

***1-HOUR SAFE CE
CALIFORNIA DBO MORTGAGE
PROFESSIONALS RULEBOOK***

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Overview

This 1-hour course covers California Law topics as required by the California Department of Business Oversight (CA-DBO). Specifically, the course discusses rules regarding the California Financing Law, the California Residential Lending Act and the California Homeowner Bill of Rights.



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1 Hour CA DBO SAFE CE – California Mortgage Professionals Rulebook

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Attachments:

1. NMLS Rules
2. Syllabus

I. INTRODUCTION

Welcome to the California State Law component of your SAFE training. Upon completion of this course, you will have met the minimum education requirements of the State of California, Department of Corporations and the Department of Business Oversight (DBO) for an individual seeking to maintain their license as a mortgage loan originator doing business in California. This course includes many laws and regulations required to be covered in the license renewal exam.

This course focuses on License Maintenance, the Powers of the Commissioner and the Attorney General, Required Conduct as well as the Homeowner's Bill of Rights. All the questions on the exam come from these sections. The requirements and prohibitions listed here are also the primary focus of the enforcement units of the Department of Business Oversight and the Department of Corporations. You need to know this information to pass the test. More importantly, you need to know what you can and cannot do in order to conduct your business in an ethical and trustworthy manner.

The course covers the CA Financing Law (CA Fin. Code §22000 - §22780) and the CA Residential Mortgage Lending Act (CA Fin. Code §50000 - §50706).

The **California Residential Mortgage Lending Act** governs a number of lending activities and applies to those involved in making or servicing mortgage loans on one- to four-family dwellings.

The **California Financing Law** (Division 9) will be liberally construed and applied to promote its underlying purposes and policies, which are:

- i. To ensure an adequate supply of credit to borrowers in this state.
- ii. To simplify, clarify, and modernize the law governing loans made by Financing.
- iii. To foster competition among Financing.
- iv. To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.
- v. To permit and encourage the development of fair and economically sound lending practices.
- vi. To encourage and foster a sound economic climate in this state.¹

¹ California Financial Code §22001(a)

II. LICENSE MAINTENANCE

A. DEFINITIONS

Borrower: means the loan applicant.ⁱ

Commissioner: means the Commissioner of Business Oversight.^{ii iii}

Lender: means a person that

- is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation;
- directly makes residential mortgage loans; and
- makes the credit decision in the loan transactions.^{iv}

Licensee: means any finance lender or broker who receives a license in accordance with Division 9.^v

Makes or making residential mortgage loans or mortgage lending: means processing, underwriting, or as a lender using or advancing one's own funds, or making a commitment to advance one's own funds, to a loan applicant for a residential mortgage loan.^{vi}

Mortgage loan, residential mortgage loan, or home mortgage loan: means a federally related mortgage loan or a loan made to finance construction of a one-to-four family dwelling.^{vii}

Mortgage loan originator: means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan.^{viii} **Mortgage loan originator** does **NOT** include any of the following:

- An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator. The terms 'administrative' or 'clerical' tasks means the receipt, collection, and distribution of information common for

ⁱ California Financial Code §50003(b)

ⁱⁱ California Financial Code §22005

ⁱⁱⁱ California Financial Code §50003(d)

^{iv} California Financial Code §50003(m)

^v California Financial Code §22007

^{vi} California Financial Code §50003(o)

^{vii} California Financial Code §50003(p)

^{viii} California Financial Code §22013(a)

the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.ⁱ

- An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the SAFE Act requires that employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.ⁱⁱ
- An individual that is solely involved in extensions of credit relating to timeshare plans.ⁱⁱⁱ
- An individual licensed as a mortgage loan originator pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code and the SAFE Act.^{iv}
- An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency.^v

Mortgage servicer or residential mortgage loan servicer: means a person that

- is an approved servicer for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation; and
- directly services or offers to service mortgage loans.^{vi}

Nationwide Mortgage Licensing System and Registry (NMLS): means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.^{vii viii}

ⁱ California Financial Code §50003.5(b)(1)

ⁱⁱ California Financial Code §50003.5(b)(2)

ⁱⁱⁱ California Financial Code §50003.5(b)(3)

^{iv} California Financial Code §50003.5(b)(4)

^v California Financial Code §50003.5(b)(5)

^{vi} California Financial Code §50003(q)

^{vii} California Financial Code §22012(d)

^{viii} California Financial Code §50003(r)

Person: means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government, or a political subdivision of a government.ⁱ

Residential mortgage loan: means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling. **Dwelling** means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobilehome, or trailer, if it is used as a residence.ⁱⁱ

Residential real property or residential real estate: means real property located in this state that is improved by a one-to-four family dwelling.ⁱⁱⁱ

B. LICENSE RENEWAL

A mortgage loan originator wishing to renew his/her license must, at a minimum:

