

# CITY OF OAKLAND

## AGENDA REPORT

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2008 MAY 29 PM 7:50

**TO:** Office of the City Administrator  
**ATTN:** Deborah A. Edgerly  
**FROM:** Community & Economic Development Agency  
**DATE:** June 12, 2008

**RE:** Summary of Mortgage Lending and Foreclosure Bills: AB 69 (Lieu), AB 1830 (Lieu), AB 2880 (Wolk), AB 2359 (Jones), AB 2740 (Brownley), and SB 1137 (Perata)

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### SUMMARY

The California Reinvestment Coalition (CRC), based in San Francisco, is a nonprofit membership organization of two hundred fifty (250) nonprofit organizations and public agencies across the state of California. It works with community-based organizations to promote the economic revitalization of California's low-income communities and communities of color. CRC promotes increased access to credit for affordable housing and community economic development, and to financial services for these communities. City staff have worked with CRC in the past on such issues as community reinvestment and predatory lending.

CRC and its members have embarked on a campaign to keep borrowers in their homes. The key components of the campaign are 1) supporting and building capacity for home loan counselors who are on the front lines in helping distressed homeowners; 2) promoting the long term loan modifications that borrowers need and deserve from loan servicers; and 3) reforming the mortgage lending process to ensure that the scourge of predatory lending does not recur. This package of bills will go a long way towards meeting these last two goals and serve to bring investors back to the mortgage market.

**AB 69 (Lieu):** Will expand current reporting by lenders and servicers to the Department of Corporations to include information on the number of loans that are in default or foreclosure, the number of modifications to loans offered to troubled borrowers and the result of those workouts." With a new round of interest rate "resets" coming on adjustable rate loans, it is critical that policymakers and the public have information about how many borrowers are being assisted and by which companies.

**AB 1830 (Lieu):** The bill would outlaw certain abusive practices and loan terms that have led hundreds of thousands of Californians down the path to foreclosure. Specifically, it would require that lenders make high cost, subprime or nontraditional loans only to those borrowers who evidence an ability to repay the loan at the fully indexed rate; prohibit loans based only on "stated income," which has been an invitation for broker fraud; prohibit prepayment penalties which trap borrowers in bad loans or strip equity; ban yield spread premiums which incent

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brokers to put borrowers in more expensive loans; and provide additional and needed protections for consumers against the evils of loan flipping, steering, and negatively amortizing loans which leave borrowers owing more than they borrowed. This bill will protect California homeowners and restore common sense underwriting to the market and, in so doing, will restore investor confidence and increase liquidity.

**AB 2880 (Wolk):** This bill would end several of the practices that have helped fuel our current foreclosure crisis. Specifically, it would clarify that brokers operate as fiduciaries for borrowers, which most borrowers reasonably believe is the case today. The bill would also address current perverse incentives brokers have to enrich themselves at the expense of their clients. Importantly, the bill would create civil and criminal liability for brokers who fail to comply with its provisions. Additionally, the bill requires the filing of reports, the payment of fees, and the acquisition of larger bonds which will augment the state's ability to police, and consumers' ability to seek redress from, the brokers who touch the lives of so many Californians. We believe this bill will protect California homeowners from abusive practices by mortgage brokers who borrowers reasonably rely on for the best deal.

**AB 2359 (Jones):** This bill would encourage more responsible due diligence on the part of the secondary market for mortgage loans by making subsequent holders or assignees of high-cost, subprime or nontraditional mortgages subject to all claims and defenses that the borrower could have asserted against the original lender. In effect, the bill would send a strong message that Wall Street and the secondary market must be responsible for financing bad loans. The bill would also restrict the practice by lenders and brokers of requiring that borrowers waive legal rights or agree to mandatory arbitration of any claims in order to get a loan.

**AB 2740 (Brownley):** This bill would establish that home loan servicers owe a duty of good faith and fair dealing to borrowers. The bill would regulate the charging of certain fees, and require loan servicers to respond within 10 days of a request from a borrower for information or dispute resolution. Servicers have tremendous authority to decide who can remain in their homes and who will be foreclosed upon, yet there are virtually no rules, no oversight, and no clear data regulating this critical business role. CRC surveys of home loan counseling agencies confirm that loan servicers are not effectively working to keep Californians in their homes. This bill will set some basic parameters for servicers that are needed and that will product better outcomes.

**SB 1137 (Perata):** This would implement important foreclosure process reforms to protect the hundreds of thousands of Californians who are in danger of losing their homes due to the mortgage crisis. The bill takes several important steps to reduce the number of foreclosure sales by requiring lenders to contact borrowers to provide loan restructuring options, taking steps to ensure that foreclosed properties do not contribute to neighborhood blight, and providing additional protections to tenants living in investor owned properties. We support all of these important provisions.

This is a critical package of common sense proposals that will protect homeowners and tenants impacted by foreclosure, restore investor confidence, and help protect communities from the deleterious impact that foreclosures are having on neighborhoods. We urge your support for each of these measures.

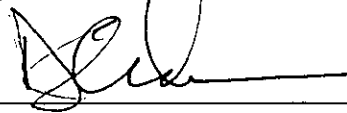
The following is a list of organizations that has endorsed CRC's legislative package:

AARP	Los Angeles Coalition to End Hunger & Homelessness
Affordable Housing Services	MAAC Project
Amador-Tuolumne Community Action Agency	Mission Economic Development Agency
Asset Policy Initiative of California (APIC)	Neighborhood housing Services of the Inland Empire, Inc.
California Alliance for Retired Americans	Neighborhood Partnership Housing Services, Inc.
California Coalition for Rural Housing	Non Profit Housing Association of Northern California
California Reinvestment Coalition	Older Women's League
California Resources and Training (CARAT)	Orange County Community Housing Corporation
Center for California Homeowner Association Law	Pacific Asian Consortium in Employment
CHARO Community Development Corp	People Helping People
Civic Center Barrio Housing Corporation	Project Sentinel
Community Housing Development Corporation of North Richmond	Public Interest Law Firm
Community Legal Services in East Palo Alto	Richmond Commission on Aging
Consumer Action	Rural Community Assistance Corporation
Consumer Federation of California	San Diego Home Loan Counseling & Education Center
Council on Aging Silicon Valley	S.F. Consortium for Elder Abuse Prevention
EARN	Senior Action Network
East Bay Asian Local Development Corp.	Sierra Planning & Housing Alliance, Inc.
East Bay Housing Organizations	STAND Affordable housing
East L.A. Community Corporation (ELACC)	Unity Council Homeownership Center
East Oakland CDC	Vermont Slauson Economic Development Corp.
East Palo Alto Council of Tenants (EPACT)	Watsonville Law Center
Education Fund	West Company
Fair Housing Council of San Diego	West County Senior Coalition
Fair Housing Council of Orange County	San Francisco Mayor Gavin Newsome
Fair Housing Council of the San Fernando Valley	San Francisco Assessor-Recorder Phil Ting
Fair Housing Law Project	Christi Baker, Chrysalis Consulting Group, LLC
Gray Panthers California	Matthew Edling
Housing and Economic Rights Advocates	
Housing California	
Housing Rights Center Los Angeles	
La Raza Centro Legal	


**ACTION REQUESTED OF THE CITY COUNCIL**

Accept the Bill Analyses and adopt the resolutions in **SUPPORT** of the following mortgage lending and foreclosure bills now pending before the California Legislature: AB 69 (Lieu), AB 1830 (Lieu), AB 2880 (Wolk), AB 2359 (Jones), AB 2740 (Brownley), and SB 1137 (Perata)

Respectfully submitted,




Dan Lindheim, Director  
Community & Economic Development Agency

Reviewed by: Sean Rogan   
Deputy Director, Housing and Community Development

Prepared by: Jeffrey Levin  
Housing Policy & Programs Coordinator

APPROVED AND FORWARDED TO THE  
RULES & LEGISLATION COMMITTEE:

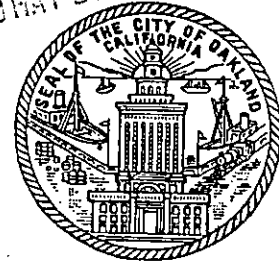
  
Office of the City Administrator

Attachments: Bill Analyses AB 69 (Lieu)  
AB 1830 (Lieu)  
AB 2880 (Wolk)  
AB 2359 (Jones)  
AB 2740 (Brownley)  
SB 1137 (Perata)

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2008 MAY 29 PM 7:53

## CITY OF OAKLAND BILL ANALYSIS



**Date:** June 12, 2008

**Bill Number:** AB 69

**Bill Author:** Lieu (co-authors include Swanson)

### DEPARTMENT INFORMATION

**Contact:** Jeffrey Levin  
**Department:** CEDA/HCD  
**Telephone:** 238-6188    **FAX:** 238-3691    **E-mail:** jplevin@oaklandnet.com

**RECOMMENDED POSITION:** SUPPORT

### Summary of the Bill

This bill would expand existing reporting requirements for mortgage lenders and servicers to include information on the number of loans that are in default or foreclosure, the number of modifications to loans offered to borrowers, and the result of these workouts.

### Positive Factors for Oakland

Oakland has been particularly hard hit by foreclosures of subprime and non-traditional mortgage loans. It has been difficult to get accurate information on the extent of the problem and particularly difficult to determine whether lenders and servicers are in fact making efforts to restructure loans to keep borrowers in their homes. This bill would require greater reporting of this information.

### Negative Factors for Oakland

None

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

**Critical** (top priority for City lobbyist, city position required ASAP)

**Very Important** (priority for City lobbyist, city position necessary)

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\_\_\_ **Somewhat Important** (City position desirable if time and resources are available)

\_\_\_ **Minimal or** \_\_\_ **None** (do not review with City Council, position not required)

**Known support:**

Aaron Myers, Attorney at Law  
ByDesign Financial Solutions  
California Coalition for Rural Housing  
California Reinvestment Coalition (CRC)  
Center for California Homeowner Association Law (CCHAL)  
Center for Responsible Lending (CRL)  
CHARO Community Development Corporation  
Chrysalis Consulting Group, LLC  
Civic Center Barrio Housing Corporation  
Congressman Dennis Cardoza  
Consumer Action  
EARN  
East Bay Asian Local Development Corporation  
East Palo Alto Council of Tenants (EPACT)  
Fair Housing Council of San Diego  
Fair Housing Law Project (FHLP)  
Fair Housing of Marin  
Gray Panthers  
Human Rights/Fair Housing Commission of the City and County of Sacramento  
Just Cause Oakland  
Law Center for Families  
Mission Community Financial Assistance  
Nehemiah Community Reinvestment Fund  
Pacific Asian Consortium in Employment  
Predatory Lending Clinic University of San Francisco School of Law  
Project Sentinel HUD Housing Counseling Programs  
Public Interest Law Firm  
Renaissance Entrepreneurship Center  
Sacramento Mutual Housing Association  
San Antonio Community Development Corporation  
Sierra Planning & Housing Alliance, Inc.

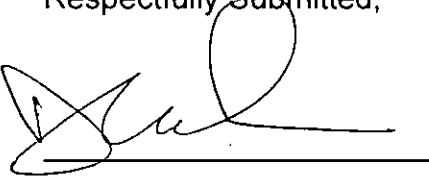
**Known Opposition:**

California Bankers Association  
California Chamber of Commerce  
California Financial Services Association  
California Independent Bankers  
California Mortgage Bankers Association

**Attach bill text and state/federal legislative committee analysis, if available.**

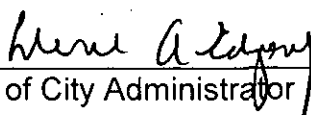
Bill and bill analysis are attached.

Respectfully Submitted,



Dan Lindheim  
Director, Community and  
Economic Development Agency

Approved for Forwarding to  
Rules Committee

  
Office of City Administrator

AMENDED IN ASSEMBLY JANUARY 18, 2008

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY APRIL 23, 2007

AMENDED IN ASSEMBLY FEBRUARY 1, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 69**

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**Introduced by Assembly Member Lieu**  
*(Coauthors: Assembly Members Swanson and Wolk)*

December 4, 2006

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An act to ~~amend Sections 5310 and 22715 of, and to add~~ *add and repeal* Sections 1934.5, ~~5205.7,~~ 14255.5, 22159.5, and 50307.1 ~~to,~~ of the Financial Code, relating to mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 69, as amended, Lieu. Mortgage lending: reporting.

(1) Existing law provides for the regulation of state commercial and industrial banks, ~~savings associations,~~ and credit unions by the Commissioner of the Department of Financial Institutions. Existing law requires those banks, ~~savings associations,~~ and credit unions to submit specified reports to the commissioner. Existing law provides for specified penalties for a violation thereof.

This bill would, *until July 1, 2010,* require the entities described above, if servicing ~~or originating~~ loans secured by real property, to report to the commissioner monthly with specified information related to different types of loans serviced ~~or originated~~ by those entities, including whether the loans are past due, in foreclosure, or have been modified. The bill would require the Department of Financial Institutions



to make information on these reports available on its Internet Web site and to the Legislature, as specified. ~~The bill would make those entities that fail to submit those reports subject to the penalties described above, as applied respectively.~~

(2) Existing law provides for the regulation and licensure of finance lenders and brokers by the Commissioner of Corporations. Existing law requires a licensee to submit specified reports to the commissioner. Existing law provides for the suspension or revocation of the license of any licensee that fails to submit those reports.

Existing law provides for the regulation and licensure of residential mortgage lenders and residential mortgage loan services by the Commissioner of Corporations. Existing law requires a licensee to submit specified reports to the commissioner. Existing law provides for specified penalties against a licensee that fails to submit those reports and authorizes the commissioner to examine the books, records, and affairs of a licensee for failure to submit the reports.

This bill would, *until July 1, 2010*, require the licensees described above to report to the commissioner monthly with specified information related to different types of loans serviced ~~or originated~~ by those licensees, including whether the loans are past due, in foreclosure, or have been modified. The bill would require the Department of Corporations to make information on these reports available on its Internet Web site ~~and to the Legislature~~, as specified. ~~The bill would make a licensee that fails to submit those reports subject to the penalties described above, as applied respectively.~~

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

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

- 1 SECTION 1. Section 1934.5 is added to the Financial Code,
- 2 to read:
- 3 1934.5. (a) Any bank that services ~~or originates~~ loans secured
- 4 by real property shall file a report with the commissioner monthly
- 5 that contains all of the following and any other information
- 6 *concerning loan modifications* requested by the commissioner:
- 7 (1) The total number of loans serviced.
- 8 (2) ~~Serviced loans~~ *The total number of nontraditional loans*
- 9 *serviced that were* originated and funded by an unaffiliated party.

