

AMENDED IN SENATE JUNE 22, 2000  
AMENDED IN ASSEMBLY MAY 3, 2000  
AMENDED IN ASSEMBLY APRIL 10, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2403**

**Introduced by Assembly Member Maddox**

February 24, 2000

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An act to amend Sections 50204, 50302, 50314, and 50401 of the Financial Code, relating to residential mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 2403, as amended, Maddox. Residential mortgage lending.

Existing law, the California Residential Mortgage Lending Act, *prohibits a licensee from engaging in certain acts regarding the disbursement of the mortgage loan proceeds, the amount of the closing fees charged, and other matters.*

*This bill would prohibit a licensee from requiring a borrower to pay interest on a mortgage loan for a period in excess of one day prior to the recording of the mortgage, with certain exceptions based on the day agreed to for the recording.*

*Existing law* sets annual assessments to be paid to the commissioner by licensees based on a pro rata share of total administrative costs to operate the program and a percentage of the income of each licensee. Existing law requires licensees

to pay the cost of all nonroutine examinations by the commissioner.

This bill would remove obsolete portions of the assessment provisions. This bill would revise the time and method for determining the annual assessments to be paid by licensees. This bill would require licensees to pay the cost of all examinations by the commissioner.

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 50204 of the Financial Code is*
- 2 *amended to read:*
- 3 50204. A licensee may not do any of the following:
- 4 (a) Disburse the mortgage loan proceeds in a form
- 5 other than direct deposit to the borrower’s or borrower’s
- 6 designee’s account, wire, bank or certified check, ACH
- 7 funds transfer, or attorney’s check drawn on a trust
- 8 account. An entity may apply to the commissioner for a
- 9 waiver of the requirements of this subdivision by
- 10 demonstrating, in a letter application, that it has adopted
- 11 or will adopt another method of disbursement of loan
- 12 proceeds that will satisfy the purposes of this subdivision.
- 13 (b) Fail to disburse funds in accordance with a
- 14 commitment to make a mortgage loan that is accepted by
- 15 the applicant.
- 16 (c) Accept fees at closing that are not disclosed to the
- 17 borrower on the federal HUD-1 Settlement Statement.
- 18 (d) Commit an act in violation of Section 2941 of the
- 19 Civil Code.
- 20 (e) Obtain or induce an agreement or other
- 21 instrument in which blanks are left to be filled in after
- 22 execution.
- 23 (f) Intentionally delay closing of a mortgage loan for
- 24 the sole purpose of increasing interest, costs, fees, or
- 25 charges payable by the borrower.
- 26 (g) Engage in fraudulent home mortgage
- 27 underwriting practices.



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

8 (i) Engage in any acts in violation of Section 17200 or  
9 17500 of the Business and Professions Code.

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

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

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

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

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

23 *(o) Require a borrower to pay interest on the*  
24 *mortgage loan for a period in excess of one day prior to*  
25 *recording of the mortgage or deed of trust.*  
26 *Notwithstanding the foregoing, if the borrower*  
27 *affirmatively requests, and the lender agrees, that the*  
28 *recording will occur on Monday, or a day immediately*  
29 *following a bank holiday, interest may commence to*  
30 *accrue on the business day immediately preceding the*  
31 *day of recording, provided the following is disclosed to*  
32 *the borrower in writing: (1) the amount of additional per*  
33 *diem interest charged to accommodate recording on*  
34 *Monday or the day following a holiday, as the case may be,*  
35 *and (2) that it may be possible to avoid the additional per*  
36 *diem interest charge by recording the loan or deed of*  
37 *trust on a day immediately following a business day. This*  
38 *disclosure shall be provided to the borrower when the*  
39 *parties establish the recording date, and the borrower*



1 shall acknowledge the additional interest charge by  
2 signing the disclosure instrument.

3 SEC. 2. Section 50302 of the Financial Code is  
4 amended to read:

5 50302. (a) As often as the commissioner deems  
6 necessary and appropriate, but at least once every 48  
7 months, the commissioner shall examine the affairs of  
8 each licensee for compliance with this division. The  
9 commissioner shall appoint suitable persons to perform  
10 the examination. The commissioner and his or her  
11 appointees may examine the books, records, and  
12 documents of the licensee, and may examine the  
13 licensee's officers, directors, employees, or agents under  
14 oath regarding the licensee's operations. The  
15 commissioner may cooperate with any agency of the state  
16 or federal government, other states, agencies, the federal  
17 national mortgage association, or the federal home loan  
18 mortgage corporation. The commissioner may accept an  
19 examination conducted by one of these entities in place  
20 of an examination by the commissioner under this law,  
21 unless the commissioner determines that the  
22 examination does not provide information necessary to  
23 enable the commissioner to fulfill his or her  
24 responsibilities under this division.

25 (b) The commissioner shall provide a written  
26 statement of the findings of the examination, issue a copy  
27 of that statement to each licensee's principals, officers, or  
28 directors, and take appropriate steps to ensure correction  
29 of any violations of this division.

30 (c) Affiliates of a licensee are subject to examination  
31 by the commissioner on the same terms as the licensee,  
32 but only when reports from, or examination of, a licensee  
33 provides documented evidence of unlawful activity  
34 between a licensee and affiliate benefiting, affecting, or  
35 arising from the activities regulated by this division.

36 (d) The licensee shall pay, and the commissioner shall  
37 assess, the reasonable expenses of any examination of the  
38 licensee and affiliates, consistent with the requirements  
39 of subdivision (c) of Section 50314.