- Continue to meet the minimum requirements contained under §50141^{iv} or §22109.1^v
- Have paid all the required fees (if the mortgage loan originator is employed by a residential mortgage lender or servicer, the latter should have settled the fees)^{vi vii}
- Continue to meet the annual continuing education requirements^{viii ix}

If the minimum standards required to renew the mortgage loan originator license have not been met by the last day of December, then the license will expire at midnight on that day. The commissioner may put in place procedures to permit the reinstatement of licenses which have lapsed provided those procedures are in keeping with the standards established by the NMLS.^{x xi}

ⁱ California Financial Code §22008

ⁱⁱ California Financial Code §22012(e)

ⁱⁱⁱ California Financial Code §50003(v)

^{iv} California Financial Code §50144(b)(1)

^v California Financial Code §22109.4(b)(1)

^{vi} California Financial Code §50144(b)(3)

^{vii} California Financial Code §22109.4(b)(3)

^{viii} California Financial Code §50144(b)(2)

^{ix} California Financial Code §22109.4(b)(2)

^x California Financial Code §50144(b)(4)

^{xi} California Financial Code §22109.4(c)

C. EDUCATIONAL REQUIREMENTS

A licensed mortgage loan originator wishing to renew their license must complete at least eight hours of continuing education which must include at least the following:

- Three hours of instruction on federal laws and regulations;
- Two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues;
- Two hours of training related to lending standards for the nontraditional mortgage product marketplace;
- One hour of CA-BDO defined electives.^{i ii}

Continuing education courses will be reviewed and approved by the NMLS. Review and approval of a continuing education course will include review and approval of the course provider.^{iii iv}

Nothing in §22109.5 and §50145 will preclude any continuing education course approved by the NMLS that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.^{v vi}

Continuing education courses may be offered in a classroom, online, and by any other means approved by the NMLS.^{vii viii}

Except as provided in §22109.5(i) or in §50145(i), a licensed mortgage loan originator:

- May only receive credit for a continuing education course in the year in which the course is taken
- May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.^{ix x}

ⁱ California Financial Code §22109.5(a)

ⁱⁱ California Financial Code §50145(a)

ⁱⁱⁱ California Financial Code §22109.5(b)

^{iv} California Financial Code §50145(b)

^v California Financial Code §22109.5(c)

^{vi} California Financial Code §50145(c)

^{vii} California Financial Code §22109.5(d)

^{viii} California Financial Code §50145(d)

^{ix} California Financial Code §22109.5(e)

^x California Financial Code §50145(e)

A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours' credit for every one hour taught.^{i ii}

Any individual who has successfully completed continuing education requirements approved by the NMLS for any state other than California will be granted credit toward completion of continuing education requirements in California.^{iii iv}

A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.^{v vi}

If an individual was previously licensed under Division 9 as a mortgage loan originator, they must, when applying to be licensed again, prove that they have completed all of the continuing education requirements for the year in which a license was last held.^{vii viii}

If a licensed mortgage loan originator fails to maintain a valid license for 5 years or more, they will be required to retake the test. The five-year period does not include any time during which the individual is a registered mortgage loan originator.^{ix x}

A person meeting the requirements of paragraphs (1) and (3) of §22109.4(b) and §50144(b) may correct any deficiency in continuing education as established by rule or regulation of the commissioner.^{xi xii}

D. RECORD KEEPING

Licensed mortgage loan originators must keep and use in the conduct of their business books, accounts, and records in order to enable the commissioner to establish if they are complying with the provisions of Division 9 as well as with the rules and regulations made by the commissioner.^{xiii}

ⁱ California Financial Code §22109.5(f)

ⁱⁱ California Financial Code §50145(f)

ⁱⁱⁱ California Financial Code §22109.5(g)

^{iv} California Financial Code §50145(g)

^v California Financial Code §22109.5(h)

^{vi} California Financial Code §50145(h)

^{vii} California Financial Code §22109.2(f)

^{viii} California Financial Code §50142(f)

^{ix} California Financial Code §22109.3(g)

^x California Financial Code §50143(d)(4)

^{xi} California Financial Code §22109.5(i)

^{xii} California Financial Code §50145(i)

^{xiii} California Financial Code §22156

These books, accounts, and records, including cards used in the card system, if any, should be retained for at least three years after the final entry on any loan recorded on them has been made.ⁱ

Licensed mortgage loan originators are not required to maintain or preserve original records. However, they should be able to provide any information requested by the commissioner within 48 hours – excluding Saturdays, Sundays, and holidays – of a request.ⁱⁱ

A licensed mortgage loan originator may not knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of any provision of Division 9.^{iii iv}

The commissioner may require a licensed mortgage loan originator to maintain a file of all advertising copy for a period of two years from the date of its use. The file must be available to the commissioner upon request.^v