- 1     ~~(3) Serviced loans~~ *The total number of nontraditional loans*  
2 *serviced where the originator or funding party is affiliated with*  
3 *the licensee.*
- 4     ~~(4) Serviced loans~~ *The total number of nontraditional loans*  
5 *serviced that are secured by owner-occupied residences.*
- 6     ~~(5) Serviced loans~~ *The total number of nontraditional loans*  
7 *serviced that are for investment or second residence properties.*
- 8     ~~(6) Loans serviced or originated~~ *The total number of*  
9 *nontraditional loans serviced that are secured by a first mortgage*  
10 *only.*
- 11    ~~(7) Loans serviced or originated~~ *The total number of*  
12 *nontraditional loans serviced that are secured by a second*  
13 *mortgage only.*
- 14    ~~(8) Loans serviced or originated~~ *The total number of*  
15 *nontraditional loans serviced that are secured by both a first and*  
16 *second mortgage.*
- 17    ~~(9) Prime loans serviced or originated in the following~~  
18 ~~categories:~~  
19 ~~and second mortgage.~~
- 20    (9) *The total number of subprime loans serviced that were*  
21 *originated and funded by an unaffiliated party.*
- 22    (10) *The total number of subprime loans serviced where the*  
23 *originator or funding party is affiliated with the licensee.*
- 24    (11) *The total number of subprime loans serviced that are*  
25 *secured by owner-occupied residences.*
- 26    (12) *The total number of subprime loans serviced that are for*  
27 *investment or second residence properties.*
- 28    (13) *The total number of subprime loans serviced that are*  
29 *secured by a first mortgage only.*
- 30    (14) *The total number of subprime loans serviced that are*  
31 *secured by a second mortgage only.*
- 32    (15) *The total number of subprime loans serviced that are*  
33 *secured by both a first and second mortgage.*
- 34    (16) *The total number of nontraditional loans serviced in the*  
35 *following categories:*
- 36    (A) *Fixed rate, fully amortizing loans.*
- 37    (B) *Hybrid adjustable rate mortgages mortgage loans.*
- 38    (C) *Adjustable rate, fully amortizing loans.*
- 39    (D) *Loans with interest only features.*

- 1 (E) Payment option adjustable rate mortgages and other loans  
2 with negative amortization features.
- 3 ~~(F) Other real property loans that are not subprime loans under~~  
4 ~~paragraph (10):~~
- 5 ~~(10) Subprime loans serviced or originated~~  
6 ~~(17) The total number of subprime loans serviced in the~~  
7 ~~following categories:~~
- 8 (A) Fixed rate, fully amortizing loans.  
9 (B) Hybrid adjustable rate mortgages mortgage loans.  
10 (C) Adjustable rate, fully amortizing loans.  
11 (D) Loans with interest only features.  
12 (E) Payment option adjustable rate mortgages and other loans  
13 with negative amortization features.
- 14 ~~(F) Other real property loans that are not prime loans under~~  
15 ~~paragraph (9):~~
- 16 ~~(11) The following information for prime loans, subprime loans,~~  
17 ~~and alternative mortgage loans serviced or originated:~~
- 18 ~~(18) The following information for subprime loans and~~  
19 ~~nontraditional loans serviced:~~
- 20 ~~(A) Loans—The total number of loans 30 to 59 days past due.~~  
21 ~~(B) Loans—The total number of loans 60 to 89 days past due.~~  
22 ~~(C) Loans—The total number of loans 90 days or more past due.~~  
23 ~~(D) Loans—The total number of loans described in subparagraph~~  
24 ~~(A), (B), or (C) that have been modified in the last 12 months.~~  
25 ~~(E) Loans—The total number of loans in the process of~~  
26 ~~foreclosure.~~
- 27 ~~(F) Loans—The total number of loans where notice of default has~~  
28 ~~been sent.~~
- 29 ~~(G) Loans—The total number of loans where formal foreclosure~~  
30 ~~proceedings have been started.~~
- 31 ~~(H) Loans—The total number of loans where foreclosure~~  
32 ~~proceedings have been completed.~~
- 33 ~~(I) Loans—The total number of loans that entered delinquency~~  
34 ~~within three six payments of an interest rate increase.~~
- 35 ~~(J) The percentage of loans described in subparagraphs (A) to~~  
36 ~~(I), inclusive, that are securitized.~~
- 37 ~~(12)~~  
38 ~~(19) The following loss mitigation efforts that are in process or~~  
39 ~~are closed relative to mortgage loans serviced or originated:~~
- 40 (A) Deeds in lieu.

- 1 (B) Short sales.
- 2 (C) Forbearances.
- 3 (D) Repayment plans.
- 4 (E) Refinances or paid in full.
- 5 (F) Reinstatement by an account becoming current.
- 6 (G) Modification by principal reduction or by interest rate or
- 7 term of debt modification.
- 8 ~~(13) Whether a prepayment penalty was waived for any loss~~
- 9 ~~mitigation action under paragraph (12).~~
- 10 (H) *The percentage of loans described in subparagraphs (A)*
- 11 *to (G), inclusive, that are securitized.*
- 12 (20) *The number of prepayment penalties waived in connection*
- 13 *with each of the loss mitigation actions under paragraph (19).*
- 14 (21) *The number of prepayment penalties assessed in connection*
- 15 *with each of the loss mitigation actions under paragraph (19).*
- 16 ~~(14)~~
- 17 (22) Information on closed loan modifications under paragraph
- 18 ~~(12)~~ (19), including the following:
- 19 (A) The duration of the modification relative to the life of the
- 20 loan.
- 21 (B) The types of modifications closed.
- 22 (C) Modifications by freezing the interest rate at the initial or
- 23 start rate.
- 24 (D) Modifications by reducing the interest rate below the initial
- 25 or start rate.
- 26 (E) Modifications by reducing the interest rate below the
- 27 scheduled adjustable rate increase (reset) but above the initial or
- 28 start rate.
- 29 (F) Modifications with extension of the term of the loan.
- 30 (G) Modifications with reduction in principal balance.
- 31 (H) Modifications using a combination of the methods described
- 32 in this paragraph.
- 33 (I) Any other types of modifications.
- 34 (J) *The percentage of loans described in subparagraphs (A) to*
- 35 *(I), inclusive, that are securitized.*
- 36 (b) ~~A summation of all~~ *The reports made to the commissioner*
- 37 *pursuant to subdivision (a) shall be posted on the department's*
- 38 ~~Internet Web site and the full data shall be made available to the~~
- 39 ~~Legislature upon request.~~

1 ~~(e) A bank that fails to report under subdivision (a) shall be~~  
 2 ~~subject to Section 1938.~~

3 ~~Internet Web site on a servicer-specific basis.~~

4 ~~(c) Nothing in this section shall prevent the commissioner from~~  
 5 ~~accepting data voluntarily submitted from a federally supervised~~  
 6 ~~financial institution.~~

7 ~~(d) The data collected under this section shall be for loans~~  
 8 ~~secured by residential real property.~~

9 ~~(e) For purposes of this section the following definitions shall~~  
 10 ~~apply:~~

11 ~~(1) "Subprime loan" means a loan where the difference between~~  
 12 ~~the annual percentage rate for the loan and the yield on Treasury~~  
 13 ~~securities having comparable periods of maturity is either equal~~  
 14 ~~to or greater than (A) 3 percentage points if the loan is secured~~  
 15 ~~by a first lien mortgage or deed of trust, or (B) 5 percentage points~~  
 16 ~~if the loan is secured by a subordinate lien mortgage or deed of~~  
 17 ~~trust.~~

18 ~~(2) "Nontraditional loan" or "nontraditional mortgage" means~~  
 19 ~~any mortgage product that allows the borrower to defer payment~~  
 20 ~~of principal and, sometimes, interest, as set forth in the~~  
 21 ~~"Interagency Guidance on Nontraditional Mortgage Product~~  
 22 ~~Risks" (71 Fed. Reg. 58609 (Oct. 4, 2006)).~~

23 ~~(f) This section shall become inoperative on July 1, 2010, and,~~  
 24 ~~as of January 1, 2011, is repealed, unless a later enacted statute,~~  
 25 ~~that becomes operative on or before January 1, 2011, deletes or~~  
 26 ~~extends the dates on which it becomes inoperative and is repealed.~~

27 ~~SEC. 2. Section 5205.7 is added to the Financial Code, to read:~~

28 ~~5205.7. (a) Any savings association that services or originates~~  
 29 ~~loans secured by real property shall file a report with the~~  
 30 ~~commissioner monthly that contains all of the following and any~~  
 31 ~~other information requested by the commissioner:~~

32 ~~(1) The total number of loans serviced;~~

33 ~~(2) Serviced loans originated and funded by an unaffiliated~~  
 34 ~~party;~~

35 ~~(3) Serviced loans where the originator or funding party is~~  
 36 ~~affiliated with the licensee;~~

37 ~~(4) Serviced loans secured by owner-occupied residences;~~

38 ~~(5) Serviced loans for investment or second residence properties;~~

39 ~~(6) Loans serviced or originated that are secured by a first~~  
 40 ~~mortgage only.~~

- 1 ~~(7) Loans serviced or originated that are secured by a second~~
- 2 ~~mortgage only.~~
- 3 ~~(8) Loans serviced or originated that are secured by both a first~~
- 4 ~~and second mortgage.~~
- 5 ~~(9) Prime loans serviced or originated in the following~~
- 6 ~~categories:~~
- 7 ~~(A) Fixed rate, fully amortizing.~~
- 8 ~~(B) Hybrid adjustable rate mortgages.~~
- 9 ~~(C) Adjustable rate, fully amortizing.~~
- 10 ~~(D) Loans with interest only features.~~
- 11 ~~(E) Payment option adjustable rate mortgages and other loans~~
- 12 ~~with negative amortization features.~~
- 13 ~~(F) Other real property loans that are not subprime loans under~~
- 14 ~~paragraph (10).~~
- 15 ~~(10) Subprime loans serviced or originated in the following~~
- 16 ~~categories:~~
- 17 ~~(A) Fixed rate, fully amortizing.~~
- 18 ~~(B) Hybrid adjustable rate mortgages.~~
- 19 ~~(C) Adjustable rate, fully amortizing.~~
- 20 ~~(D) Loans with interest only features.~~
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- 22 ~~with negative amortization features.~~
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- 26 ~~and alternative mortgage loans serviced or originated:~~
- 27 ~~(A) Loans 30 to 59 days past due.~~
- 28 ~~(B) Loans 60 to 89 days past due.~~
- 29 ~~(C) Loans 90 days or more past due.~~
- 30 ~~(D) Loans described in subparagraph (A), (B), or (C) that have~~
- 31 ~~been modified in the last 12 months.~~
- 32 ~~(E) Loans in the process of foreclosure.~~
- 33 ~~(F) Loans where notice of default has been sent.~~
- 34 ~~(G) Loans where formal foreclosure proceedings have been~~
- 35 ~~started.~~
- 36 ~~(H) Loans where foreclosure proceedings have been completed.~~
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- 38 ~~interest rate increase.~~
- 39 ~~(12) The following loss mitigation efforts that are in process or~~
- 40 ~~are closed relative to mortgage loans serviced or originated:~~

- 1 ~~(A) Deeds in lieu.~~  
2 ~~(B) Short sales.~~  
3 ~~(C) Forbearances.~~  
4 ~~(D) Repayment plans.~~  
5 ~~(E) Refinances or paid in full.~~  
6 ~~(F) Reinstatement by an account becoming current.~~  
7 ~~(G) Modification by principal reduction or by interest rate or~~  
8 ~~term of debt modification.~~  
9 ~~(13) Whether a prepayment penalty was waived for any loss~~  
10 ~~mitigation action under paragraph (12).~~  
11 ~~(14) Information on closed loan modifications under paragraph~~  
12 ~~(12), including the following:~~  
13 ~~(A) The duration of the modification relative to the life of the~~  
14 ~~loan.~~  
15 ~~(B) The types of modifications closed.~~  
16 ~~(C) Modifications by freezing the interest rate at the initial or~~  
17 ~~start rate.~~  
18 ~~(D) Modifications by reducing the interest rate below the initial~~  
19 ~~or start rate.~~  
20 ~~(E) Modifications by reducing the interest rate below the~~  
21 ~~scheduled adjustable rate increase (reset) but above the initial or~~  
22 ~~start rate.~~  
23 ~~(F) Modifications with extension of the term of the loan.~~  
24 ~~(G) Modifications with reduction in principal balance.~~  
25 ~~(H) Modifications using a combination of the methods described~~  
26 ~~in this paragraph.~~  
27 ~~(I) Any other types of modifications.~~  
28 ~~(b) A summation of all reports made to the commissioner~~  
29 ~~pursuant to subdivision (a) shall be posted on the department's~~  
30 ~~Internet Web site and the full data shall be made available to the~~  
31 ~~Legislature upon request.~~  
32 ~~(c) A savings association that fails to report under subdivision~~  
33 ~~(a) shall be subject to Section 5310.~~  
34 ~~SEC. 3. Section 5310 of the Financial Code is amended to read:~~  
35 ~~5310. (a) Any person violating or conspiring to violate Sections~~  
36 ~~5205.7, 5303, 5304, 5305, or 5306 shall be subject to a civil penalty~~  
37 ~~in an amount assessed by the court in a civil action under this~~  
38 ~~section.~~

1 ~~(b) The maximum amount of the penalty which may be imposed~~  
2 ~~under this section shall be determined in accordance with the~~  
3 ~~following:~~

4 ~~(1) Except as provided by paragraphs (2) and (3), the civil~~  
5 ~~penalty shall not exceed one million dollars (\$1,000,000).~~

6 ~~(2) In the case of a continuing violation, the amount of the civil~~  
7 ~~penalty may exceed the amount described in paragraph (1), but~~  
8 ~~may not exceed the lesser of one million dollars (\$1,000,000) for~~  
9 ~~each day the violation continues or five million dollars~~  
10 ~~(\$5,000,000).~~

11 ~~(3) If any person derives pecuniary gain from the violation, or~~  
12 ~~if the violation results in pecuniary loss to a person other than the~~  
13 ~~violatee, the amount of the civil penalty may exceed the amounts~~  
14 ~~described in paragraphs (1) and (2) but may not exceed the amount~~  
15 ~~of that gain or loss.~~

16 ~~(c) A civil action to recover a civil penalty under this section~~  
17 ~~shall be brought in the name of the people of the State of California~~  
18 ~~by the Attorney General, who shall be required to establish the~~  
19 ~~right to recovery by a preponderance of the evidence.~~

20 ~~(d) For the purpose of conducting a civil investigation in~~  
21 ~~contemplation of proceeding under this section, the Attorney~~  
22 ~~General may do all of the following:~~

23 ~~(1) Administer oaths and affirmations.~~

24 ~~(2) Take evidence.~~

25 ~~(3) By subpoena or subpoena duces tecum, summon witnesses~~  
26 ~~and require the production of any books, papers, correspondence,~~  
27 ~~memoranda, or other records which the Attorney General deems~~  
28 ~~relevant or material to the inquiry.~~

