consultant" means any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

- (1) Stop or postpone the foreclosure sale.
- (2) Obtain any forbearance from any beneficiary or mortgagee.
- (3) Assist the owner to exercise the right of reinstatement provided in Section 2924c.
- (4) Obtain any extension of the period within which the owner may reinstate his or her obligation.
- (5) Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage



on a residence in foreclosure or contained in any such deed of trust or mortgage.

(6) Assist the owner to obtain a loan or advance of funds.

(7) Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale.

(8) Save the owner's residence from foreclosure.

(b) A foreclosure consultant does not include any of the following:

(1) A person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney-at-law.

(2) A person licensed under Division 3 (commencing with Section 12000) of the Financial Code when the person is acting as a prorater as defined therein.

(3) A person licensed under Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code when the person makes a direct loan or when the person (A) engages in acts whose performance requires licensure under that part, (B) is entitled to compensation for the acts performed in connection with the sale of a residence in foreclosure or with the arranging of a loan secured by a lien on a residence in foreclosure, (C) does not claim, demand, charge, collect, or receive any compensation until the acts have been performed or cannot be performed because of an owner's failure to make the disclosures set forth in Section 10243 of the Business and Professions Code or failure to accept an offer from a purchaser or lender ready, willing, and able to purchase a residence in foreclosure or make a loan secured by a lien on a residence in foreclosure on the terms prescribed in a listing or a loan agreement, and (D) does not acquire any interest in a residence in foreclosure directly from an owner for whom the person agreed to perform the acts other than as a trustee or beneficiary under a deed of trust given to secure the payment of a loan or that compensation. For the purposes of this paragraph, a "direct loan" means a loan of a real estate broker's own funds secured by a deed of trust on the residence in foreclosure, which loan and deed of trust the broker in good faith attempts to assign to a lender, for an amount at least sufficient to cure all of the defaults on obligations which are then subject to a recorded notice of default, provided that, if a foreclosure sale is conducted with respect to the deed of trust, the person conducting the foreclosure sale has no interest in the residence in foreclosure or in the outcome of the sale and is not owned, controlled, or managed by the lending broker; the lending broker does not acquire any interest in the residence in foreclosure directly from the owner other than as a beneficiary under the deed of trust; and the loan is not made for the purpose or effect of avoiding or evading the provisions of this article.

(4) A person licensed under Chapter 1 (commencing with Section 5000) of Division 3 of the Business and Professions Code when the



person is acting in any capacity for which the person is licensed under those provisions.

(5) A person or his or her authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services.

(6) A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien.

(7) Any person licensed to make loans pursuant to Division 9 (commencing with Section 22000), 10 (commencing with Section 24000), or 11 (commencing with Section 26000) of the Financial Code, subject to the authority of the Commissioner of Corporations to terminate this exclusion, after notice and hearing, for any person licensed pursuant to any of those divisions upon a finding that the licensee is found to have engaged in practices described in subdivision (a) of Section 2945.

(8) Any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, insurance companies, or any person or entity authorized under the laws of this state to conduct a title or escrow business, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of the above, and any agent or employee of the above while engaged in the business of these persons or entities.

(9) A person licensed as a residential mortgage lender or servicer pursuant to Division 20 (commencing with Section 50000) of the Financial Code, when acting under the authority of that license.

(c) "Person" means any individual, partnership, corporation, limited liability company, association or other group, however organized.

(d) "Service" means and includes, but is not limited to, any of the following:

(1) Debt, budget, or financial counseling of any type.

(2) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure.

(3) Contacting creditors on behalf of an owner of a residence in foreclosure.

(4) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure his or her default and reinstate his or her obligation pursuant to Section 2924c.

(5) Arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure.



(6) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court.

(7) Giving any advice, explanation or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure pursuant to a power of sale contained in any deed of trust.

(e) “Residence in foreclosure” means a residence in foreclosure as defined in Section 1695.1.

(f) “Owner” means a property owner as defined in Section 1695.1.

(g) “Contract” means any agreement, or any term thereof, between a foreclosure consultant and an owner for the rendition of any service as defined in subdivision (d).

SEC. 5. Section 2955 of the Civil Code, as amended by Section 3 of Chapter 1055 of the Statutes of 1992, is amended to read:

2955. (a) Money held by a mortgagee or a beneficiary of a deed of trust on real property in this state, or held by a vendor on a contract of sale of real property in this state, in an impound account for the payment of taxes and assessments or insurance premiums or other purposes on or relating to the property, shall be retained in this state and, if invested, shall be invested only with residents of this state in the case of individuals, or with partnerships, corporations, or other persons, or the branches or subsidiaries thereof, which are engaged in business within this state.