1 (e) The statement of the findings of an examination  
2 shall belong to the commissioner and shall not be  
3 disclosed to anyone other than the licensee, law  
4 enforcement officials, or other state or federal regulatory  
5 agencies for further investigation and enforcement.  
6 Reports required of licensees by the commissioner under  
7 this division and results of examinations performed by the  
8 commissioner under this division are the property of the  
9 commissioner.

10 ~~SEC. 2.~~

11 *SEC. 3.* Section 50314 of the Financial Code is  
12 amended to read:

13 50314. (a) Every person subject to this division shall  
14 keep documents and records that will properly enable  
15 the commissioner to determine whether the residential  
16 mortgage lending or residential mortgage loan servicing  
17 functions performed by that person comply with the  
18 provisions of this division and with all rules and orders  
19 made by the commissioner under this division. Upon  
20 request of the commissioner, residential mortgage  
21 lenders and residential mortgage loan servicers shall file  
22 an authorization for disclosure to the commissioner of  
23 financial records of the licensed business pursuant to  
24 Section 7473 of the Government Code.

25 (b) The business documents and records of every  
26 residential mortgage lender or residential mortgage loan  
27 servicer, whether required to be licensed under this  
28 division or not, are subject to inspection and examination  
29 by the commissioner at any time without prior notice.  
30 The provisions of this subdivision shall not apply to  
31 persons specified in subdivision (g) of Section 50003.

32 Any person subject to this division shall, upon request  
33 and within the time specified in the request, allow  
34 inspection and copying of any documents and records by  
35 the commissioner or his or her authorized representative.

36 (c) The cost of every inspection and examination of a  
37 licensee or other person subject to this division shall be  
38 paid to the commissioner by the licensee or person  
39 examined, and the commissioner may maintain an action  
40 for the recovery of these costs in any court of competent



1 jurisdiction. In determining the cost of any inspection or  
2 examination, the commissioner may use the estimated  
3 average hourly cost, including overhead, for all persons  
4 performing inspections or examinations of licensees or  
5 other persons subject to this division for the fiscal year.

6 For the purpose of this subdivision only, no person  
7 other than a licensee shall be deemed to be a person  
8 subject to this division unless and until the person is  
9 determined to be a person subject to this division by an  
10 administrative hearing in accordance with Chapter 5  
11 (commencing with Section 11500) of Part 1 of Division 3  
12 of Title 2 of the Government Code, or by a judicial  
13 hearing in any court of competent jurisdiction.

14 (d) Investigation and examination reports prepared  
15 by the commissioner's duly designated representatives  
16 are not public reports. Those reports may be disclosed to  
17 the officers or directors of a licensee that is the subject of  
18 the report for the purpose of corrective action by the  
19 officers or directors. Such a disclosure shall not operate as  
20 a waiver of the exemption specified in subdivision (d) of  
21 Section 6254 of the Government Code.

22 ~~SEC. 3.~~

23 *SEC. 4.* Section 50401 of the Financial Code is  
24 amended to read:

25 50401. (a) In addition to other fees and  
26 reimbursements required to be paid under this division,  
27 each licensee shall pay to the commissioner an amount  
28 equal to the lesser of: (1) its pro rata share of all costs and  
29 expenses (including overhead and the maintenance of a  
30 prudent reserve not to exceed 90 days' costs and  
31 expenses) that the commissioner reasonably expects to  
32 incur in the ~~next~~ *current* fiscal year in the administration  
33 of this division and not otherwise recovered by the  
34 commissioner under this division or from the State  
35 Corporations Fund, plus a deficit or less a surplus actually  
36 incurred during the ~~current~~ *prior* fiscal year; or (2) five  
37 thousand dollars (\$5,000). The pro rata share shall be the  
38 greater of either one thousand dollars (\$1,000) or the sum  
39 of: (A) a number derived from the ratio of the aggregate  
40 principal amount of the mortgage loans secured by



1 residential real property originated by the licensee to all  
2 mortgage loans secured by residential real property  
3 originated by all licensees under this division, as shown by  
4 the annual financial reports to the commissioner, which  
5 number is then multiplied by one-half of the costs and  
6 expenses estimated by the commissioner for the ~~next~~  
7 *current* fiscal year; plus (B) a number derived from the  
8 ratio of the average value of mortgage loans secured by  
9 residential real property serviced by a licensee to the  
10 average value of all mortgage loans secured by residential  
11 real property serviced by all licensees under this division,  
12 as shown by the annual financial reports to the  
13 commissioner, which number is then multiplied by  
14 one-half of the costs and expenses estimated by the  
15 commissioner for the ~~next~~ *current* fiscal year. For the  
16 purposes of this section, the “principal amount” of a  
17 mortgage loan means the initial total amount a borrower  
18 is obligated to repay the lender and the “average value”  
19 of loans serviced means the sum of the aggregate dollar  
20 value of all mortgage loans secured by residential real  
21 property serviced by a licensee, calculated as of the last  
22 day of each month in the calendar year just ended,  
23 divided by 12.

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

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

34 (b) In no case shall the reimbursement, payment, or  
35 other fee authorized by this section exceed the cost,  
36 including overhead, reasonably incurred in the  
37 administration of this division, and the maintenance of a  
38 prudent reserve not to exceed 90 days’ costs and expenses.

39 (c) On or before the 30th day of ~~August~~ *September* in  
40 each year, the commissioner shall notify each licensee by



1 mail of the amount assessed and levied against it and that  
2 amount shall be paid within 20 days. If payment is not  
3 made within 20 days, the commissioner shall assess and  
4 collect a penalty, in addition to the assessment of 1  
5 percent of the assessment for each month or part of a  
6 month that the payment is delayed or withheld.

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