29 ~~SEC. 4.~~

30 ~~SEC. 2. Section 14255.5 is added to the Financial Code, to~~  
31 ~~read:~~

32 ~~14255.5. (a) Any credit union that services or originates loans~~  
33 ~~secured by real property shall file a report with the commissioner~~  
34 ~~monthly that contains all of the following and any other information~~  
35 ~~concerning loan modifications requested by the commissioner:~~

36 ~~(1) The total number of loans serviced.~~

37 ~~(2) Serviced loans—The total number of nontraditional loans~~  
38 ~~serviced that were originated and funded by an unaffiliated party.~~



- 1 (3) ~~Serviced loans~~—*The total number of nontraditional loans*  
2 *serviced* where the originator or funding party is affiliated with  
3 the licensee.
- 4 (4) ~~Serviced loans~~—*The total number of nontraditional loans*  
5 *serviced that are secured by owner-occupied residences.*
- 6 (5) ~~Serviced loans~~—*The total number of nontraditional loans*  
7 *serviced that are for investment or second residence properties.*
- 8 (6) ~~Loans serviced or originated~~—*The total number of*  
9 *nontraditional loans serviced* that are secured by a first mortgage  
10 only.
- 11 (7) ~~Loans serviced or originated~~—*The total number of*  
12 *nontraditional loans serviced* that are secured by a second  
13 mortgage only.
- 14 (8) ~~Loans serviced or originated~~—*The total number of*  
15 *nontraditional loans serviced* that are secured by both a first and  
16 second mortgage.
- 17 (9) ~~Prime loans serviced or originated in the following~~  
18 ~~categories:~~
- 19 (9) *The total number of subprime loans serviced that were*  
20 *originated and funded by an unaffiliated party.*
- 21 (10) *The total number of subprime loans serviced where the*  
22 *originator or funding party is affiliated with the licensee.*
- 23 (11) *The total number of subprime loans serviced that are*  
24 *secured by owner-occupied residences.*
- 25 (12) *The total number of subprime loans serviced that are for*  
26 *investment or second residence properties.*
- 27 (13) *The total number of subprime loans serviced that are*  
28 *secured by a first mortgage only.*
- 29 (14) *The total number of subprime loans serviced that are*  
30 *secured by a second mortgage only.*
- 31 (15) *The total number of subprime loans serviced that are*  
32 *secured by both a first and second mortgage.*
- 33 (16) *The total number of nontraditional loans serviced in the*  
34 *following categories:*
- 35 (A) Fixed rate, fully amortizing *loans.*
- 36 (B) Hybrid adjustable rate ~~mortgages~~ *mortgage loans.*
- 37 (C) Adjustable rate, fully amortizing *loans.*
- 38 (D) Loans with interest only features.
- 39 (E) Payment option adjustable rate mortgages and other loans  
40 with negative amortization features.

- 1 (F) Other real property loans that are not subprime loans under  
2 paragraph (10).  
3 ~~(10) Subprime loans serviced or originated in the following~~  
4 ~~categories:~~  
5 *(17) The total number of subprime loans serviced in the*  
6 *following categories:*  
7 (A) Fixed rate, fully amortizing loans.  
8 (B) Hybrid adjustable rate mortgages mortgage loans.  
9 (C) Adjustable rate, fully amortizing loans.  
10 (D) Loans with interest only features.  
11 (E) Payment option adjustable rate mortgages and other loans  
12 with negative amortization features.  
13 ~~(F) Other real property loans that are not prime loans under~~  
14 ~~paragraph (9).~~  
15 ~~(11) The following information for prime loans, subprime loans,~~  
16 ~~and alternative mortgage loans serviced or originated:~~  
17 *(18) The following information for subprime loans and*  
18 *nontraditional loans serviced:*  
19 (A) ~~Loans~~ *The total number of loans 30 to 59 days past due.*  
20 (B) ~~Loans~~ *The total number of loans 60 to 89 days past due.*  
21 (C) ~~Loans~~ *The total number of loans 90 days or more past due.*  
22 (D) ~~Loans~~ *The total number of loans described in subparagraph*  
23 *(A), (B), or (C) that have been modified in the last 12 months.*  
24 (E) ~~Loans~~ *The total number of loans in the process of*  
25 *foreclosure.*  
26 (F) ~~Loans~~ *The total number of loans where notice of default has*  
27 *been sent.*  
28 (G) ~~Loans~~ *The total number of loans where formal foreclosure*  
29 *proceedings have been started.*  
30 (H) ~~Loans~~ *The total number of loans where foreclosure*  
31 *proceedings have been completed.*  
32 (I) ~~Loans~~ *The total number of loans that entered delinquency*  
33 *within three six payments of an interest rate increase.*  
34 (J) *The percentage of loans described in subparagraphs (A) to*  
35 *(I), inclusive, that are securitized.*  
36 ~~(12)~~  
37 *(19) The following loss mitigation efforts that are in process or*  
38 *are closed relative to mortgage loans serviced or originated:*  
39 (A) Deeds in lieu.  
40 (B) Short sales.

- 1 (C) Forbearances.  
2 (D) Repayment plans.  
3 (E) Refinances or paid in full.  
4 (F) Reinstatement by an account becoming current.  
5 (G) Modification by principal reduction or by interest rate or  
6 term of debt modification.  
7 ~~(13) Whether a prepayment penalty was waived for any loss~~  
8 ~~mitigation action under paragraph (12):~~  
9 (H) *The percentage of loans described in subparagraphs (A) to*  
10 *(G), inclusive, that are securitized.*  
11 (20) *The number of prepayment penalties waived in connection*  
12 *with each of the loss mitigation actions under paragraph (19).*  
13 (21) *The number of prepayment penalties assessed in connection*  
14 *with each of the loss mitigation actions under paragraph (19).*  
15 ~~(14)~~  
16 (22) Information on closed loan modifications under paragraph  
17 ~~(12)~~ (19), including the following:  
18 (A) The duration of the modification relative to the life of the  
19 loan.  
20 (B) The types of modifications closed.  
21 (C) Modifications by freezing the interest rate at the initial or  
22 start rate.  
23 (D) Modifications by reducing the interest rate below the initial  
24 or start rate.  
25 (E) Modifications by reducing the interest rate below the  
26 scheduled adjustable rate increase (reset) but above the initial or  
27 start rate.  
28 (F) Modifications with extension of the term of the loan.  
29 (G) Modifications with reduction in principal balance.  
30 (H) Modifications using a combination of the methods described  
31 in this paragraph.  
32 (I) Any other types of modifications.  
33 (J) *The percentage of loans described in subparagraphs (A) to*  
34 *(I), inclusive, that are securitized.*  
35 (b) ~~A summation of all~~ The reports made to the commissioner  
36 pursuant to subdivision (a) shall be posted on the department's  
37 Internet Web site and the full data shall be made available to the  
38 Legislature upon request.  
39 (c) ~~A credit union that fails to report under subdivision (a) shall~~  
40 ~~be subject to Section 14256.~~

1 *Internet Web site on a Servicer-specific basis.*

2 (c) *Nothing in this section shall prevent the commissioner from*  
3 *accepting data voluntarily submitted from a federally supervised*  
4 *financial institution.*

5 (d) *The data collected under this section shall be for loans*  
6 *secured by residential real property.*

7 (e) *For purposes of this section the following definitions shall*  
8 *apply:*

9 (1) *"Subprime loan" means a loan where the difference between*  
10 *the annual percentage rate for the loan and the yield on Treasury*  
11 *securities having comparable periods of maturity is either equal*  
12 *to or greater than (A) 3 percentage points if the loan is secured*  
13 *by a first lien mortgage or deed of trust, or (B) 5 percentage points*  
14 *if the loan is secured by a subordinate lien mortgage or deed of*  
15 *trust.*

16 (2) *"Nontraditional loan" or "nontraditional mortgage" means*  
17 *any mortgage product that allows the borrower to defer payment*  
18 *of principal and, sometimes, interest, as set forth in the*  
19 *"Interagency Guidance on Nontraditional Mortgage Product*  
20 *Risks" (71 Fed. Reg. 58609 (Oct. 4, 2006)).*

21 (f) *This section shall become inoperative on July 1, 2010, and,*  
22 *as of January 1, 2011, is repealed, unless a later enacted statute,*  
23 *that becomes operative on or before January 1, 2011, deletes or*  
24 *extends the dates on which it becomes inoperative and is repealed.*

25 ~~SEC. 5.~~

26 SEC. 3. Section 22159.5 is added to the Financial Code, to  
27 read:

28 22159.5. (a) Each licensee shall file a report with the  
29 commissioner monthly that contains all of the following and any  
30 other information *concerning loan modifications* requested by the  
31 commissioner:

32 (1) The total number of loans serviced.

33 (2) ~~Serviced loans~~ *The total number of nontraditional loans*  
34 *serviced that were originated and funded by an unaffiliated party.*

35 (3) ~~Serviced loans~~ *The total number of nontraditional loans*  
36 *serviced where the originator or funding party is affiliated with*  
37 *the licensee.*

38 (4) ~~Serviced loans~~ *The total number of nontraditional loans*  
39 *serviced that are secured by owner-occupied residences.*

- 1     ~~(5) Serviced loans~~ *The total number of nontraditional loans*
- 2     *serviced that are for investment or second residence properties.*
- 3     ~~(6) Loans serviced or originated~~ *The total number of*
- 4     *nontraditional loans serviced that are secured by a first mortgage*
- 5     *only.*
- 6     ~~(7) Loans serviced or originated~~ *The total number of*
- 7     *nontraditional loans serviced that are secured by a second*
- 8     *mortgage only.*
- 9     ~~(8) Loans serviced or originated~~ *The total number of*
- 10    *nontraditional loans serviced that are secured by both a first and*
- 11    *second mortgage.*
- 12    ~~(9) Prime loans serviced or originated in the following~~
- 13    ~~categories:~~
- 14    ~~(9) The total number of subprime loans serviced that were~~
- 15    ~~originated and funded by an unaffiliated party.~~
- 16    ~~(10) The total number of subprime loans serviced where the~~
- 17    ~~originator or funding party is affiliated with the licensee.~~
- 18    ~~(11) The total number of subprime loans serviced that are~~
- 19    ~~secured by owner-occupied residences.~~
- 20    ~~(12) The total number of subprime loans serviced that are for~~
- 21    ~~investment or second residence properties.~~
- 22    ~~(13) The total number of subprime loans serviced that are~~
- 23    ~~secured by a first mortgage only.~~
- 24    ~~(14) The total number of subprime loans serviced that are~~
- 25    ~~secured by a second mortgage only.~~
- 26    ~~(15) The total number of subprime loans serviced that are~~
- 27    ~~secured by both a first and second mortgage.~~
- 28    ~~(16) The total number of nontraditional loans serviced in the~~
- 29    ~~following categories:~~
- 30    ~~(A) Fixed rate, fully amortizing loans.~~
- 31    ~~(B) Hybrid adjustable rate mortgages mortgage loans.~~
- 32    ~~(C) Adjustable rate, fully amortizing loans.~~
- 33    ~~(D) Loans with interest only features.~~
- 34    ~~(E) Payment option adjustable rate mortgages and other loans~~
- 35    ~~with negative amortization features.~~
- 36    ~~(F) Other real property loans that are not subprime loans under~~
- 37    ~~paragraph (10):~~
- 38    ~~(10) Subprime loans serviced or originated in the following~~
- 39    ~~categories:~~

1 (17) *The total number of subprime loans serviced in the*  
2 *following categories:*

- 3 (A) Fixed rate, fully amortizing loans.
- 4 (B) Hybrid adjustable rate ~~mortgages~~ mortgage loans.
- 5 (C) Adjustable rate, fully amortizing loans.
- 6 (D) Loans with interest only features.
- 7 (E) Payment option adjustable rate mortgages and other loans
- 8 with negative amortization features.
- 9 ~~(F) Other real property loans that are not prime loans under~~
- 10 ~~paragraph (9).~~

11 ~~(11) The following information for prime loans, subprime loans,~~  
12 ~~and alternative mortgage loans serviced or originated:~~

13 (18) *The following information for subprime loans and*  
14 *nontraditional loans serviced:*

- 15 ~~(A) Loans~~ *The total number of loans 30 to 59 days past due.*
- 16 ~~(B) Loans~~ *The total number of loans 60 to 89 days past due.*
- 17 ~~(C) Loans~~ *The total number of loans 90 days or more past due.*
- 18 ~~(D) Loans~~ *The total number of loans described in subparagraph*
- 19 *(A), (B), or (C) that have been modified in the last 12 months.*
- 20 ~~(E) Loans~~ *The total number of loans in the process of*
- 21 *foreclosure.*
- 22 ~~(F) Loans~~ *The total number of loans where notice of default has*
- 23 *been sent.*
- 24 ~~(G) Loans~~ *The total number of loans where formal foreclosure*
- 25 *proceedings have been started.*
- 26 ~~(H) Loans~~ *The total number of loans where foreclosure*
- 27 *proceedings have been completed.*
- 28 ~~(I) Loans~~ *The total number of loans that entered delinquency*
- 29 *within three six payments of an interest rate increase.*
- 30 ~~(J) The percentage of loans described in subparagraphs (A) to~~
- 31 ~~(I), inclusive, that are securitized.~~

32 ~~(12)~~

33 (19) *The following loss mitigation efforts that are in process or*  
34 *are closed relative to mortgage loans serviced or originated:*

- 35 (A) Deeds in lieu.
- 36 (B) Short sales.
- 37 (C) Forbearances.
- 38 (D) Repayment plans.
- 39 (E) Refinances or paid in full.
- 40 (F) Reinstatement by an account becoming current.

- 1 (G) Modification by principal reduction or by interest rate or  
2 term of debt modification.
- 3 ~~(13) Whether a prepayment penalty was waived for any loss~~  
4 ~~mitigation action under paragraph (12):~~
- 5 (H) *The percentage of loans described in subparagraphs (A) to*  
6 *(G), inclusive, that are securitized.*
- 7 (20) *The number of prepayment penalties waived in connection*  
8 *with each of the loss mitigation actions under paragraph (19).*
- 9 (21) *The number of prepayment penalties assessed in connection*  
10 *with each of the loss mitigation actions under paragraph (19).*
- 11 ~~(14)~~
- 12 (22) Information on closed loan modifications under paragraph  
13 ~~(12)~~ (19), including the following:
- 14 (A) The duration of the modification relative to the life of the  
15 loan.
- 16 (B) The types of modifications closed.
- 17 (C) Modifications by freezing the interest rate at the initial or  
18 start rate.
- 19 (D) Modifications by reducing the interest rate below the initial  
20 or start rate.
- 21 (E) Modifications by reducing the interest rate below the  
22 scheduled adjustable rate increase (reset) but above the initial or  
23 start rate.
- 24 (F) Modifications with extension of the term of the loan.
- 25 (G) Modifications with reduction in principal balance.
- 26 (H) Modifications using a combination of the methods described  
27 in this paragraph.
- 28 (I) Any other types of modifications.
- 29 (J) *The percentage of loans described in subparagraphs (A) to*  
30 *(I), inclusive, that are securitized.*
- 31 ~~(b) A summation of all The reports made to the commissioner~~  
32 ~~pursuant to subdivision (a) shall be posted on the department's~~  
33 ~~Internet Web site and the full data shall be made available to the~~  
34 ~~Legislature upon request:~~
- 35 ~~(c) A licensee that fails to file a report under subdivision (a)~~  
36 ~~shall be subject to Section 22715.~~
- 37 *Internet Web site servicer-specific basis.*
- 38 (c) *Nothing in this section shall prevent the commissioner from*  
39 *accepting data voluntarily submitted from a federally supervised*  
40 *financial institution.*

1 (d) The data collected under this section shall be for loans  
2 secured by residential real property.