E. SURETY BOND

A mortgage loan originator must maintain a surety bond in a minimum amount of \$25,000. The bond will be payable to the commissioner and issued by an insurer authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, will be filed with the commissioner within 10 days of execution. For licensees with multiple licensed locations, only one surety bond is required. The bond will be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with Division 9 or for losses or damages incurred by borrowers or consumers as a result of a licensee's noncompliance with the requirements of Division 9.^{vi}

When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee must 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.^{vii}

The commissioner may by rule require a higher bond amount for a licensee who employs one or more mortgage loan originators and who makes or arranges residential mortgage loans, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage

ⁱ California Financial Code §22157

ⁱⁱ California Financial Code §22158

ⁱⁱⁱ California Financial Code §22170(a)

^{iv} California Financial Code §50512(a)

^v California Financial Code §22166

^{vi} California Financial Code §22112(a)

^{vii} California Financial Code §22112(b)

loan originators employed by that licensee. Every mortgage loan originator employed by the licensee will be covered by the surety bond.ⁱ

F. SURRENDER, REVOCATION OR SUSPENSION OF LICENSE

A license issued to a mortgage loan originator must be renewed annually. Once renewed, it will remain in effect until it is surrendered, revoked, or suspended.ⁱⁱ

“Surrender of a license becomes effective 30 days after receipt of an application to surrender the license or within a shorter period of time that the commissioner may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the surrender is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, surrender of a license becomes effective at the time and upon the conditions that the commissioner determines.”ⁱⁱⁱ

A mortgage loan originator may surrender a license by delivering to the commissioner written notice that they wish to surrender their license. Surrender of the license does not affect the licensee's civil or criminal liability for acts committed prior to the surrender of the license.^{iv}

The commissioner will suspend or revoke the license of a mortgage loan originator, upon notice and reasonable opportunity to be heard, if the commissioner finds that:

- The mortgage loan originator has failed to comply with any demand, ruling, or requirement of the commissioner made pursuant to and within the authority of Division 9.^v
- The mortgage loan originator has violated any provision of Division 9 or any rule or regulation made by the commissioner under and within the authority of Division 9.^{vi}
- A fact or condition exists that, if it had existed at the time of the original application for the license, reasonably would have warranted the commissioner in refusing to issue the license in the first instance.^{vii}

A master license may not be suspended or revoked pursuant to this section as a result of any action or failure to act by a subsidiary licensee unless grounds exist for the suspension or revocation of the master license pursuant to this section. An order suspending or revoking a license or imposing sanctions against a licensee will not affect other licensed locations unless expressly stated in the order.^{viii}

ⁱ California Financial Code §22112(c)

ⁱⁱ California Financial Code §22700(b)

ⁱⁱⁱ California Financial Code §22700(c)

^{iv} California Financial Code §22711

^v California Financial Code §22714(a)(1)

^{vi} California Financial Code §22714(a)(2)

^{vii} California Financial Code §22714(a)(3)

^{viii} California Financial Code §22714(b)

The commissioner may immediately revoke the license of a mortgage loan originator if the licensee fails to comply with any order issued under §§50318, 50319, 50321, 50322, or 50503. The commissioner may not revoke the license if, within 10 days from the effective date of the revocation order, the licensee secures a court order restraining the enforcement of the commissioner's revocation order.ⁱ

The commissioner may by order summarily suspend or revoke the license of a mortgage loan originator if that person fails to file the report required by §22159 within 10 days after notice by the commissioner that the report is due and not filed. If, after an order is made, a request for a hearing is filed in writing within 30 days and the hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date.ⁱⁱ

The power of investigation and examination by the commissioner is not terminated by the surrender, suspension, or revocation of any license issued by him or her.ⁱⁱⁱ

ⁱ California Financial Code §50325

ⁱⁱ California Financial Code §22715

ⁱⁱⁱ California Financial Code §22704

III. POWERS OF THE COMMISSIONER AND THE ATTORNEY GENERAL / REQUIRED CONDUCT

A. DEFINITIONS

Broker: includes any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender.ⁱ

Depository institution: has the same meaning as in Section 3 of the Federal Deposit Insurance Act, and includes any credit union.^{ii iii}

Engage in the business: means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. **Engage in the business** also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.^{iv}

Federal banking agencies: means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.^v

Finance lender: includes any person who is engaged in the business of making consumer loans or making commercial loans. The business of making consumer loans or commercial loans may include lending money and taking, in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission. The definition of finance lender must be interpreted to include a personal property broker.^{vi} **Finance lender** and **broker** do not include employees regularly employed at the location specified in the license of the finance lender or broker, except that an employee, when acting within the scope of his or her employment, will be exempt from any other law from which his or her employer is exempt.^{vii}

ⁱ California Financial Code §22004

ⁱⁱ California Financial Code §22012(b)

ⁱⁱⁱ California Financial Code §50003(f)

^{iv} California Financial Code §50003(g)

^v California Financial Code §50003(h)