(b) Notwithstanding subdivision (a), a mortgagee or beneficiary of a deed of trust, secured by a first lien on real property, may deposit money held for the payment of taxes and assessments or insurance premiums or other purposes in an impound account in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation if the mortgagee or beneficiary is any one of the following:

(1) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veteran’s Administration.

(2) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, commercial finance lender, personal property broker, consumer finance lender, or insurer doing business under the authority of and in accordance with the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance



lenders, personal property brokers, consumer finance lenders, or insurers, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(3) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000).

(4) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934, or a wholly owned subsidiary of that corporation.

(5) A syndication or other combination of any of the entities specified in paragraphs (1) to (4), inclusive, that is organized to purchase the promissory note.

(6) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(7) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser described in paragraphs (1) to (6), inclusive, of this subdivision.

(8) A licensed residential mortgage lender or servicer when acting under the authority of that license.

(c) A mortgagee or beneficiary of a deed of trust who deposits funds held in trust in an out-of-state depository institution in accordance with subdivision (b) shall make available, in this state, the books, records, and files pertaining to those trust accounts to the appropriate state regulatory department or agency, or pay the reasonable expenses for travel and lodging incurred by the regulatory department or agency in order to conduct an examination at an out-of-state location.

(d) The Attorney General may bring an action on behalf of the people of California to enjoin a violation of subdivision (a) or subdivision (b).

SEC. 6. Section 2955 of the Civil Code, as amended by Section 5 of Chapter 994 of the Statutes of 1994, is repealed.

SEC. 6.5. Section 22060 is added to the Financial Code, to read:

22060. This division does not apply to a loan made or arranged by a licensed residential mortgage lender or servicer when acting under the authority of that license.

SEC. 7. Section 50005 of the Financial Code is amended to read:

50005. This division creates and authorizes a class of exempt persons pursuant to Section 1 of Article XV of the California Constitution.

SEC. 8. Section 50120 of the Financial Code is amended to read:

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

(b) A licensee may not engage in the business as a residential mortgage lender under a name other than the name that appears on



the license, or a legally assumed name disclosed either in the application or in an amendment to the application, which shall be reflected on the license.

(c) A licensee may not make or service residential mortgage loans secured by real property pursuant to the authority of a license, or an exemption from licensure, under the Real Estate Law.

(d) The commissioner may, pursuant to Section 50321, order a licensee to cease any other business conducted at any location where the licensee operates under the authority of a residential mortgage lender license, if the commissioner finds that the conduct of that business has facilitated evasions of this division or the rules adopted pursuant to this division, or that the conduct of that business is in violation of any law to which that business is subject.

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

SEC. 9. Section 50122 of the Financial Code is amended to read:

50122. (a) The application for a residential mortgage lender license shall be in writing, executed under penalty of perjury, and verified on a form prescribed by the commissioner. If an applicant proposes to engage in business as a residential mortgage loan servicer as well as a residential mortgage lender, this information shall be set forth in the application. The commissioner may issue a license under this chapter to engage in business as a residential mortgage lender or to engage in business as a residential mortgage lender and residential mortgage loan servicer. A person filing an application under this chapter to engage in business as a residential mortgage lender and a residential mortgage loan servicer is not required to file an application under Chapter 3 (commencing with Section 50130) of this division.

(b) The application shall contain the name and complete business and residential address or addresses of the applicant. If the applicant is a partnership, association, corporation, or other entity, the application shall contain the names and complete business and residential addresses of each member, director, and principal officer. The application also shall include a description of the activities of the applicant in the detail and for the periods that the commissioner may require, including all of the following:

(1) A statement of financial solvency, noting the net worth requirements and supported by an audited financial statement



prepared by an independent certified public accountant, and access to the supporting credit information as required by this division.

(2) A statement that the applicant or its members, directors, or principals, as appropriate, are at least 18 years of age.

(3) Information as to the character, fitness, financial and business responsibility, background, experience, and criminal convictions of any of the following:

(A) Any person that owns or controls, directly or indirectly, 10 percent or more of any class of stock of the applicant.

(B) Any person that controls, directly or indirectly, the election of 25 percent or more of the members of the board of directors of a applicant.

(C) Any person or entity that significantly influences or controls the management of the applicant.

(4) A description of any disciplinary action filed under any other license through which the person conducts its business.

(5) A description of any adverse judgments entered in court actions filed by borrowers based upon allegations of fraud, misrepresentation, or dishonesty in the conduct of the person's business.