3 (e) For purposes of this section the following definitions shall  
4 apply:

5 (1) "Subprime loan" means a loan where the difference between  
6 the annual percentage rate for the loan and the yield on Treasury  
7 securities having comparable periods of maturity is either equal  
8 to or greater than (A) 3 percentage points if the loan is secured  
9 by a first lien mortgage or deed of trust, or (B) 5 percentage points  
10 if the loan is secured by a subordinate lien mortgage or deed of  
11 trust.

12 (2) "Nontraditional loan" or "nontraditional mortgage" means  
13 any mortgage product that allows the borrower to defer payment  
14 of principal and, sometimes, interest, as set forth in the  
15 "Interagency Guidance on Nontraditional Mortgage Product  
16 Risks" (71 Fed. Reg. 58609 (Oct. 4, 2006)).

17 (f) This section shall become inoperative on July 1, 2010, and,  
18 as of January 1, 2011, is repealed, unless a later enacted statute,  
19 that becomes operative on or before January 1, 2011, deletes or  
20 extends the dates on which it becomes inoperative and is repealed.

21 ~~SEC. 6. Section 22715 of the Financial Code is amended to~~  
22 ~~read:~~

23 ~~22715. The commissioner may by order summarily suspend~~  
24 ~~or revoke the license of any licensee if that person fails to file the~~  
25 ~~report required by Section 22159 or 22159.5 within 10 days after~~  
26 ~~notice by the commissioner that the report is due and not filed. If,~~  
27 ~~after an order is made, a request for hearing is filed in writing~~  
28 ~~within 30 days and the hearing is not held within 60 days thereafter,~~  
29 ~~the order is deemed rescinded as of its effective date.~~

30 ~~SEC. 7.~~

31 ~~SEC. 4. Section 50307.1 is added to the Financial Code, to~~  
32 ~~read:~~

33 50307.1. (a) Each licensee shall file a report with the  
34 commissioner monthly that contains all of the following and any  
35 other information concerning loan modifications requested by the  
36 commissioner:

37 (1) The total number of loans serviced.

38 (2) ~~Serviced loans~~ The total number of nontraditional loans  
39 serviced that were originated and funded by an unaffiliated party.



- 1 (3) ~~Serviced loans~~—*The total number of nontraditional loans*  
2 *serviced* where the originator or funding party is affiliated with  
3 the licensee.
- 4 (4) ~~Serviced loans~~—*The total number of nontraditional loans*  
5 *serviced that are secured by owner-occupied residences.*
- 6 (5) ~~Serviced loans~~—*The total number of nontraditional loans*  
7 *serviced that are for investment or second residence properties.*
- 8 (6) ~~Loans serviced or originated~~—*The total number of*  
9 *nontraditional loans serviced* that are secured by a first mortgage  
10 only.
- 11 (7) ~~Loans serviced or originated~~—*The total number of*  
12 *nontraditional loans serviced* that are secured by a second  
13 mortgage only.
- 14 (8) ~~Loans serviced or originated~~—*The total number of*  
15 *nontraditional loans serviced* that are secured by both a first and  
16 second mortgage.
- 17 (9) ~~Prime loans serviced or originated in the following~~  
18 ~~categories:~~
- 19 (9) *The total number of subprime loans serviced that were*  
20 *originated and funded by an unaffiliated party.*
- 21 (10) *The total number of subprime loans serviced where the*  
22 *originator or funding party is affiliated with the licensee.*
- 23 (11) *The total number of subprime loans serviced that are*  
24 *secured by owner-occupied residences.*
- 25 (12) *The total number of subprime loans serviced that are for*  
26 *investment or second residence properties.*
- 27 (13) *The total number of subprime loans serviced that are*  
28 *secured by a first mortgage only.*
- 29 (14) *The total number of subprime loans serviced that are*  
30 *secured by a second mortgage only.*
- 31 (15) *The total number of subprime loans serviced that are*  
32 *secured by both a first and second mortgage.*
- 33 (16) *The total number of nontraditional loans serviced in the*  
34 *following categories:*
- 35 (A) *Fixed rate, fully amortizing loans.*
- 36 (B) *Hybrid adjustable rate ~~mortgages~~ mortgage loans.*
- 37 (C) *Adjustable rate, fully amortizing loans.*
- 38 (D) *Loans with interest only features.*
- 39 (E) *Payment option adjustable rate mortgages and other loans*  
40 *with negative amortization features.*

- 1 ~~(F) Other real property loans that are not subprime loans under~~  
2 ~~paragraph (10):~~  
3 ~~(10) Subprime loans serviced or originated in the following~~  
4 ~~categories:~~  
5 ~~(17) The total number of subprime loans serviced in the~~  
6 ~~following categories:~~  
7 ~~(A) Fixed rate, fully amortizing loans.~~  
8 ~~(B) Hybrid adjustable rate mortgages mortgage loans.~~  
9 ~~(C) Adjustable rate, fully amortizing loans.~~  
10 ~~(D) Loans with interest only features.~~  
11 ~~(E) Payment option adjustable rate mortgages and other loans~~  
12 ~~with negative amortization features.~~  
13 ~~(F) Other real property loans that are not prime loans under~~  
14 ~~paragraph (9):~~  
15 ~~(11) The following information for prime loans, subprime loans,~~  
16 ~~and alternative mortgage loans serviced or originated:~~  
17 ~~(18) The following information for subprime loans and~~  
18 ~~nontraditional loans serviced:~~  
19 ~~(A) Loans—The total number of loans 30 to 59 days past due.~~  
20 ~~(B) Loans—The total number of loans 60 to 89 days past due.~~  
21 ~~(C) Loans—The total number of loans 90 days or more past due.~~  
22 ~~(D) Loans—The total number of loans described in subparagraph~~  
23 ~~(A), (B), or (C) that have been modified in the last 12 months.~~  
24 ~~(E) Loans—The total number of loans in the process of~~  
25 ~~foreclosure.~~  
26 ~~(F) Loans—The total number of loans where notice of default has~~  
27 ~~been sent.~~  
28 ~~(G) Loans—The total number of loans where formal foreclosure~~  
29 ~~proceedings have been started.~~  
30 ~~(H) Loans—The total number of loans where foreclosure~~  
31 ~~proceedings have been completed.~~  
32 ~~(I) Loans—The total number of loans that entered delinquency~~  
33 ~~within three six payments of an interest rate increase.~~  
34 ~~(J) The percentage of loans described in subparagraphs (A) to~~  
35 ~~(I), inclusive, that are securitized.~~  
36 ~~(12)~~  
37 ~~(19) The following loss mitigation efforts that are in process or~~  
38 ~~are closed relative to mortgage loans serviced or originated:~~  
39 ~~(A) Deeds in lieu.~~  
40 ~~(B) Short sales.~~

- 1 (C) Forbearances.
- 2 (D) Repayment plans.
- 3 (E) Refinances or paid in full.
- 4 (F) Reinstatement by an account becoming current.
- 5 (G) Modification by principal reduction or by interest rate or
- 6 term of debt modification.
- 7 ~~(13) Whether a prepayment penalty was waived for any loss~~
- 8 ~~mitigation action under paragraph (12).~~
- 9 *(H) The percentage of loans described in subparagraphs (A) to*
- 10 *(G), inclusive, that are securitized.*
- 11 *(20) The number of prepayment penalties waived in connection*
- 12 *with each of the loss mitigation actions under paragraph (19).*
- 13 *(21) The number of prepayment penalties assessed in connection*
- 14 *with each of the loss mitigation actions under paragraph (19).*
- 15 ~~(14)~~
- 16 (22) Information on closed loan modifications under paragraph
- 17 ~~(12)~~ (19), including the following:
- 18 (A) The duration of the modification relative to the life of the
- 19 loan.
- 20 (B) The types of modifications closed.
- 21 (C) Modifications by freezing the interest rate at the initial or
- 22 start rate.
- 23 (D) Modifications by reducing the interest rate below the initial
- 24 or start rate.
- 25 (E) Modifications by reducing the interest rate below the
- 26 scheduled adjustable rate increase (reset) but above the initial or
- 27 start rate.
- 28 (F) Modifications with extension of the term of the loan.
- 29 (G) Modifications with reduction in principal balance.
- 30 (H) Modifications using a combination of the methods described
- 31 in this paragraph.
- 32 (I) Any other types of modifications.
- 33 *(J) The percentage of loans described in subparagraphs (A) to*
- 34 *(I), inclusive, that are securitized.*
- 35 ~~(b) A summation of all~~ The reports made to the commissioner
- 36 pursuant to subdivision (a) shall be posted on the department's
- 37 Internet Web site and the full data shall be made available to the
- 38 Legislature upon request.

1 ~~(e) A licensee that fails to file a report under subdivision (a)~~  
2 ~~shall be subject to subdivision (c) of Section 50307 and Section~~  
3 ~~50326.~~

4 *Internet Web site on a servicer-specific basis.*

5 *(c) Nothing in this section shall prevent the commissioner from*  
6 *accepting data voluntarily submitted from a federally supervised*  
7 *financial institution.*

8 *(d) The data collected under this section shall be for loans*  
9 *secured by residential real property.*

10 *(e) For purposes of this section the following definitions shall*  
11 *apply:*

12 *(1) "Subprime loan" means a loan where the difference between*  
13 *the annual percentage rate for the loan and the yield on Treasury*  
14 *securities having comparable periods of maturity is either equal*  
15 *to or greater than (A) 3 percentage points if the loan is secured*  
16 *by a first lien mortgage or deed of trust, or (B) 5 percentage points*  
17 *if the loan is secured by a subordinate lien mortgage or deed of*  
18 *trust.*

19 *(2) "Nontraditional loan" or "nontraditional mortgage" means*  
20 *any mortgage product that allows the borrower to defer payment*  
21 *of principal and, sometimes, interest, as set forth in the*  
22 *"Interagency Guidance on Nontraditional Mortgage Product*  
23 *Risks" (71 Fed. Reg. 58609 (Oct. 4, 2006)).*

24 *(f) This section shall become inoperative on July 1, 2010, and,*  
25 *as of January 1, 2011, is repealed, unless a later enacted statute,*  
26 *that becomes operative on or before January 1, 2011, deletes or*  
27 *extends the dates on which it becomes inoperative and is repealed.*

28

29

30 CORRECTIONS:

31 Text—Page 3.

32

O

ASSEMBLY THIRD READING  
AB 69 (Lieu)  
As Amended January 18, 2008  
Majority vote

BANKING & FINANCE 8-1      APPROPRIATIONS 11-5

Ayes: Lieu, Coto, Fuentes,  Houston, Parra, Swanson,  Torricco, Wolk	Ayes: Leno, Caballero, Davis,  DeSaulnier, Huffman,  Karnette, Krekorian,  Lieu, Ma, Nava, Solorio
Nays: Walters	Nays: Walters, Emmerson, La  Malfa, Nakanishi, Sharon  Runner

SUMMARY : Requires mortgage lenders to report to their respective regulatory agency information regarding loan loss mitigation efforts. Specifically, this bill :

- 1) Requires banks, credit unions, residential mortgage lenders and finance lenders to report data on subprime, and alternative mortgage products serviced by those entities.
- 2) Provides that loan servicers must provide data on their volume of loans on a monthly basis that includes the following information:
  - a) Loans that are 30 to 59 days past due;
  - b) Loans that are 60 to 89 days past due;
  - c) Loans that are 90 days past due or over;
  - d) Loans from above which were modified in the last 12 months;
  - e) Loans in process of foreclosure;
  - f) Loans where a notice of default (NOD) has been sent;

□

- g) Loans where formal foreclosure proceedings have started;
  - h) Loans where foreclosure has been completed; and,
  - i) Loans which entered delinquency within three payments of initial rate reset.
- 3) Requires loan servicers to report information on the disposition of loan modifications that resulted in the following:
    - a) Deed in lieu;
    - b) Short sale;
    - c) Forbearance;
    - d) Repayment plan;
    - e) Loans that were Refinanced or paid in full;
    - f) Modification of the loan terms, such as a principal or interest rate reduction;
    - g) Temporary modifications effective for less than the life of loan;
    - h) Permanent modification effective for life of loan;
    - i) Modification by freezing interest rate at the initial/start rate;
    - j) Modification by reducing the interest rate below the initial/start rate;
    - aa) Modification by reducing the interest rate below scheduled reset rate, but above start rate;

- bb) Modification with extension of loan terms;
- cc) Modification with reduction in principal balance; and,
- dd) Modification using two or more of above modifications

□

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Page 3

(e.g., rate reduction and term change).

- 4) Requires data reporting results to be posted on the Web site of the Department of Corporations (DOC) and the Department of Financial Institutions (DFI).
- 5) Sunsets the requirement for monthly data reporting on July 1, 2010.

EXISTING FEDERAL LAW requires, under the Home Mortgage Disclosure Act (HMDA) and implemented by the Federal Reserve Board's Regulation C (12 CFR 203), financial institutions to report certain types of data regarding home loans.

For each calendar year, a financial institution must report data regarding its applications, originations, and purchases of home purchase loans, home improvement loans, and refinancing, as defined. Data must also be given for loan applications that did not result in originations, including applications denied, withdrawn, or closed for incompleteness, as well as applications approved by the institution but not accepted by the applicant. HMDA requires lenders to report the ethnicity, race, gender, and gross income of mortgage applicants and borrowers. Lenders must also report information regarding the pricing of the loan and whether the loan is subject to the Home Ownership and Equity Protection Act. Additionally, lenders must identify the type of purchaser for mortgage loans that they sell.

For each application or loan, institutions are required to identify the purpose (home purchase, home improvement, or refinancing), lien status, and whether the property relating to the loan or loan application is to be owner-occupied as a principal dwelling. Regulation C requires financial institutions to identify the following general loan types: conventional, FHA-insured, VA-guaranteed, and FSA/RHS (Farm Service Agency/Rural Housing Service) guaranteed. Institutions must report the property type as a one- to four-family dwelling, multifamily dwelling, or manufactured housing. Financial institutions must report certain geographic data, as well as, the applicant's or borrower's ethnicity, race, sex, and gross annual income.