^{vi} California Financial Code §22009

^{vii} California Financial Code §22010

Service or servicing: means receiving more than three installment payments of principal, interest, or other amounts placed in escrow, pursuant to the terms of a mortgage loan and performing services by a licensee relating to that receipt or the enforcement of its receipt, on behalf of the holder of the note evidencing that loan.ⁱ

B. POWERS OF THE COMMISSIONER

The commissioner is authorized to establish relationships or contracts with the NMLS or other entities designated by the NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this division.ⁱⁱ

For the purpose of participating in the NMLS, the commissioner is authorized to waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this division and to establish new requirements as reasonably necessary to participate in the NMLS.ⁱⁱⁱ

The commissioner may use the NMLS as a channeling agent for requesting information from, and distributing information to, the Department of Justice or any governmental agency.^{iv}

The commissioner may use the NMLS as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.^v

The commissioner will establish a process where applicants and licensees may challenge information entered into the NMLS by the commissioner.^{vi}

The commissioner will establish the timelines, fees, and assessments applicable to individuals applying for mortgage loan originator license renewals and license changes.^{vii}

The commissioner may require mortgage loan originator licensees to pay assessments through the NMLS.^{viii}

The license issued will state the name of the mortgage loan originator. If the licensee is a partnership, the license will show the names of its general partners. If the licensee is a corporation or an association, the license will indicate the date and place of the corporation's incorporation or organization and the address of the licensee's principal business location. The license will also state that the licensee is licensed as a mortgage loan originator.^{ix}

ⁱ California Financial Code §50003(x)

ⁱⁱ California Financial Code §50150(a)

ⁱⁱⁱ California Financial Code §50150(b)

^{iv} California Financial Code §50150(c)

^v California Financial Code §50150(d)

^{vi} California Financial Code §50150(e)

^{vii} California Financial Code §50140(c)

^{viii} California Financial Code §50140(d)

^{ix} California Financial Code §50208

The commissioner may:

- Suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of Division 9, or any rules or regulations adopted there under.^{i ii}
- Suspend, revoke, condition, or decline to renew a mortgage loan originator license if a licensee fails at any time to meet the requirements of §22109.1, §50141, §22109.4 or §50144 or withholds information or makes a material misstatement in an application for a license renewal.^{iii iv}
- Order restitution against a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator for a violation of Divisions 9 and/or 20.^{v vi}
- Impose fines on a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d) of §22172 or §50513.^{vii viii}
- Issue orders or directives to mortgage loan originators under Divisions 9 and/or 20 as follows:
 - Order or direct a mortgage loan originator or any finance lender or broker licensee, or any residential mortgage lender or servicer licensee employing a mortgage loan originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.^{ix x1}
 - Order or direct a mortgage loan originator or any finance lender or broker licensee, or any residential mortgage lender or servicer licensee employing a mortgage loan originator to cease any harmful activities or violations of Divisions 9 and/or 20, including immediate temporary orders to desist and refrain.^{xi xii}
 - Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under §22100 or §50002 if the commissioner determines that the license was erroneously granted or the mortgage loan originator is currently in violation of Divisions 9 and/or 20.^{xiii xiv}

ⁱ California Financial Code §22172(a)(1)

ⁱⁱ California Financial Code §50513(a)(1)

ⁱⁱⁱ California Financial Code §22172(a)(2)

^{iv} California Financial Code §50513(a)(2)

^v California Financial Code §22172(a)(3)

^{vi} California Financial Code §50513(a)(3)

^{vii} California Financial Code §22172(a)(4)

^{viii} California Financial Code §50513(a)(4)

^{ix} California Financial Code §22172(a)(5)(A)

^x California Financial Code §50513(a)(5)(A)

^{xi} California Financial Code §22172(a)(5)(B)

^{xii} California Financial Code §50513(a)(5)(B)

^{xiii} California Financial Code §22172(a)(5)(C)

^{xiv} California Financial Code §50513(a)(5)(C)

- Order or direct any other affirmative action as the commissioner deems necessary.^{i ii}

The commissioner may impose a civil penalty on a mortgage loan, or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for a hearing, that the mortgage loan originator, or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of Divisions 9 and/or 20 or any regulation prescribed by the commissioner under these divisions or order issued under authority of these divisions.^{iii iv}

The maximum amount of penalty for each act or omission described in §22172(b) and §50513(b) will be \$25,000.^{v vi}

Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.^{vii viii}

Whenever, in the opinion of the commissioner, any person is engaged in the business as a mortgage loan originator without a license, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating Division 9. If, within 30 days after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded.^{ix}

Notwithstanding §22712(a), if, after an investigation, the commissioner has reasonable grounds to believe that a person is conducting business in an unsafe or injurious manner, the commissioner will, by written order addressed to that person, direct the discontinuance of the unsafe or injurious practices. The order will become effective immediately, but will not become final except in accordance with the provisions of §22717.^x