(6) A copy of the fidelity bond currently in effect.

(7) Other information as required by rule of the commissioner.

SEC. 10. Section 50128 is added to the Financial Code, to read:

50128. As used in this act, the term "principal officer" means an officer with direct responsibility for the conduct of the licensee's or license applicant's lending or servicing activities in this state.

SEC. 11. Section 50130 of the Financial Code is amended to read:

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

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

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

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

(3) Submitting the statements required by Section 50124.

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

(c) A licensee may not make or service loans secured by real property pursuant to the authority of a license, or exemption from licensure, under the Real Estate Law.

(d) The commissioner may, pursuant to Section 50321, order a licensee to cease any other business conducted at any location where



the licensee operates under the authority of a residential mortgage servicer license, if the commissioner finds that the conduct of that business has facilitated evasions of this division or the rules adopted pursuant to this division, or that the conduct of that business is in violation of any law to which that business is subject.

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

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

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

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

SEC. 12. Section 50201 of the Financial Code is amended to read:

50201. (a) A licensee issued a license for purposes of making or servicing residential mortgage loans shall maintain a minimum tangible net worth at all times of two hundred fifty thousand dollars (\$250,000).

(b) Tangible net worth shall be computed in accordance with generally accepted accounting principles.

SEC. 13. Section 50202 of the Financial Code is amended to read:

50202. (a) Escrow funds for a purpose authorized by the residential mortgage loan contract (1) shall be subject to and satisfy all applicable state and federal requirements, including Section 2609 of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C.A. Sec. 2601 et seq.) and all applicable provisions of the Civil Code, (2) shall be maintained in a depository institution as described in subdivision (b), and (3) may not be commingled with a licensee's funds.

(b) Except as provided in subdivision (f), a trust account shall be placed in a non-interest-bearing account in a federally insured depository institution, a federal home loan bank, a federal reserve bank, or other similar government-sponsored enterprise, to be removed and used only for the following:

(1) Payments authorized by the borrower, allowed by the mortgage loan contract, or required by federal or state law.



(2) Refunds to the borrower.

(3) Transfer to another institution that is described in this subdivision (b).

(4) Forwarding to the appropriate servicer in case of a transfer of servicing.

(5) Any other purpose authorized by the residential mortgage loan contract.

(6) Compliance with a regulatory or court order.

(c) As used in this section, “trust funds” means funds collected by a licensee in connection with the making or servicing of a residential mortgage loan that the licensee holds on behalf of another.

(d) Notwithstanding any other provision of law, but subject to the limitations of Section 854, benefits accruing from the placement in a non-interest-bearing account of a commercial bank (including a national banking association) of funds received by a licensee who services mortgage loans under this law, shall inure to the licensee, unless otherwise agreed in writing by the licensee and the investor on whose behalf the licensee services the loan. A borrower shall receive at least 2 percent simple interest per annum on impound account payments covered by Section 2954.8 of the Civil Code.

(e) Trust funds are not subject to the enforcement of a money judgment arising out of a claim against the licensee or person acting as the servicing agent, and in no instance shall the trust funds be considered or treated as an asset of the licensee or person performing the functions of a residential mortgage lender or loan servicer.

(f) A licensee may, at the request of the owner of the trust funds, transfer the funds initially deposited in a non-interest-bearing trust account into an interest-bearing account in a federally insured depository institution if all of the following requirements are met:

(1) The account is in the name of the licensee in trust for the specified beneficiary.

(2) All of the funds in the account are federally insured.

(3) The funds in the account are kept separate and distinct from the funds of the licensee or funds of any other person for whom the licensee holds funds in trust.

(4) The licensee discloses to the person from whom the funds are received and the beneficiary of the account how interest will be calculated and paid, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) All interest earned on the account will be paid to the owner of the trust funds or the beneficiary.

SEC. 14. Section 50203 of the Financial Code is amended to read:

50203. (a) A licensee may not require a borrower to pay fees or charges prior to the residential mortgage loan closing, except for:

(1) Actual charges to be incurred by the licensee on behalf of the borrower for services from third parties necessary to process the



application, such as credit reports, appraisals, flood certification, and tax service, and in transactions where these services are provided by the licensee, a charge not to exceed the prevailing market rate for the service.

(2) An application fee.

(3) A rate-lock fee, provided:

(A) There is a written agreement signed by the borrower and licensee.

(B) The terms of the agreement include, but are not limited to:

(i) The expiration date of the rate-lock fee agreement.

(ii) The principal amount of the mortgage loan, the term of the mortgage loan, and identification of the property.