EXISTING STATE LAW provides for the regulation of residential mortgage lenders and California finance lenders by the DOC and

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Page 4

for the regulations of state banks and credit unions by the Department of Financial Institutions (DFI).

FISCAL EFFECT : According to Assembly Appropriations Committee, annual costs of about \$200,000 to DOC and DFI, combined, to compile and maintain data provided by financial institutions.

COMMENTS :

Need for the bill : The intent of the author is to follow up on the work of DOC and its voluntary collection of loss mitigation data with a requirement on mortgage lender licensees to provide the Commissioner this data on an ongoing basis. This bill will provide authority for the Commissioner of DOC and DFI to get this data without the constraints of a voluntary system.

The author has become concerned in recent months that the announcements by lenders and servicers to modify loans are not matching up to the realities on ground. It is also the author's intent to ensure accountability and transparency on the servicing of loan and loss mitigation efforts. It is important that not only can policy makers and regulators have access to data, but that lenders and servicers can have a public forum to reveal their efforts to assist consumers. Finally, it is necessary to gather data to determine the obstacles to loan modification, so in the future, state and federal regulators and policy makers can request alterations to the current modification plans underway.

Background : Early in 2007 all signs pointed to a major storm

brewing in the mortgage market, marked by growing concern with the performance of securitized adjustable rate mortgages (ARMs). As ARM loans began to default and underperform several large lenders filed for bankruptcy, and others saw massive losses on their balance sheets.

Between 2001 and 2006, ARMs as a share of total subprime loans increased from 73% to more than 91%. The share of no-documentation or low-documentation loans increased from 28% to more than 50% and the percentage of borrowers who took out interest only payment loans increased from zero to more than 22%. Furthermore, ARM loans accounted for 44% of new foreclosures in the second quarter of 2007.

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In California, lenders filed 72,571 NODs on borrowers in the third quarter of 2007, eclipsing a record of 61,541 set in 1996, according to DataQuick Information Systems. Most of the loans that went into default last quarter were originated between July 2005 and August 2006. Actual losses of homes to foreclosure statewide totaled 24,209 during the third quarter, the highest number since DataQuick began recording data in 1988, up 38.7 percent from last quarter and up six-fold year-over-year. (For a more detailed discussion of the mortgage crisis, please see the committee's report from November 2007, Impact of Mortgage Turmoil on California Communities ).

The scale of the problem is so large that many lenders begin to retool their operations to handle the increase in borrower calls seeking relief from rapidly rising interest rates. Several lenders and servicers announced plans to identify, early, borrowers who are in trouble or who may become in trouble with the change in their interest rate. However, several press reports indicate that borrowers in trouble were not on the receiving end of the help that was promised. Often borrowers were on the phone, after hours of trying to find the appropriate contact, with people at servicing entities that did not have the expertise to handle their situation, or were not authorized to make any decisions relative to the loan. Additionally, mortgage securitization agreements have a lot presented obstacles where the loan servicer has a duty to maximize profits to bond holders that reduces incentives to engage in modifications (More on this issue in later sections).

Furthermore, the California Reinvestment Coalition conducted a survey (available at <http://www.calreinvest.org/system/assets/92.pdf>) 33 of the roughly 80 mortgage counseling agencies across the state which are certified by the United States (U.S.) Department of Housing and Urban Development to assist borrowers at risk of foreclosure. The survey found that servicers were not offering modifications at the level or rate that was being publicly represented. Anecdotal evidence provided to the committee from some counseling agencies finds that the average workout is taking four months from initiation of a request for loan modification to a final arrangement. In spite of this disconnect many lenders and servicers have continually pledged to work with troubled borrowers.

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In September of 2007, the Commissioner of DOC designed a voluntary survey to query the loan modification efforts of loan servicers. DFI also engaged in a survey of state chartered banks and credit unions. Subsequent to this survey effort, Governor Schwarzenegger announced an agreement with five of the largest loan servicers to streamline the modification process.

In early December 2007, Treasury Secretary Henry Paulson announced an agreement to streamline and establish standards for loan modification and in some cases freezing the interest rate on some loans for five years. This agreement (<http://www.americansecuritization.com/uploadedFiles/FinalASFStatementonStreamlinedServicingProcedures.pdf>) was reached in conjunction with the American Securitization Forum (ASF), an organization that represents companies that issue mortgage backed securities, as well as investors, loan servicers and rating agencies. The ASF modification parameters sorts subprime borrowers whose rates are about to reset into three categories:

- 1) Those who are current on their loans, have decent credit scores and equity in their homes, and are likely to be

eligible for refinancing. The plan "encourages" servicers to refinance these loans without prepayment penalties, but there are no guarantees.

- 2) Those who are current on their loans but are not eligible to refinance because of poor credit scores or zero to 3% equity in their homes. This is the group that could be fast-tracked into a five-year freeze at the loan's introductory rate, to prevent their monthly payments from shooting up.
- 3) Those who are delinquent on their loans even at the introductory rate and do not qualify for refinancing. This group could very well end up in foreclosure or have to "short sell" their home if no other option can be worked out.

The ASF plan also called for voluntary data collection by its members on loan modifications and workout arrangements. A week after the plan was announced an article appeared in American Banker, A Murky Path to Loan-Mod Transparency that, among other things, questioned the transparency of the plan with "any reporting will be voluntary and may not present a complete picture of modification efforts."

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Securitized mortgages and loan modifications: As mentioned previously, securitization of mortgage loans often can make modification of a mortgage loan very difficult for both borrower and servicer.

When difficulty arises in making payments on a securitized loan, the borrower generally will not be dealing with the local banker with whom there might be an established relationship. Instead, the borrower will be dealing with a servicer. The servicer has responsibilities defined in the securitization documents that are substantially different than those of a lender. The servicer and the trustee are responsible for taking actions that are in the best interest of the investors who purchased portions of the securitization. Protecting the investors means determining the best alternative that would bring the maximum recovery on a defaulted loan on a present-value basis. If the servicer determines that a workout or modification of the loan achieves that goal, then there is an alignment of the investor/servicer/borrower relationship. However, if liquidation of the collateral (through a foreclosure or other means) results in the highest net present value of cash flows, the servicer may be bound by the terms of the securitization to pursue this approach to the benefit of the investor despite the resulting detriment to the borrower.

Even if a modification to the loan looks like the right approach, other factors might limit the servicer's options. Most securitizations are established as Real Estate Mortgage Investment Conduits (REMICs). The REMIC structure provides considerable tax benefits, (i.e., only the investors are subject to tax, not the conduit itself) but also includes provisions that could limit the flexibility of a servicer to modify a borrower's loan terms in a proactive manner. To qualify for tax-advantaged status, the pool of loans securitized in a REMIC must generally be treated as a static pool, which usually precludes modifying loans in the pool. An exception to this general prohibition allows for modifications when default is reasonably foreseeable. Once a determination is made that default is reasonably foreseeable, most securitization agreements provide significant flexibility for the servicer to modify terms of the loan. This allows for modification of terms when a loan has defaulted, but may prohibit changes to loans that are current.

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The Internal Revenue Service (IRS) leaves it to servicers to determine what "reasonably foreseeable" means as it relates to default, which makes these determinations dependent upon the facts and circumstances of each mortgage.

Aside from the restraints imposed on modifications by the REMIC structure, the personal service agreement (PSA) can also impose barriers to loan modification. The language in each PSA is different and each establishes the rules about how a particular



securitization operates or what needs to be done to change those rules. Many PSAs contain more than 200 pages of dense legal verbiage. The PSA provides a blueprint as to how cash flows and losses are allocated and distributed to the various parties, and establishes the rules that the servicer must abide by in managing this critical function in the transaction. The PSA sets forth whether and how a servicer can modify the underlying loans in a securitization. The documents will also identify the other parties in the transaction who might have an important role in this decision.

If the PSAs terms and conditions regarding modifications prove to be overly restrictive, changing the PSA can be very difficult and may require extraordinary actions, such as obtaining the consent of two-thirds or all of the investors. In some deals, the PSA is quite explicit in allowing the servicer flexibility in modifying delinquent loans, while in other transactions the language is vague.

The accounting rules also play an important role in the decisions made by the various parties. Securitization is often used as a balance sheet management strategy, whereby assets sold into a securitization are removed from the seller's books, thus freeing up resources such as capital. The implementation of the ASF plan has opened up this question as to what accounting principle is required for modified loans. Perhaps to for some a relief, the SEC issued an advisory letter on January 8, 2008, that some ARMS could be modified without triggering rules requiring those loans to be moved to their balance sheet. The easing of this accounting risk may encourage some servicers to

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increase their rates of loan modification.

Overall, the ability to securitize pools of such mortgages certainly helped to make mortgage loans available and has reduced the cost of credit for borrowers. However, the securitization structure also has introduced a number of new participants and complexities into the loan relationship, which reduces flexibility for addressing the problems of distressed borrowers.

Securitized subprime mortgage loans : In recent history, banks funded mortgage loans through their customer's deposits with mortgage credit dictated by the volume of bank deposits. Furthermore, banks kept loans on their books. In the last two decades, this model has changed with financial institutions selling mortgage loans to other institutions or to investors, with a mortgage market now dominated by non-depository institutions, many of whom, are state licensed and regulated.

With this change in lending, many institutions set up loan servicing units to collect the mortgage payments and disburse that money to the holder of the mortgage loan, whether that is investors in mortgage backed securities or other financial institutions. The servicer is typically compensated with fees based on the volume of loans serviced. The servicer is generally obligated to maximize the payments from the borrowers to the issuer, and is responsible for handling delinquent loans and foreclosures. The flow of capitol for subprime lending became possible through the rise of mortgage backed securities (MBSs).

MBSs are securities sold to investors like stocks and bonds. MBS are created when originators or financial intermediaries pool large volumes of mortgage loans and sell securities backed by the monthly payments made by borrowers on the underlying mortgage loans. When a homeowner, whose loan is secured in an investment pool, makes his or her monthly payment, the payment combined with the payments of other loans goes into the pool and forms the basis of cash flows for investors. Investors choose their position in mortgage pool based on priority of payments from the pool in the event of a default. The pools typically have several investment grade tranches, ranging from AAA ratings down to subprime rated tranches that would absorb the most

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losses in the event of default but offer the most return. Bonds are also structured as tranches that collect only interest on the underlying mortgage obligation, or tranches that received

payments from the principle payments on the mortgage.

Last year, the U.S. mortgage market amounted to 10,000 billion dollars, of which sub-prime mortgages represent 13% of the total market and 9% of nominal gross domestic product (GDP) of the U.S. Most of these sub-prime mortgage loans are granted by financial institutions that are not deposit-taking entities and therefore are subject to lower regulatory and supervision requirements compared with those for other banks and deposit institutions. Once the customer uses the loan to buy a house, the debt is noted in the balance sheet of the institution granting the loan. However, in order to boost their business, these institutions relieve themselves of these mortgages and sell them to commercial banks or investment banks. The new holders in turn, package the mortgages in blocks and issue securitization bonds or collateralized debt obligations (CDOs) using the sub-prime mortgages as security or collateral. That is to say, based on subprime mortgages, they create a new kind of asset that is more easily negotiable in the markets and it is this bond that carries the risk in the operation. To the extent that the holders of the mortgages keep paying off their debt every month, these funds are used to pay those who have bought these bonds.

The MBS market is the largest fixed income market in the U.S. At the end of 2006, approximately \$6.5 trillion of securitize mortgage-related debt was outstanding compared to \$4.3 trillion of U.S. Treasury securities and \$5.4 trillion of corporate debt.

\_ CDOs are a global phenomenon extending far beyond national boundaries or domestic capitol controls. JPMorgan estimate that \$1.5 trillion in CDOs exist globally with \$500 billion in structured finance CDOs meaning those made up of bonds back by subprime mortgages.

Analysis Prepared by : Mark Farouk / B. & F. / (916) 319-3081

FN: 0003874

**CITY OF OAKLAND**  
**BILL ANALYSIS**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2008 MAY 23 PM 7:53



**Date:** June 12, 2008

**Bill Number:** AB 1830

**Bill Author:** Lieu (co-authors include Hancock and Swanson)

**DEPARTMENT INFORMATION**

**Contact:** Jeffrey Levin  
**Department:** CEDA/HCD  
**Telephone:** 238-6188 **FAX:** 238-3691 **E-mail:** jplevin@oaklandnet.com

**RECOMMENDED POSITION: SUPPORT**

**Summary of the Bill**

This bill would outlaw certain abusive practices and loan terms that have made foreclosure more likely for many homeowners. It will modify existing law to require that lenders can only make high cost, subprime and nontraditional loans to borrowers who can support payments at the fully indexed rate; prohibit loans based on stated income; prohibit prepayment penalties; ban yield spread premiums for brokers; and protect borrowers from other abusive practices.

**Positive Factors for Oakland**

Oakland has been particularly hard hit by foreclosures of subprime and non-traditional mortgage loans. The bill would end many of the abusive loan practices that put unwary borrowers in high risk loans

**Negative Factors for Oakland**

This bill will not provide assistance for existing borrowers.

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

**Critical** (top priority for City lobbyist, city position required ASAP)

**Very Important** (priority for City lobbyist, city position necessary)

Item: \_\_\_\_\_  
Rules & Legislation Comte.  
June 12, 2008

**Somewhat Important** (City position desirable if time and resources are available)  
 **Minimal or**  **None** (do not review with City Council, position not required)

**Known support:**

California ACORN (co-sponsor)  
California Reinvestment Coalition (co-sponsor)  
Center for Responsible Lending (co-sponsor)  
Consumer's Union (co-sponsor)  
AARP  
AFSCME  
Affordable Housing Services  
Amador-Tuolumne Community Action Agency  
Asset Policy Initiative of California (APIC)  
California Alliance for Retired Americans  
California Coalition for Rural Housing  
California Labor Federation  
California Public Interest Research Group (CalPIRG)  
California Resources and Training (CARAT)  
Center for California Homeowner Association Law  
CHARO Community Development Corp  
City of Sacramento  
Civic Center Barrio Housing Corporation  
Community Housing Development Corporation of North Richmond  
Community Legal Services in East Palo Alto  
Consumer Action  
Consumer Attorneys of California  
Consumer Federation of California  
Council on Aging Silicon Valley  
EARN  
East Bay Asian Local Development Corp.  
East Bay Housing Organizations  
East L.A. Community Corporation (ELACC)  
East Oakland CDC  
East Palo Alto Council of Tenants (EPACT) Education Fund  
Fair Housing Council of San Diego  
Fair Housing Council of Orange County  
Fair Housing Council of the San Fernando Valley  
Fair Housing Law Project

Gray Panthers California  
Housing and Economic Rights Advocates  
Housing California  
Housing Rights Center Los Angeles  
La Raza Centro Legal  
Los Angeles Coalition to End Hunger & Homelessness  
MAAC Project  
Mission Economic Development Agency  
Neighborhood Partnership Housing Services, Inc.  
Older Women's League  
Orange County Community Housing Corporation  
People Helping People  
Project Sentinel  
Public Interest Law Firm  
Rural Community Assistance Corporation  
San Diego Home Loan Counseling & Education Center  
S.F. Consortium for Elder Abuse Prevention  
Sierra Planning & Housing Alliance, Inc.  
STAND Affordable Housing  
Unity Council Homeownership Center  
Vermont Slauson Economic Development Corp.  
Watsonville Law Center  
West Company  
San Francisco Assessor-Recorder Phil Ting  
Christi Baker, Chrysalis Consulting Group, LLC  
Matthew Edling

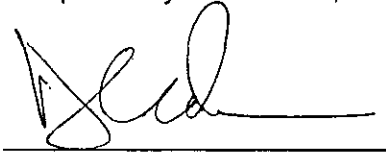
**Known Opposition:**

California Bankers Association  
California Financial Services Association  
California Independent Bankers  
California Mortgage Bankers Association  
Civil Justice Association of California

**Attach bill text and state/federal legislative committee analysis, if available.**

Bill and bill analysis are attached.