The commissioner may, pursuant to §50321, order a residential mortgage loan servicer or a residential mortgage lender licensee to cease any other business conducted at any location where the licensee operates under the authority of a residential mortgage servicer/lender license, if the commissioner finds that the conduct of that business has facilitated evasions of

ⁱ California Financial Code §22172(a)(5)(D)

ⁱⁱ California Financial Code §50513(a)(5)(D)

ⁱⁱⁱ California Financial Code §22172(b)

^{iv} California Financial Code §50513(b)

^v California Financial Code §22172(c)

^{vi} California Financial Code §50513(c)

^{vii} California Financial Code §22172(d)

^{viii} California Financial Code §50513(d)

^{ix} California Financial Code §22712(a)

^x California Financial Code §22712(b)

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.^{i ii}

The commissioner may, at his discretion, issue a loan servicer or a mortgage lender license for a business located outside this state. However, this will constitute an agreement by the mortgage servicer/lender to either:

1. make his/her 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^{iii iv}
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.^{v vi}

The commissioner may, after appropriate notice and opportunity for a hearing, by order censure or suspend for a period not exceeding 12 months, or bar from any position of employment, management, or control any mortgage loan originator, or any other person, if the commissioner finds that the censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of Division 20 or rule or order of the commissioner, and:

- The violation was either known or should have been known by the person committing or causing it; or
- The violation has caused material damage to the mortgage loan originator or to the public.^{vii}

Persons suspended or barred under §50318 are prohibited from participating in any business activity of a mortgage loan originator and from engaging in any business activity on the premises where a licensed mortgage loan originator is conducting its business. This subdivision will not be construed to prohibit suspended or barred persons from having their personal transactions processed by a licensed mortgage loan originator.^{viii}

C. POWERS OF THE ATTORNEY GENERAL

Whenever the Attorney General considers that the public interest requires, he or she may, with or without the concurrence of the district attorney, direct the grand jury to convene for the investigation and consideration of those matters of a criminal nature that he or she desires to

ⁱ California Financial Code §50130(d)

ⁱⁱ California Financial Code §50120(d)

ⁱⁱⁱ California Financial Code §50130(e)(1)

^{iv} California Financial Code §50120(e)(1)

^v California Financial Code §50130(e)(2)

^{vi} California Financial Code §50120(e)(2)

^{vii} California Financial Code §50318(a)(1)

^{viii} California Financial Code §50318(d)

submit to it. He or she may take full charge of the presentation of the matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do.ⁱ

Whenever the Attorney General considers that the public interest requires, he or she may, with or without the concurrence of the district attorney, petition the court to impanel a special grand jury to investigate, consider, or issue indictments for any of the activities subject to fine, imprisonment, or asset forfeiture under §14107 of the Welfare and Institutions Code. He or she may take full charge of the presentation of the matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do. If the evidence presented to the grand jury shows the commission of an offense or offenses for which venue would be in a county other than the county where the grand jury is impaneled, the Attorney General, with or without the concurrence of the district attorney in the county with jurisdiction over the offense or offenses, may petition the court to impanel a special grand jury in that county.ⁱⁱ

D. REQUIRED CONDUCT

Mortgage loan originators employed and compensated by a licensee who engages in making or brokering residential mortgage loans must maintain a mortgage loan originator license from the commissioner or have obtained a license endorsement from the Commissioner of Business Oversight.ⁱⁱⁱ

A mortgage loan originator employed or compensated by a residential mortgage lender who engages in the business of making, servicing, or making and servicing residential mortgage loans must maintain a mortgage loan originator license from the commissioner.^{iv}

Licensed mortgage loan originators must maintain a valid unique identifier issued by the NMLS.^v

^{vi}

Before engaging in the business of a mortgage loan originator with respect to any dwelling located in this state, an individual should first obtain and maintain a license.^{vii viii}

However, a registered mortgage loan originator is exempt from licensure if they are employed by:

- A depository institution

ⁱ California Penal Code §923(a)

ⁱⁱ California Penal Code §923(b)

ⁱⁱⁱ California Financial Code §22100(b)

^{iv} California Financial Code §50002.5(a)

^v California Financial Code §22100(e)

^{vi} California Financial Code §50146

^{vii} California Financial Code §22100(f)

^{viii} California Financial Code §50146

- A subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency
- An institution regulated by the Farm Credit Administration.ⁱ

It is a violation of Division 9 for a mortgage loan originator to do any of the following:

- Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person.ⁱⁱ
- Engage in any unfair or deceptive practice toward any person.ⁱⁱⁱ
- Obtain property by fraud or misrepresentation.^{iv}
- Solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower.^v
- Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.^{vi}
- Conduct any business covered by Division 9 without holding a valid license as required under Division 9, or assist or aid and abet any person in the conduct of business under Division 9 without a valid license as required under Division 9.^{vii}
- Fail to make disclosures as required by Division 9 and any other applicable state or federal law, including regulations there under.^{viii}
- Fail to comply with Division 9 or rules or regulations promulgated under Division 9, or fail to comply with any other state or federal law, including the rules and regulations there under, applicable to any business authorized or conducted under Division 9.^{ix}
- Make, in any manner, any false or deceptive statement or representation including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising.^x
- Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental

ⁱ California Financial Code §22100(g)

ⁱⁱ California Financial Code §22755(a)

ⁱⁱⁱ California Financial Code §22755(b)

^{iv} California Financial Code §22755(c)

^v California Financial Code §22755(d)

^{vi} California Financial Code §22755(e)

^{vii} California Financial Code §22755(f)

^{viii} California Financial Code §22755(g)

^{ix} California Financial Code §22755(h)

^x California Financial Code §22755(i)

agency or the NMLS or in connection with any investigation conducted by the commissioner or another governmental agency.ⁱ

- Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.ⁱⁱ
- Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by Division 9.ⁱⁱⁱ
- Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.^{iv}
- Fail to truthfully account for moneys belonging to a party of a residential mortgage loan transaction.^v

A mortgage loan originator licensed under Division 9 may not pay any commission, fee, or other compensation to an unlicensed individual for conducting activities that require a license, unless that unlicensed individual is exempt from licensure pursuant to Division 9.^{vi}

A residential mortgage lender, or a person or employee acting under the authority of a residential mortgage lender's license, including a mortgage loan originator, may not provide brokerage services to a borrower, except as provided in §50700(c) below.^{vii}

A mortgage loan originator employed by a residential mortgage lender may provide brokerage services under the authority of the lender's license if the lender first enters into a written brokerage agreement with the borrower that satisfies the requirements of §50701.^{viii}

A mortgage loan originator may only provide brokerage services as an employee of a licensed residential mortgage lender.^{ix}

ⁱ California Financial Code §22755(j)

ⁱⁱ California Financial Code §22755(k)

ⁱⁱⁱ California Financial Code §22755(l)

^{iv} California Financial Code §22755(m)

^v California Financial Code §22755(n)

^{vi} California Financial Code §22757

^{vii} California Financial Code §50700(a)

^{viii} California Financial Code §50700(c)

^{ix} California Financial Code §50700(e)

IV. THE HOMEOWNER'S BILL OF RIGHTS

The Homeowner Bill of Rights (HBOR) complements existing laws by adding new protections to help prevent avoidable foreclosures. It calls for enhanced notifications to ensure that borrowers know their rights and know how to contact their loan servicer to pursue a loan modification or some other form of relief. It limits the ability of loan servicers to advance the foreclosure process when loan modification applications are under consideration. It promotes better communication between borrower and loan servicer by requiring loan servicers to provide an accountable, consistent point of contact to assist the homeowner through the loan modification and/or foreclosure process. The Homeowner Bill of Rights requires lenders to provide borrowers with proper documentation before the foreclosure process can take place. It also gives borrowers tools to enforce their rights.

A. APPLICABILITY OF THE LAW

The Homeowner's Bill of Rights, which came into effect on January 1, 2013, applies to first trust deeds which are secured by owner-occupied properties consisting of one-to-four residential units.

DEFINITIONS

An '**owner-occupied**' property is the principal residence of a borrower. It is secured by a personal, family, or household loan made for personal, family, or household purposes.ⁱ

A '**borrower**' is a natural person who may be eligible for a foreclosure prevention alternative program offered by the mortgage servicer. A '**borrower**' may not be someone who has filed bankruptcy, surrendered the secured property, or contracted with an organization which mainly advises the public on ways to extend the foreclosure process and avoid fulfilling contractual obligations.ⁱⁱ

'**Foreclosure prevention alternative**' may refer to a first lien loan modification or to a loss mitigation program (including short sales).^{iiiiv}

ⁱ California Civil Code §2924.15

ⁱⁱ California Civil Code §2920.5(c)

ⁱⁱⁱ California Civil Code §2920.5(b)

^{iv} California Civil Code §2924.18(b)

B. NO DUAL TRACKING DURING SHORT SALE

When a foreclosure prevention alternative has been approved in writing by all parties (first lien investor, junior lienholder, mortgage insurer etc.) and proof of funds or financing has been provided to the servicer, the servicer or lender may not:

- Record a notice of default;
- Record a notice of sale; or
- Conduct a trustee's sale

If a foreclosure prevention alternative is approved in writing after the recordation of a notice of default, a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of sale or conduct a trustee's sale under either of the following circumstances:

- The borrower is in compliance with the terms of a written trial or permanent loan modification, forbearance, or repayment plan.
- A foreclosure prevention alternative has been approved in writing by all parties, including, for example, the first lien investor, junior lienholder, and mortgage insurer, as applicable, and proof of funds or financing has been provided to the servicer.