(iii) The initial interest rate and the discount (points) to be paid.

(iv) The amount and payment term of the rate-lock fee along with a statement disclosing whether the fee is refundable and the terms and conditions necessary to obtain a refund.

(C) The licensee demonstrates to the commissioner that it is able to perform under the terms of the agreement.

(4) A commitment fee, upon approval of the residential mortgage loan application, provided:

(A) The commitment is in writing and signed by the licensee and the borrower.

(B) The commitment contains all of the following information:

(i) The terms and conditions of the residential mortgage loan.

(ii) The terms and conditions of the commitment, including, but not limited to, all of the following:

(I) The time period during which the commitment is irrevocable and may be accepted by the borrower, which may not be less than three calendar days from the date of commitment or the date of mailing, whichever is later.

(II) The amount and payment terms of the commitment fee, along with a statement disclosing whether the fee is refundable and the terms and conditions necessary to obtain a refund.

(III) The expiration date of the commitment.

(IV) Conditions precedent to closing.

(b) If the licensee has performed its obligations under the law related to the transaction, fees or charges collected pursuant to this section, other than those collected pursuant to paragraphs (1) and (2) of subdivision (a), shall be refunded if a valid commitment or closing, respectively, does not occur, except that the licensee may retain appropriate fees upon the licensee's demonstration to the commissioner that any of the following occurred:

(1) The borrower withdrew the loan application.

(2) The borrower made a material misrepresentation or omission on the loan application.



(3) The borrower failed, after written request, to provide documentation necessary to the processing or closing of the loan application.

(4) The closing failed to occur due solely to the fault of the borrower.

SEC. 15. 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.

SEC. 16. Section 50205 of the Financial Code is amended to read:



50205. (a) A licensee shall maintain a surety bond in accordance with this subdivision. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division. The bond shall be payable when the licensee fails to comply with a provision of this division and shall be in the amount of fifty thousand dollars (\$50,000), and may be increased by order of the commissioner to one hundred thousand dollars (\$100,000) upon a determination by the commissioner that the licensee is not in compliance with any provision of this chapter or any rule or order adopted or issued by the commissioner to implement or enforce provisions of this chapter. The bond shall be payable to the commissioner and issued by an insurance company authorized to do business in this state. A copy of the bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner for review and approval prior to execution and filed with the commissioner within 10 days of its execution.

(b) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon the recovery of an action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license.

SEC. 17. Section 50320 of the Financial Code is amended to read:

50320. Whenever, in the opinion of the commissioner, a person, is engaged, either actually or through subterfuge, in the business of making residential mortgage loans or servicing residential mortgage loans without a license from the commissioner, the commissioner may order that person to desist and refrain. If, within 30 days after an order is served, a request for a hearing is filed in writing and the hearing is not held within 60 days of the filing, the order is rescinded. This section does not apply to persons exempted under subdivision (f) of Section 50003.

SEC. 18. Section 50401 of the Financial Code is amended to read:

50401. (a) In addition to other fees and reimbursements required to be paid under this division, each licensee shall pay to the commissioner an amount equal to the greater of: (1) its pro rata share of all costs and expenses (including routine regulatory examinations, overhead, and the maintenance of a prudent reserve of at least 90 days' costs and expenses) that the commissioner reasonably expects to incur in the next fiscal year in the administration of this division and not otherwise recovered by the commissioner under this division or from the State Corporations Fund, plus a deficit or less a surplus actually incurred during the current fiscal year; or (2) five thousand



dollars (\$5,000). The pro rata share shall be the sum of: (A) a number derived from the ratio of the aggregate principal amount of the mortgage loans secured by residential real property originated by the licensee to all mortgage loans secured by residential real property originated by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the next fiscal year; plus (B) a number derived from the ratio of the average value of mortgage loans secured by residential real property serviced by a licensee to the average value of all mortgage loans secured by residential real property serviced by all licensees under this division, as shown by the annual financial reports to the commissioner, which number is then multiplied by one-half of the costs and expenses estimated by the commissioner for the next fiscal year. For the purposes of this section, the “principal amount” of a mortgage loan means the initial total amount a borrower is obligated to repay the lender and the “average value” of loans serviced means the sum of the aggregate dollar value of all mortgage loans secured by residential real property serviced by a licensee, calculated as of the last day of each month in the calendar year just ended, divided by 12.

In order for the commissioner to calculate the assessment under this section, each licensee shall file an annual report for the calendar year just ended containing the information required by the commissioner on or before March 1 of the year in which the assessment is to be calculated.