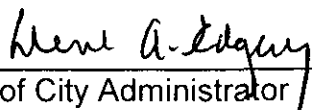
Respectfully Submitted,



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Dan Lindheim  
Director, Community and  
Economic Development Agency

Approved for Forwarding to  
Rules Committee

  
Office of City Administrator

AMENDED IN ASSEMBLY APRIL 1, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1830

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**Introduced by Assembly Member Lieu**

**(Principal coauthors: Assembly Members Nunez and Ruskin)**

**(Coauthors: Assembly Members Arambula, Bass, Beall, Berg, Brownley, Caballero, Carter, Coto, Davis, De Leon, DeSaulnier, Dymally, Eng, Feuer, Hancock, Hayashi, Huffman, Jones, Karnette, Krekorian, Laird, Leno, Levine, Ma, Mendoza, Mullin, Nava, Price, Salas, Saldana, Solorio, Swanson, Torrico, and Wolk)**

January 23, 2008

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An act to amend Sections 4970, 4973, 4974, 4975, 4977, 4978, 4978.6, and 4979 of, to amend the heading of Division 1.6 (commencing with Section 4970) of, and to add Sections 4973.2 and 4980 to, the Financial Code, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1830, as amended, Lieu. High-cost, subprime, and nontraditional loans.

Existing law imposes certain limitations and prohibitions on licensed persons, including real estate brokers, finance lenders, residential mortgage lenders, and financial institutions, with respect to consumer loans and covered loans. Existing law defines a "consumer loan" as a consumer credit transaction secured by residential real property, subject to certain exceptions, and defines a "covered loan" as a consumer loan that meets certain other requirements. Existing law prohibits a covered loan from including a prepayment penalty after the first 36 months from the date of ~~consumation~~ *consummation* of the loan but authorizes a covered loan to include a prepayment penalty before that time period

if specified conditions are satisfied. Existing law prohibits a covered loan from being made unless a specified disclosure is provided to the consumer no later than 3 business days prior to signing of the loan documents. Violations of these limitations and prohibitions by licensed persons are deemed to be violations of the person's licensing law and may be punishable by, among other things, disciplinary action, civil liability, and the imposition of administrative penalties and civil penalties up to \$25,000, as specified. *For certain licensed persons, violations of these limitations and prohibitions may be punished as crimes.*

This bill would redefine a "covered loan" as a "high-cost loan," would establish "subprime loans" and "nontraditional loans," as defined, as new categories of regulated loans, and would make various conforming changes to existing law relative to these loans. The bill would prohibit a high-cost loan from including prepayment penalties and from including at origination a payment schedule with regular periodic payments that, when aggregated, do not fully amortize the principal balance as of the maturity date of the loan. The bill would prohibit a person from making a high-cost loan unless at the time the loan is ~~consummated~~ *consummated* the person *reasonably* believes the consumer will be able to make the scheduled payments, including taxes and insurance, and would *create a rebuttable presumption regarding repayment ability in certain circumstances.* The bill would prohibit a high-cost loan from being originated as a stated income loan, except as specified. The bill would prohibit a *licensed* person who originates ~~a certain high-cost loan~~ *loans* from receiving a yield spread premium or other incentive compensation and would prohibit a person from originating a high-cost loan unless an escrow or impound account is established for a specified period of time. The bill would delete the provisions requiring a disclosure to be provided to a consumer prior to making a covered loan and would instead prohibit a high-cost loan from being made unless a consumer receives a certificate of certain counseling. The bill would establish similar limitations and prohibitions for subprime and nontraditional loans but would require a specified disclosure to be provided to a consumer before those loans could be made. The bill would authorize a licensing agency to levy administrative penalties in an amount up to \$10,000 against a person who violates the provisions regulating high-cost, subprime, and nontraditional loans and would make a person who makes a willful and knowing violation of those provisions of law liable to the consumer in the amount of \$25,000 or the ~~consumers~~



*consumer's actual damages, whichever is greater. The bill would authorize ~~private causes of action by a consumer against a licensed person to recover damages~~ the Attorney General, city attorney, or district attorney to bring an action for specified civil penalties for a violation of the provisions regulating high-cost, subprime, or nontraditional loans. The bill would provide that it is a defense against foreclosure on a property secured by a high-cost, subprime, or nontraditional loan if the loan is in violation of the laws regulating those loans. The bill's provisions would apply to high-cost, subprime, and nontraditional loans originated on or after January 1, 2009. Because a violation of the bill's provisions by certain licensed persons may be punished as crimes, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

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

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

- 1 SECTION 1. The heading of Division 1.6 (commencing with
- 2 Section 4970) of the Financial Code is amended to read:
- 3
- 4 DIVISION 1.6. SUBPRIME LENDING REFORM ACT
- 5
- 6 SEC. 2. Section 4970 of the Financial Code is amended to read:
- 7 4970. For purposes of this division:
- 8 (a) "Annual percentage rate" means the annual percentage rate
- 9 for the loan calculated according to the provisions of the federal
- 10 Truth in Lending Act and the regulations adopted thereunder by
- 11 the Federal Reserve Board.
- 12 (b) "High-cost loan" means a consumer loan in which the
- 13 original principal balance of the loan does not exceed the most
- 14 current conforming loan limit for a single-family first mortgage
- 15 loan established by the Federal National Mortgage Association in
- 16 the case of a mortgage or deed of trust, and where one of the
- 17 following conditions are met:

1 (1) For a mortgage or deed of trust, the annual percentage rate  
2 at consummation of the transaction will exceed by more than eight  
3 percentage points for first lien loans, or by more than 10 percentage  
4 points for subordinate lien loans, the yield on Treasury securities  
5 having comparable periods of maturity on the 15th day of the  
6 month immediately preceding the month in which the application  
7 for the extension of credit is received by the creditor.

8 (2) The total points and fees payable by the consumer at or  
9 before closing for a mortgage or deed of trust will exceed 5 percent  
10 of the total loan amount.

11 (c) "Subprime loan" or "subprime mortgage" means a loan  
12 secured by a dwelling that is, or will be, the borrower's principal  
13 dwelling and consumer loan in which the annual percentage rate  
14 exceeds the greater of either of the following:

15 (1) ~~If the loan is a closed-end loan, the~~ The difference between  
16 the annual percentage rate for the loan and the yield on Treasury  
17 securities having comparable periods of maturity is either equal  
18 to or greater than (A) 3 percentage points if the loan is secured by  
19 a first lien mortgage or deed of trust, or (B) 5 percentage points if  
20 the loan is secured by a subordinate lien mortgage or deed of trust.  
21 ~~If the loan is an open-end credit plan, the difference between the~~  
22 ~~annual percentage rate for the loan and the yield on Treasury~~  
23 ~~securities having comparable periods of maturity is equal to or~~  
24 ~~greater than 3 percentage points, regardless of whether the~~  
25 ~~open-end credit plan is secured by a first or subordinate lien~~  
26 ~~mortgage or deed of trust.~~ Without regard to whether the loan is  
27 subject to or reportable under the provisions of the federal Home  
28 Mortgage Disclosure Act (12 U.S.C. Sec. 2801, et seq.) (HMDA),  
29 the difference between the annual percentage rate and the yield on  
30 Treasury securities having comparable periods of maturity shall  
31 be determined using the same procedures and calculation methods  
32 applicable to loans that are subject to the reporting requirements  
33 of the HMDA.

34 (2) The difference between the annual percentage rate for the  
35 loan and the annual yield on conventional mortgages published  
36 by the Board of Governors of the Federal Reserve System, as  
37 published in statistical release H.15 or any publication that may  
38 supersede it, is either equal to or greater than (A) 1.75 percentage  
39 points, if the loan is secured by a first lien mortgage or deed of

1 trust, or (B) 3.75 percentage points, if the loan is secured by a  
2 subordinate lien mortgage or deed of trust.

3 (d) “Nontraditional loan” or “nontraditional mortgage” means  
4 ~~mortgage products that allow a consumer loan that allows~~  
5 borrowers to defer payment of principal and, sometimes, interest,  
6 as set forth in the “Interagency Guidance on Nontraditional  
7 Mortgage Product Risks” (71 Fed. Reg. 58609 (Oct. 4, 2006)).

8 (e) (1) “Points and fees” shall include the following:

9 (A) All items required to be disclosed as finance charges under  
10 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
11 Regulations, including the Official Staff Commentary, as amended  
12 from time to time, except interest.

13 (B) All compensation paid directly or indirectly to a mortgage  
14 broker from any source, including, but not limited to, any payment  
15 of a yield spread premium, and including a payment to a mortgage  
16 broker that originates a loan in its own name in a table-funded  
17 transaction.

18 (C) All items listed in Section 226.4(c)(7) of Title 12 of the  
19 Code of Federal Regulations, only if the person originating the  
20 ~~covered~~ *high-cost* loan receives direct compensation in connection  
21 with the charge.

22 (2) “Points and fees” shall not include any of the following:

23 (A) Taxes, filing fees, recording fees, and other charges and  
24 fees paid or to be paid to public officials for determining the  
25 existence of or for perfecting, releasing, or satisfying a security  
26 interest.

27 (B) Bona fide and reasonable fees paid to a person other than  
28 the creditor or an affiliate of the creditor for fees for tax payment  
29 services, flood certification, or pest infestation and flood  
30 determination, appraisal fees, fees for inspections performed prior  
31 to closing, credit report fees, survey fees, attorneys’ fees if the  
32 borrower has the right to select the attorney from an approved list  
33 or otherwise, notary fees, escrow charges, title insurance premiums,  
34 and fire and hazard insurance and flood insurance premiums,  
35 provided that the conditions in Section 226.4(d)(2) of Title 12 of  
36 the Code of Federal Regulations are met.

37 (f) “Consumer loan” means a consumer credit transaction that  
38 is secured by real property located in this state used, or intended  
39 to be used or occupied, as the principal dwelling of the consumer  
40 that is improved by a one-to-four residential unit. “Consumer loan”

1 does not include a reverse mortgage, an open line of credit as  
2 defined in Part 226 of Title 12 of the Code of Federal Regulations  
3 (Regulation Z), or a consumer credit transaction that is secured by  
4 rental property or second homes. “Consumer loan” does not include  
5 a bridge loan. For purposes of this division, a bridge loan is any  
6 temporary loan, having a maturity of one year or less, for the  
7 purpose of acquisition or construction of a dwelling intended to  
8 become the consumer’s principal dwelling.

9 (g) “Original principal balance” means the total initial amount  
10 the consumer is obligated to repay on the loan.

11 (h) “Licensing agency” shall mean the Department of Real  
12 Estate for licensed real estate brokers, the Department of  
13 Corporations for licensed residential mortgage lenders and licensed  
14 finance lenders and brokers, and the Department of Financial  
15 Institutions for commercial and industrial banks and savings  
16 associations and credit unions organized in this state.

17 (i) “Licensed person” means a real estate broker licensed under  
18 the Real Estate Law (Part 1 (commencing with Section 10000) of  
19 Division 4 of the Business and Professions Code), a finance lender  
20 or broker licensed under the California Finance Lenders Law  
21 (Division 9 (commencing with Section 22000)), a residential  
22 mortgage lender licensed under the California Residential Mortgage  
23 Lending Act (Division 20 (commencing with Section 50000)), a  
24 commercial or industrial bank organized under the Banking Law  
25 (Division 1 (commencing with Section 99)), a savings association  
26 organized under the Savings Association Law (Division 2  
27 (commencing with Section 5000)), and a credit union organized  
28 under the California Credit Union Law (Division 5 (commencing  
29 with Section 14000)). Nothing in this division shall be construed  
30 to prevent any enforcement by a governmental entity against any  
31 person who originates a loan and who is exempt or excluded from  
32 licensure by all of the licensing agencies, based on a violation of  
33 any provision of this division. Nothing in this division shall be  
34 construed to prevent the Department of Real Estate from enforcing  
35 this division against a licensed salesperson employed by a licensed  
36 real estate broker as if that salesperson were a licensed person  
37 under this division. A licensed person includes any person engaged  
38 in the practice of consumer lending, as defined in this division, for  
39 which a license is required under any other provision of law, but

1 whose license is invalid, suspended or revoked, or where no license  
2 has been obtained.

3 (j) "Originate" means to arrange, negotiate, or make a consumer  
4 loan.

5 (k) "Servicer" has the same meaning provided in Section 6 (i)(2)  
6 of the Real Estate Settlement Procedures Act of 1974.

7 (l) "Fully indexed rate" means the index rate prevailing on a  
8 residential mortgage loan at the time the loan is ~~made~~ consummated  
9 plus the margin that will apply after the expiration of any  
10 introductory interest rates.

11 SEC. 3. Section 4973 of the Financial Code is amended to read:  
12 4973. The following are prohibited acts and limitations for  
13 high-cost loans:

14 (a) A high-cost loan shall not include a prepayment fee or  
15 penalty.

16 (b) (1) A high-cost loan may not provide at origination for a  
17 payment schedule with regular periodic payments that when  
18 aggregated do not fully amortize the principal balance as of the  
19 maturity date of the loan.

20 (2) For a payment schedule that is adjusted to account for the  
21 seasonal or irregular income of the consumer, the total installments  
22 in any year shall not exceed the amount of one year's worth of  
23 payments on the loan. This prohibition does not apply to a bridge  
24 loan. For purposes of this paragraph, "bridge loan" means a loan  
25 with a maturity of less than 18 months that only requires payments  
26 of interest until the time when the entire unpaid balance is due and  
27 payable.