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C. CANCELLING A PENDING TRUSTEE'S SALE

A mortgage servicer must rescind a pending trustee's sale when:

- A short sale has been approved by all parties (first lien investor, junior lienholder, mortgage insurer etc.); and
- Proof of funds or financing has been provided to the lender / authorized agent.

For all other forms of foreclosure prevention alternatives, a lender is either required to record a rescission of a notice of default or cancel a pending trustee's sale if a borrower executes a permanent foreclosure prevention alternative.

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D. SINGLE POINT OF CONTACT

A direct means of communication with a single point of contact must promptly be made available to borrowers who request a foreclosure prevention alternative. This single point of contact must remain in place until:

ⁱ California Civil Code §2924.11

ⁱⁱ California Civil Code §2924.11

- All loss mitigation options offered are exhausted; or
- The borrower's account becomes current.

The responsibilities of the single point of contact, who may be an individual or a team, will include:

- Managing the application for the foreclosure prevention alternative
- Providing status reports in a timely and accurate manner
- Coordinating with those able and authorized to suspend the foreclosure proceedings
- Referring the borrower to a manager upon the borrower's request

When the single point of contact is a team, each team member should be aware of the borrower's circumstances and should know their status in the foreclosure alternative process.

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E. NO DUAL TRACKING DURING LOAN MODIFICATION

As a rule, a mortgage servicer may not conduct a trustee's sale or record a notice of default or a notice of sale in cases of a nonjudicial foreclosure if:

- The borrower's application for a first lien loan modification is still pending; or
- The borrower has fully complied with the terms of:
 - a written trial;
 - a permanent loan modification;
 - a forbearance; or
 - a repayment plan

In cases where a loan modification application is rejected, the borrower will be given the opportunity to appeal. However, they must do so within 30 days of the denial.ⁱⁱ A mortgage servicer may not foreclose on a property during that 30-day period.ⁱⁱⁱ

Lenders and mortgage servicers will not be allowed to record a notice of sale or conduct a trustee's sale:

- If the borrower's complete application for a foreclosure prevention alternative is pending; and
- Until the borrower has been given a written determination by the mortgage servicer.

ⁱ California Civil Code §2923.7

ⁱⁱ California Civil Code §2923.6(d)

ⁱⁱⁱ California Civil Code §2923.6(e)

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F. NO LATE FEES OR APPLICATION FEES

A mortgage servicer may not collect late fees while:

- A first lien loan modification application is being considered;
- An appeal for a loan modification is ongoing;
- The borrower is up to date with their modification payments; or
- The evaluation or exercise of a foreclosure prevention alternative is ongoing

A mortgage servicer may not levy a fee for the application or the processing of a first lien loan modification or other foreclosure prevention alternative.

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G. ADDITIONAL LOAN MODIFICATION SAFEGUARDS

When a first lien loan modification is denied, a mortgage servicer is required to send a written notice to the borrower identifying with specificity the reasons for the denial that includes a statement that the borrower may obtain additional documentation supporting the denial decision upon written request to the mortgage servicer.

iii iv

H. REVIEW OF FORECLOSURE DOCUMENTS

The recording of a notice of default or the initiation of the foreclosure process can only be performed by:

- The holder of the beneficial interest under the deed of trust;
- An authorized designated agent of the holder of the beneficial interest; or
- The original or substituted trustee under the deed of trust.

ⁱ California Civil Code §2924.11

ⁱⁱ California Civil Code §2924.11

ⁱⁱⁱ California Civil Code §2923.6

^{iv} California Civil Code §2924.11

Mortgage servicers must verify the accuracy and completeness of the following foreclosure documents:

- Initial contact declaration
- Notice of default
- Notice of sale
- Assignment of deed of trust
- Substitution of trustee
- Declarations and affidavits filed in the judicial foreclosure proceeding.

Mortgage servicers must also ensure that these documents are supported by competent and reliable evidence to substantiate a borrower's default and their right to foreclose.

Such provisions apply to all trust deeds irrespective of occupancy or number of units.^{i ii}

I. EXTENDING INITIAL CONTACT REQUIREMENTS

A mortgage servicer or lender must contact a borrower in person or by telephone to assess their financial situation and discuss potential avenues to avoid foreclosure. A notice of default may only be recorded 30 days after this initial contact, in which the borrower must:

- Be advised of their right to request an additional meeting within 14 days; and
- Be provided with a toll-free number to identify a HUD-certified housing counseling agency.

Any notice of default must either confirm that the initial contact has taken place or that the mortgage servicer is exempt from making such a contact.

This legislation applies to first trust deeds secured by owner-occupied residential properties consisting of one-to-four units.^{iii iv}

J. NOTIFYING BORROWERS BEFORE NOTICE OF DEFAULT

In cases of nonjudicial foreclosures, mortgage servicers may not record a notice of default until the borrower(s) has/have been informed of their right to:

ⁱ California Civil Code §2924(a)(6)

ⁱⁱ California Civil Code §2924.17(c)

ⁱⁱⁱ California Civil Code §2923.5

^{iv} California Civil Code §2923.55

- Request copies of the promissory note, deed of trust, payment history, and assignment of loan, if any, to demonstrate the mortgage servicer's right to foreclose; and
- Certain protections under the Servicemembers Civil Relief Act if the borrower is a service member or a dependent.