The assessment shall be fixed by the commissioner by notice to all licensees on or before May 30 of each year, commencing with the assessment for the 1996–97 fiscal year.

In determining the amount assessed, the commissioner shall consider all appropriations from the State Corporations Fund for the support of this division and all reimbursements provided for under this division.

The maximum assessment of a licensee for each budget year beginning with the 1995–96 budget year and ending with the conclusion of the 1999–2000 budget year shall be one hundred thousand dollars (\$100,000). However, the maximum assessment of a licensee may be increased by five percent each budget year subsequent to the 1995–96 budget year. Any amount in excess of the maximum assessment authorized by this section shall be immediately assessed pro rata on those licensees whose assessments are less than the maximum assessment amount.

(b) In no case shall the reimbursement, payment, or other fee authorized by this section exceed the cost, including overhead, reasonably incurred in the administration of this division, and the maintenance of a prudent reserve of 90 days’ costs and expenses.



(c) Notwithstanding subdivisions (a) and (b), the commissioner is authorized to levy a special assessment for the period of July 1, 1995, through June 30, 1996, to pay the costs and expenses, including overhead, and to provide a prudent reserve of 90 days' costs and expenses, reasonably estimated by the commissioner to be incurred during the period of July 1, 1995, through June 30, 1996, as follows:

(1) The special assessment shall be calculated pursuant to the provisions of subdivision (a) of this section, based on the information filed by the licensee with the notice of intent to file an application described below.

(2) An applicant filing an application for licensure as a residential mortgage lender or for licensure as a residential mortgage loan servicer during the month of September 1995 shall have paid the application filing fee required by subdivision (c) of Section 50121 in the case of a residential mortgage lender, or the application filing fee required by paragraph (2) of subdivision (b) of Section 50130 in the case of a residential mortgage loan servicer at the time of filing the application, and shall have paid the special assessment calculated under this subdivision at the time the application is filed. These moneys shall be deposited into the State Corporations Fund. If the commissioner denies an application for licensure filed during the month of September 1995, the applicant is entitled to receive a ratable return on a monthly basis of the special assessment paid, commencing with the month after the month in which the application was denied. The commissioner shall pay the ratable return of the special assessment on the first business day of the next fiscal year.

An applicant who files a notice of intention to file an application for licensure as a residential mortgage lender or residential mortgage loan servicer, or filing an application for licensure as a residential mortgage lender or residential mortgage loan servicer, after September 30, 1995, and on or before June 30, 1996, shall comply with the provisions of paragraph (1), and shall be subject to the provisions of paragraph (2), of subdivision (c) of this section. However, an application for licensure as a residential mortgage lender or residential mortgage loan servicer filed after September 30, 1995, and on or before June 30, 1996, shall be processed on a first-filed, first-processed basis after all applications filed during the month of September 1995 have been processed.

A residential mortgage loan servicer shall not file an application for licensure during the month of September 1995, unless the residential mortgage loan servicer files with the Commissioner of Corporations, on or before March 1, 1995, a notice of intention to file an application as a residential mortgage servicer, accompanied by the application filing fee, and an annual unaudited financial report for calendar year 1994 meeting the requirements of Section 50401.



(d) Commencing in 1996, on or before the 30th day of May in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 20 days. If payment is not made within 20 days, the commissioner shall assess and collect a penalty, in addition to the assessment of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(e) If a licensee fails to pay the assessment on or before the 30th day of June following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the license issued to the licensee. An order issued under this section is not stayed by the filing of a request for a hearing. If, after an order is made, the request for hearing is filed in writing within 15 days from the date of service of the order and a hearing is not held within 60 days of the filing, the order is deemed rescinded as of its effective date. During a period when its license is revoked or suspended, a licensee shall not conduct business pursuant to this division except as may be permitted by further order of the commissioner. However, the revocation, suspension, or surrender of a license shall not affect the powers of the commissioner as provided in this division.

SEC. 19. Section 50504 of the Financial Code is repealed.

SEC. 20. Section 50504 is added to the Financial Code, to read:

50504. (a) If an amount other than or in excess of the charges permitted by this division is willfully charged, contracted for, or received, in addition to any other penalties or remedies, the commissioner may order the licensee to refund to all borrowers charged the excess amount, the excess amount and the amount of the charge, both with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed.

(b) If interest on the principal amount of a loan in excess of the amount authorized by this division is willfully charged, contracted for, or received, in addition to any other penalties or remedies, the commissioner may order the licensee to refund the excess interest amount to all borrowers charged the excess amount, with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed.