28 (c) A high-cost loan shall not contain a provision for negative  
29 amortization such that the payment schedule for regular monthly  
30 payments causes the principal balance to increase.

31 (d) A high-cost loan shall not include terms under which periodic  
32 payments required under the loan are consolidated and paid in  
33 advance from the loan proceeds.

34 (e) A high-cost loan shall not contain a provision that increases  
35 the interest rate as a result of a default. This provision does not  
36 apply to interest rate changes in a variable rate loan otherwise  
37 consistent with the provisions of the loan documents, provided the  
38 change in the interest rate is not triggered by the event of default  
39 or the acceleration for the indebtedness.

1 (f) (1) A person who originates high-cost loans shall not make  
2 or arrange a high-cost loan unless at the time the loan is  
3 consummated, the person reasonably believes the consumer, or  
4 consumers, when considered collectively in the case of multiple  
5 consumers, will be able to make the scheduled payments, including  
6 taxes and insurance at the fully indexed rate, to repay the obligation  
7 based upon a consideration of their current and expected income,  
8 current obligations, employment status, and other financial  
9 resources, other than the consumer's equity in the dwelling that  
10 secures repayment of the loan. In the case of a high-cost loan that  
11 is structured to increase to a specific designated rate, stated as a  
12 number or formula, at a specific predetermined date not exceeding  
13 37 months from the date of application, this evaluation shall be  
14 based upon the fully indexed rate of the loan calculated at the time  
15 of application *consummation of the transaction.*

16 ~~The consumer shall be presumed to be able to make the~~  
17 ~~scheduled payments to repay the obligation if, at the time the loan~~  
18 ~~is consummated, the consumer's total monthly debts, including~~  
19 ~~amounts owed under the loan, do not exceed 45 percent of the~~  
20 ~~consumer's monthly gross income, as verified by the credit~~  
21 ~~application, the consumer's financial statement, a credit report,~~  
22 ~~financial information provided to the person originating the loan~~  
23 ~~by or on behalf of the consumer, or any other reasonable means.~~

24 *There is a rebuttable presumption that a high-cost mortgage*  
25 *was made without regard to repayment ability if, at the time the*  
26 *loan is consummated, the consumer's total monthly debts, including*  
27 *total monthly housing payments, taxes, property and private*  
28 *mortgage insurance, any required homeowner or condominium*  
29 *fees, and any subordinate mortgages, including those that will be*  
30 *made contemporaneously to the same consumer, exceed 45 percent*  
31 *of the consumer's established monthly gross income. To rebut the*  
32 *presumption of inability to repay, the licensed person shall, at*  
33 *minimum, determine and consider the consumer's residual income*  
34 *after payment of current expenses and proposed loan payments.*  
35 *However, no presumption of ability to make the scheduled*  
36 *payments to repay the obligation shall arise solely from the fact*  
37 *that at the time the loan is consummated, the consumer's total*  
38 *monthly debts, including amounts owed under the loan, do not*  
39 *exceed 45 percent of consumer's established monthly gross income.*

1 (2) In the case of a stated income loan, the reasonable belief  
2 requirement in paragraph (1) shall apply, however, for stated  
3 income loans that belief may be based on the income verified by  
4 using tax records, bank statements, payroll receipts, or other  
5 reasonable documentation from a third party. A person shall not  
6 knowingly or willfully originate a high-cost loan as a stated income  
7 loan with the intent, or effect, of evading the provisions of this  
8 subdivision. A high-cost loan shall not be originated as a stated  
9 income loan based solely on a consumer's statement of income.

10 (g) A person who originates a high-cost loan shall not pay a  
11 contractor under a home-improvement contract from the proceeds  
12 of a high-cost loan other than by an instrument payable to the  
13 consumer or jointly to the consumer and the contractor or, at the  
14 election of the consumer, to a third-party escrow agent for the  
15 benefit of the contractor in accordance with terms and conditions  
16 established in a written escrow agreement signed by the consumer,  
17 the person who originates a high-cost loan, and the contractor prior  
18 to the disbursement of funds. No payments, other than progress  
19 payments for home-improvement work that the consumer certifies  
20 is completed, shall be made to an escrow account or jointly to the  
21 consumer and the contractor unless the person who originates the  
22 loan is presented with a signed and dated completion certificate  
23 by the consumer showing that the home-improvement contract  
24 was completed to the satisfaction of the consumer.

25 (h) It is unlawful for a person who originates a high-cost loan  
26 to recommend or encourage a consumer to default on an existing  
27 consumer loan or other debt in connection with the solicitation or  
28 making of a high-cost loan that refinances all or any portion of the  
29 existing consumer loan or debt.

30 (i) A high-cost loan shall not contain a call provision that permits  
31 the lender, in its sole discretion, to accelerate the indebtedness.  
32 This prohibition does not apply if repayment of the loan has been  
33 accelerated in accordance with the terms of the loan documents  
34 (1) as a result of the consumer's default, (2) pursuant to a  
35 due-on-sale provision, or (3) due to fraud or material  
36 misrepresentation by a consumer in connection with the loan or  
37 the value of the security for the loan.

38 (j) A person who originates a high-cost loan shall not refinance  
39 or arrange for the refinancing of a consumer loan such that the  
40 new loan is a high-cost loan that is made for the purpose of

1 refinancing, debt consolidation or cash out, that does not result in  
2 a net tangible benefit to the consumer, considering the consumer's  
3 stated purpose for seeking the loan, fees, interest rates, finance  
4 charges, and points.

5 ~~(k) A person who originates a high-cost loan shall not receive,~~  
6 ~~directly or indirectly, any incentive compensation, including a~~  
7 ~~yield spread premium, that is based on, or varies with, the terms~~  
8 ~~of any high-cost loan.~~

9 *(k) A licensed person shall not receive, directly or indirectly,*  
10 *any incentive compensation, including a yield spread premium,*  
11 *for originating a high-cost loan with an interest rate above the*  
12 *wholesale par rate for which the consumer qualifies.*

13 *(l) A licensed person shall not originate a high-cost loan unless*  
14 ~~the licensed person requires and collects~~ *loan contract requires*  
15 *the creation of an escrow account and the collection of the monthly*  
16 *escrow of property taxes and hazard insurance calculated in*  
17 *accordance with the requirements of Section 2609 of Title 12 of*  
18 *the United States Code and regulations promulgated pursuant*  
19 *thereto. The provisions of this paragraph do not apply to a high-cost*  
20 *loan that is secured by a subordinate lien when the taxes and*  
21 *insurance are escrowed through another loan.*

22 *(m) A licensed person shall not originate a high-cost loan unless*  
23 *an escrow or impound account is established that remains in*  
24 *existence for a minimum period of five years or until the consumer*  
25 *has sufficient equity in the dwelling securing the loan that private*  
26 *mortgage insurance is not required.*

27 *(n) A licensed person shall not originate a high-cost loan unless*  
28 *the consumer provides certification from a housing counselor*  
29 *approved by the United States Department of Housing and Urban*  
30 *Development that the consumer received counseling on the*  
31 *advisability of the loan transaction.*

32 ~~(o) (1) A person who originates a high-cost loan shall not steer,~~  
33 ~~counsel, or direct any prospective consumer to accept a loan~~  
34 ~~product with a risk grade less favorable than the risk grade that~~  
35 ~~the consumer would qualify for based on that person's then-current~~  
36 ~~underwriting guidelines, prudently applied, considering the~~  
37 ~~information available to that person, including the information~~  
38 ~~provided by the consumer.~~

39 *(o) (1) In connection with a high-cost loan, a licensed person*  
40 *shall not steer, counsel, or direct a consumer to a loan with rates,*



1 *charges, principal amount, or prepayment terms that are more*  
2 *costly than that for which the consumer qualifies.*

3 (2) If a broker originates a high-cost loan, the broker shall not  
4 steer, counsel, or direct any prospective consumer to accept a loan  
5 product at a higher cost than that for which the consumer could  
6 qualify based on the loan products offered by the persons with  
7 whom the broker regularly does business.

8 (p) A person who originates a high-cost loan shall not avoid, or  
9 attempt to avoid, the application of this division by ~~doing the~~  
10 ~~following:~~

11 ~~(1) Structuring a loan transaction as an open-end credit plan for~~  
12 ~~the purpose of evading the provisions of this division when the~~  
13 ~~loan would have been a high-cost loan if the loan had been~~  
14 ~~structured as a closed-end loan.~~

15 ~~(2) Dividing any loan transaction into separate parts for the~~  
16 ~~purpose of evading the provisions of this division:~~

17 ~~dividing any loan transaction into separate parts or otherwise~~  
18 ~~structuring a loan transaction for the purposes of evading the~~  
19 ~~provisions of this division or by engaging in any other subterfuge~~  
20 ~~with the intent of evading the provisions of this division.~~

21 (q) A person who originates a high-cost loan shall not act in  
22 any manner, whether specifically prohibited by this section or of  
23 a different character, that constitutes fraud.

24 SEC. 4. Section 4973.2 is added to the Financial Code, to read:

25 4973.2. The following are prohibited acts and limitations for  
26 subprime and nontraditional loans:

27 (a) A licensed person shall not originate a subprime or  
28 nontraditional loan unless at the time the loan is consummated,  
29 the licensed person reasonably believes the ~~consumer, or consumers~~  
30 ~~borrower, or borrowers~~, when considered collectively in the case  
31 of multiple ~~consumers~~ ~~borrowers~~, will be able to make the  
32 scheduled loan payments, real estate tax payments, and insurance  
33 payments associated with the loan.

34 (b) (1) A licensed person shall base its determination of the  
35 ~~consumer's~~ ~~borrower's~~ ability to pay on documentation of all  
36 sources of income verified by tax returns, payroll receipts, bank  
37 records, or the best and most appropriate form of documentation  
38 available, and the debt-to-income ratio, the ~~consumer's~~ ~~borrower's~~  
39 residual income after payment of current expenses, and the  
40 proposed loan payments.

1 (2) A statement provided by the ~~consumer~~ *borrower* of the  
2 income and financial resources of the ~~consumer~~ *borrower*, without  
3 other documentation referred to in this subdivision, is not sufficient  
4 verification for purposes of assessing the ability of the ~~consumer~~  
5 *borrower* to pay.

6 (3) The calculation assumptions used in evaluating the ability  
7 to repay a subprime or nontraditional loan shall include the  
8 following:

9 (A) The monthly payment amounts based on, at a minimum,  
10 the fully indexed rate, assuming a fully amortizing repayment  
11 schedule, as well as amounts for taxes and insurance.

12 (B) Verification of all sources of income, as provided in  
13 paragraph (1).

14 (4) With regard to subprime and nontraditional loans, there is  
15 a rebuttable presumption that a mortgage was made without regard  
16 to repayment ability if, at the time the loan is consummated, the  
17 ~~consumer's borrower's~~ total monthly debts, including total monthly  
18 housing payments, taxes, property and private mortgage insurance,  
19 any required homeowner or condominium fees, and any  
20 subordinate mortgages including those that will be made  
21 contemporaneously to the same ~~consumer~~ *borrower*, exceed ~~45~~  
22 ~~55 percent of the consumer's borrower's monthly gross income~~  
23 ~~established~~ *established monthly gross income*. To rebut the  
24 presumption of inability to repay, the licensed person shall, at  
25 minimum, determine and consider the ~~consumer's borrower's~~  
26 residual income after payment of current expenses and proposed  
27 loan payments. However, no presumption of ability to make the  
28 scheduled payments to repay the obligation shall arise solely from  
29 the fact that, at the time the loan is consummated, the ~~consumer's~~  
30 ~~borrower's~~ total monthly debts, including amounts owed under  
31 the loan, do not exceed ~~45~~ 55 percent of the ~~consumer's borrower's~~  
32 ~~established~~ monthly gross income.

33 (c) (1) A subprime loan ~~or nontraditional loan~~ shall not include  
34 a prepayment fee or penalty.

35 (2) ~~A~~ ~~For a~~ consumer loan that is not a subprime ~~or~~  
36 ~~nontraditional~~ loan and that has an adjustable interest rate ~~shall~~  
37 ~~not include~~, a creditor shall not charge a prepayment fee or penalty  
38 within six months of the date of the first interest rate adjustment  
39 for the loan.

1 (d) (1) A person originating a subprime or nontraditional loan  
2 shall not refinance or arrange for the refinancing of a consumer  
3 ~~loan such that the new loan is a subprime or nontraditional loan~~  
4 ~~that is made~~ *loan into a new loan* for the purpose of refinancing,  
5 debt consolidation or cash out, that does not result in a *reasonable*  
6 net tangible benefit to the ~~consumer~~ *borrower*, considering all of  
7 the circumstances, including, but not limited to, the terms of both  
8 the new and refinanced loans, the cost of the new loan including,  
9 fees, interest rates, finance charges, and points, and the ~~consumer's~~  
10 *borrower's* individual circumstances.

11 (2) For a period of one year after the consummation of a  
12 subprime or nontraditional loan originated by a licensed person to  
13 ~~a consumer borrower~~, neither the licensed person who made the  
14 loan, nor any licensed person who holds the loan, or an affiliate  
15 of either, ~~shall engage in direct marketing or initiate any~~  
16 ~~communication with the consumer regarding refinancing.~~ "Direct  
17 marketing" and "communication" shall include any communication  
18 directed at a specific person without the use of intervening media;  
19 including, but not limited to, the following methods: telephone,  
20 electronic mail, United States mail or other form of courier service,  
21 and in-person communication *shall refinance the existing subprime*  
22 *or nontraditional loan unless the new loan is no cost for the*  
23 *borrower or borrowers and includes a lower rate.* This paragraph  
24 shall not restrict a licensed person from responding to specific  
25 ~~consumer borrower~~ inquires regarding refinancing.

26 (e) In connection with a subprime or nontraditional loan, a  
27 licensed person shall not steer, counsel, or direct a ~~consumer~~  
28 *borrower* to a loan with rates, charges, principal amount, or  
29 prepayment terms that are more costly than that for which the  
30 ~~consumer borrower~~ qualifies.