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K. POSTPONING A TRUSTEE'S SALE

In cases where a trustee's sale is postponed for more than 10 business days, the lender or authorized agent will write to the borrower to confirm the new date and time of the sale. This written notice must be provided within 5 business days of the postponement.

However, failure to comply with this requirement will in no way invalidate any trustee's sale that is otherwise valid.

L. LEGAL REMEDIES FOR BORROWERS

Borrowers are generally provided with a private right of action to enjoin or stop a trustee's sale while the mortgage servicer corrects some of the material violations of this law.

In cases where the recording of the trustee's deed has already taken place, the borrower may be entitled to monetary damages as a result of these violations.

If these violations are found to have been intentional and reckless, the mortgage servicer may be liable for 3 times actual damages or \$50,000, whichever is greater. Any borrower who receives compensation may also be awarded reasonable attorney's fees and costs.

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ⁱ California Civil Code §2923.55

ⁱⁱ California Civil Code §2924.9

ⁱⁱⁱ California Civil Code §2924.12

M. LENDERS' STANDARD OF CARE TO INVESTORS

The goal of this legislation is to ensure that mortgage servicers provide borrowers with loan modifications or workout plans which meet their contractual or other authority.

A mortgage servicer's duty to maximize net present value under a pooling and servicing agreement should benefit all investors.

A mortgage servicer will be deemed to have acted in the best interest of all investors if the loan modifications or workout plans were set up in keeping with a number of specific parameters.ⁱ

N. BINDING IF LOAN IS TRANSFERRED

If a borrower has been approved in writing for a first lien loan modification or other foreclosure prevention alternative, and the servicing of that borrower's loan is transferred or sold to another mortgage servicer, the subsequent mortgage servicer shall continue to honor any previously approved first lien loan modification or other foreclosure prevention alternative.

ⁱⁱ

O. REVIEW OF FORECLOSURE DOCUMENTS

The recording of a notice of default or the initiation of the foreclosure process can only be performed by:

- The holder of the beneficial interest under the deed of trust;
- An authorized designated agent of the holder of the beneficial interest; or
- The original or substituted trustee under the deed of trust.

Mortgage servicers must verify the accuracy and completeness of the following foreclosure documents:

- Initial contact declaration
- Notice of default
- Notice of sale
- Assignment of deed of trust
- Substitution of trustee
- Declarations and affidavits filed in the judicial foreclosure proceeding.

ⁱ California Civil Code §2923.6

ⁱⁱ California Civil Code §2924.11

Mortgage servicers must also ensure that these documents are supported by competent and reliable evidence to substantiate a borrower's default and their right to foreclose.

Mortgage servicers who repeatedly fail in their obligation to review foreclosure documents will be liable for a civil penalty of up to \$7,500 per deed of trust should any action be brought by the Attorney General, the district attorney, or the city attorney. Mortgage servicers may be faced with the same penalty in an administrative proceeding brought by the Department of Business Oversight (DBO), the Department of Corporations (DOC) or the Department of Financial Institutions (DFI).

Such provisions apply to all trust deeds irrespective of occupancy or number of units.^{i ii}

P. EXTENDING INITIAL CONTACT REQUIREMENTS

A mortgage servicer or lender must contact a borrower in person or by telephone to assess their financial situation and discuss potential avenues to avoid foreclosure. A notice of default may only be recorded 30 days after this initial contact, in which the borrower must:

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Borrowers are generally provided with a private right of action to enjoin or stop a trustee's sale while the mortgage servicer corrects some of the material violations of this law.

ⁱ California Civil Code §2924(a)(6)

ⁱⁱ California Civil Code §2924.17(c)

ⁱⁱⁱ California Civil Code §2923.5

^{iv} California Civil Code §2923.55

In cases where the recording of the trustee's deed has already taken place, the borrower may be entitled to monetary damages as a result of these violations.

If these violations are found to have been intentional and reckless, the mortgage servicer may be liable for 3 times actual damages or \$50,000, whichever is greater. Any borrower who receives compensation may also be awarded reasonable attorney's fees and costs.

R. LENDERS' STANDARD OF CARE TO INVESTORS

The goal of this legislation is to ensure that mortgage servicers provide borrowers with loan modifications or workout plans which meet their contractual or other authority.

A mortgage servicer's duty to maximize net present value under a pooling and servicing agreement should benefit all investors.

A mortgage servicer will be deemed to have acted in the best interest of all investors if the loan modifications or workout plans were set up in keeping with a number of specific parameters.ⁱ

ⁱ California Civil Code §2923.6