31 (f) (1) A licensed person shall not receive, directly or indirectly,  
32 any incentive compensation, including a yield spread premium,  
33 for originating a subprime or nontraditional loan with an interest  
34 rate above the wholesale par rate for which the ~~consumer borrower~~  
35 *qualifies.*

36 (2) Notwithstanding paragraph (1), in a consumer loan other  
37 than a subprime or nontraditional loan, a licensed person may  
38 receive compensation in the form of an increased rate not to exceed  
39 200 basis points above the par rate for which the ~~consumer~~  
40 *borrower* qualifies if:

- 1 (A) The licensed person receives no other compensation,  
2 however denominated, directly or indirectly, from the ~~consumer~~  
3 *borrower* or from another licensed person.
- 4 (B) The loan does not include discount points, origination points,  
5 or rate reduction points, however denominated, or any payment  
6 reduction fee, however denominated, or any other fees or charges  
7 except bona fide and reasonable charges itemized in Section  
8 226.4(c)(7) of Title 12 of the Code of Federal Regulations,  
9 provided they are payable to a third party unaffiliated with the  
10 licensed person.
- 11 (C) The loan does not include a prepayment penalty.
- 12 (g) A subprime or nontraditional loan shall not contain a  
13 provision that increases the interest rate as a result of a default.  
14 This provision does not apply to interest rate changes in a variable  
15 rate loan otherwise consistent with the provisions of the loan  
16 documents, provided the change in the interest rate is not triggered  
17 by an event of default or the acceleration of the indebtedness.
- 18 (h) A subprime or nontraditional loan shall not contain a call  
19 provision that permits the lender, in its sole discretion, to accelerate  
20 the indebtedness. This prohibition does not apply if repayment of  
21 the loan has been accelerated in accordance with the terms of the  
22 loan documents (1) as a result of the borrower's default, (2)  
23 pursuant to a due-on-sale provision, or (3) due to fraud or material  
24 misrepresentation by a ~~consumer~~ *borrower* in connection with the  
25 loan or the value of the security for the loan.
- 26 (i) It is unlawful for a person who originates a subprime or  
27 nontraditional loan to recommend or encourage a ~~consumer~~  
28 *borrower* to default on an existing consumer loan or other debt in  
29 connection with the solicitation or making of a subprime or  
30 nontraditional loan that refinances all or any portion of the existing  
31 consumer loan or debt.
- 32 (j) (1) A licensed person shall not originate a subprime or  
33 nontraditional loan unless the ~~licensed person requires and collects~~  
34 *loan contract requires the creation of an escrow account and the*  
35 *collection of the monthly escrow of property taxes and hazard*  
36 *insurance calculated in accordance with the requirements of Section*  
37 *2609 of Title 12 of the United States Code and regulations*  
38 *promulgated pursuant thereto. The provisions of this paragraph*  
39 *do not apply to a subprime or nontraditional loan that is secured*

1 by a subordinate lien when the taxes and insurance are escrowed  
2 through another loan.

3 (2) An escrow or impound account established pursuant to  
4 paragraph (1) shall remain in existence for a minimum period of  
5 five years and until the ~~consumer~~ *borrower* has sufficient equity  
6 in the dwelling securing the subprime or nontraditional loan so  
7 that private mortgage insurance is no longer required, unless the  
8 underlying mortgage establishing the account is terminated.

9 (k) (1) A subprime or nontraditional loan shall not be made  
10 unless the following disclosure, written in 12-point typeface or  
11 larger, has been provided to the ~~consumer~~ *borrower* no later than  
12 three business days prior to signing of the loan documents of the  
13 transaction:

14 CONSUMER CAUTION NOTICE

15 Because you are receiving this notice, it is likely that this  
16 particular loan is a “subprime loan” that has a higher interest  
17 rate than other mortgage loans and is intended for people with  
18 less than excellent credit, or a “nontraditional loan,” such as  
19 a no interest loan or a payment option ARM, that are both  
20 subject to specific disclosure requirements and protections  
21 under California law (Division 1.6 (commencing with Section  
22 4970) of the Financial Code). Federal regulators have noted  
23 the risky nature of the features of these loans.

24 You are not required to complete any loan agreement merely  
25 because you have received these disclosures or have signed a  
26 loan application.

27 If you proceed with this mortgage loan, you should also  
28 remember that you may face serious financial risks if you use  
29 this loan to pay off credit card debts and other debts in  
30 connection with this transaction and then subsequently incur  
31 significant new credit card charges or other debts. If you  
32 continue to accumulate debt after this loan is closed and then  
33 experience financial difficulties, you could lose your home  
34 and any equity you have in it if you do not meet your mortgage  
35 loan obligations.

36 You should consider consulting a qualified independent credit  
37 counselor or other experienced financial adviser regarding the  
38 rate, fees, and provisions of this mortgage loan before you  
39 proceed. For information on contacting a qualified credit  
40 counselor, ask your lender or call the United States Department

1 of Housing and Urban Development's counseling hotline at  
2 ~~1-800-569-4287~~ or ~~go to~~  
3 ~~www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm~~ for a list of  
4 ~~\_\_\_\_\_~~ or go to ~~\_\_\_\_\_~~ for a list of counselors.  
5  
6

7 (2) It shall be a rebuttable presumption that a licensed person  
8 has met its obligation to provide the disclosure required by  
9 paragraph (1) if the ~~consumer~~ *borrower* provides the licensed  
10 person with a signed acknowledgment of receipt of a copy of that  
11 disclosure.

12 (l) It shall be a violation of this division for any person to  
13 ~~attempt in bad faith to~~ avoid the application of this division by  
14 dividing any loan transaction into separate parts or otherwise  
15 structuring a loan transaction for the purpose of evading the  
16 provisions of this division or by engaging in any other subterfuge  
17 with the intent of evading any provision of this division.

18 (m) A licensed person shall not make or cause to be made,  
19 directly or indirectly, any false, deceptive, or misleading statement,  
20 representation, or omission in connection with a subprime or  
21 nontraditional loan.

22 (n) A licensed person shall not finance, directly or indirectly,  
23 into a subprime or nontraditional loan, or finance to the same  
24 ~~consumer~~ *borrower* within 30 days of consummation of the loan,  
25 any credit life, credit disability, credit property, or credit  
26 unemployment insurance premiums, or any debt cancellation or  
27 suspension agreement fees, provided that credit insurance  
28 premiums, debt cancellation, or suspension fees calculated and  
29 paid on a monthly basis shall not be considered financed by the  
30 person originating the loan. For purposes of this section, credit  
31 insurance does not include a contract issued by a government  
32 agency or private mortgage insurance company to insure the lender  
33 against loss caused by a mortgagor's default.

34 (o) A subprime or nontraditional loan shall not contain a  
35 provision for negative amortization such that the payment schedule  
36 for regular monthly payments causes the principal balance to  
37 increase.

38 SEC. 5. Section 4974 of the Financial Code is amended to read:

39 4974. (a) Any compliance failure that was not willful or  
40 intentional and resulted from a bona fide error, that occurred

1 notwithstanding the maintenance of procedures reasonably adopted  
2 to avoid those errors, including, but not limited to, those involving  
3 clerical, calculation, computer malfunction and programming, and  
4 printing errors shall be corrected no later than 45 days after receipt  
5 of the complaint or discovery of the error. A person who originates  
6 a high-cost, subprime, or nontraditional loan shall not be  
7 administratively, civilly, or criminally liable for a bona fide error  
8 corrected pursuant to this section.

9 (b) If a person who originates high-cost, subprime, or  
10 nontraditional loans makes a loan where the person knew, or should  
11 have known, of and showed reckless disregard for a violation of  
12 this division by a broker, the person and broker shall be jointly  
13 and severally liable for all damages awarded under this division  
14 with respect to the broker's unlawful conduct.

15 This section does not impose or transfer liability for a breach of  
16 the broker's fiduciary duty.

17 SEC. 6. Section 4975 of the Financial Code is amended to read:

18 4975. (a) (1) Any licensed person who violates any provision  
19 of Section 4973, 4973.2, 4979.6, or 4979.7 shall be deemed to  
20 have violated that person's licensing law.

21 (2) After a knowing and willful violation, the licensing agency  
22 may bring a proceeding to suspend the license of the licensed  
23 person for not less than six months and not more than three years.

24 (b) After a knowing and willful violation resulting in a second  
25 or subsequent administrative or civil action, the licensing agency  
26 may bring a proceeding to permanently revoke the license of the  
27 licensed person or impose any lesser licensed sanction for at least  
28 three years.

29 (c) A licensing agency may exercise any and all authority and  
30 powers available to it under any other provisions of law, to  
31 administer and enforce this division including, but not limited to,  
32 investigating and examining the licensed person's books and  
33 records, and charging and collecting the reasonable costs for these  
34 activities. The licensing agency shall not charge a licensed person  
35 twice for the same service. Any civil, criminal, and administrative  
36 authority and remedies available to the licensing agency pursuant  
37 to its licensing law may be sought and employed in any  
38 combination deemed advisable by the licensing agency to enforce  
39 the provisions of this division.

1 (d) Nothing in this section shall be construed to impair or impede  
2 a licensing agency's authority under any other provision of law.

3 SEC. 7. Section 4977 of the Financial Code is amended to read:

4 4977. (a) A licensing agency may, after appropriate notice and  
5 opportunity for hearing, by order levy administrative penalties  
6 against a person who violates any provision of this division, and  
7 the person shall be liable for administrative penalties of not more  
8 than ten thousand dollars (\$10,000) for each violation. Except for  
9 licensing agencies exempt from the provisions of the  
10 Administrative Procedure Act, any hearing shall be held in  
11 accordance with the Administrative Procedure Act (Chapter 5  
12 (commencing with Section 11500) of Part 1 of Division 3 of Title  
13 2 of the Government Code), and the licensing agency shall have  
14 all the powers granted under that act.

15 (b) Any person who willfully and knowingly violates any  
16 provision of this division shall be liable for a civil penalty of not  
17 more than twenty-five thousand dollars (\$25,000) for each violation  
18 which shall be assessed and recovered in a civil action brought in  
19 the name of the people of the State of California by the licensing  
20 agency, *Attorney General, city attorney, or district attorney* in any  
21 court of competent jurisdiction.

22 (c) Nothing in this section requires exhaustion of administrative  
23 remedies prior to an injured party bringing a civil action.

24 (d) If the licensing agency, *Attorney General, city attorney, or*  
25 *district attorney* determines that it is in the public interest, the  
26 licensing agency, *Attorney General, city attorney, or district*  
27 *attorney* may include, in any action for penalties authorized by  
28 subdivision (b), a claim for relief in addition to the penalties,  
29 including a claim for restitution or disgorgement, and the court  
30 shall have jurisdiction to award the additional relief.

31 (e) Nothing in this section shall be construed to impair or impede  
32 the Attorney General from representing a licensing agency in  
33 bringing an action to enforce this division at the request and on  
34 behalf of the licensing agency.

35 (f) In any action brought by the licensing agency, ~~or the Attorney~~  
36 ~~General acting at the request and on behalf of the licensing agency;~~  
37 *Attorney General, city attorney, or district attorney* under this  
38 division in which a judgment against a person is rendered, the  
39 licensing agency ~~or the Attorney General, Attorney General, city~~  
40 ~~attorney, or district attorney~~ shall be entitled to recover costs



1 which, in the discretion of the court, may include an amount  
2 representing reasonable attorney's fees and investigative expenses  
3 for services rendered ~~for deposit in the appropriate fund of that~~  
4 ~~licensing agency.~~

5 (g) The amounts collected under subdivisions (a) and (b) shall  
6 be deposited in the appropriate fund of the licensing agency to be  
7 used by that licensing agency, subject to appropriation by the  
8 Legislature, for the purposes of financial literacy education and  
9 enforcement in connection with abusive lending practices.

10 SEC. 8. Section 4978 of the Financial Code is amended to read:

11 4978. (a) A person who fails to comply with the provisions  
12 of this division is civilly liable to the consumer in an amount equal  
13 to any actual damages suffered by the consumer, plus attorneys  
14 fees and costs. For a willful and knowing violation of this division,  
15 the person shall be liable to the consumer in the amount of  
16 twenty-five thousand dollars (\$25,000) or the ~~consumers~~  
17 *consumer's* actual damages, whichever is greater, plus attorneys  
18 fees and costs.

19 (b) (1) If a provision in a contract in a high-cost loan violates  
20 Section 4973, or a provision in a contract in a subprime or  
21 nontraditional loan violates Section 4973.2, or a provision in a  
22 contract of any of those loans violates Section 4979.6, or Section  
23 4979.7, that provision is unenforceable. A court in which any  
24 action is brought by, or on behalf of, an aggrieved consumer for  
25 relief may issue an order or injunction to reform the terms of the  
26 high-cost, subprime, or nontraditional loan to conform to the  
27 provisions of this division.

28 (2) A court may, in addition to any other remedy, award punitive  
29 damages to the consumer upon a finding that such damages are  
30 warranted pursuant to Section 3294 of the Civil Code.

31 (c) Nothing in this section is intended, nor shall be construed,  
32 to abrogate existing common law provisions prohibiting double  
33 recovery of damages.

34 (d) Without regard to whether a consumer is acting individually,  
35 jointly, or on behalf of others similarly situated, any provision in  
36 a contract of a high-cost, subprime, or nontraditional loan that  
37 allows a party to require the consumer to assert any claim or  
38 defense in a forum that is less convenient, more costly, or more  
39 dilatory for the resolution of a dispute than a judicial forum  
40 established in this state where the consumer may otherwise

1 properly bring a claim or defense or that limits in any way any  
2 claim or defense the consumer may have is unconscionable and  
3 void.

4 (e) Any provision in a contract of a high-cost, subprime, or  
5 nontraditional loan that purports to waive the consumer's right to  
6 participate in a class action, or to pursue any claims in a class  
7 action or other consolidated or joint action, is unconscionable and  
8 void.

9 ~~(f) In addition to any other enforcement provisions provided~~  
10 ~~under this division, a consumer may bring a private cause of action~~  
11 ~~against any licensed person to recover damages associated with a~~  
12 ~~violation of this division.~~

13 SEC. 9. Section 4978.6 of the Financial Code is amended to  
14 read:

15 4978.6. A person who originates high-cost, subprime, or  
16 nontraditional loans shall inform any employee, who originates  
17 those loans on behalf of the person, of the administrative or civil  
18 penalties for a violation of this division.

19 SEC. 10. Section 4979 of the Financial Code is amended to  
20 read:

21 4979. Upon request, a person who originates a high-cost,  
22 subprime, or nontraditional loan shall provide the licensing agency,  
23 *Attorney General, city attorney, district attorney*, or the consumer,  
24 at no cost, documentation regarding his or her loan that clearly  
25 demonstrates whether any loan is a high-cost, subprime, or  
26 nontraditional loan. This documentation shall include, but not be  
27 limited to, full disclosure of the original principal balance, the  
28 annual percentage rate, and the total points and fees, as defined in  
29 Section 4970.

30 SEC. 11. Section 4980 is added to the Financial Code, to read:

31 4980. It shall constitute a defense against foreclosure on a  
32 property secured by a high-cost, subprime, or nontraditional loan  
33 if that loan is in violation of this division.

34 SEC. 12. The provisions of this act shall apply to high-cost,  
35 subprime, and nontraditional loans originated on and after January  
36 1, 2009.

37 *SEC. 13. The provisions of this act are severable. If any*  
38 *provision of this act or its application is held invalid, that invalidity*  
39 *shall not affect other provisions or applications that can be given*  
40 *effect without the invalid provision or application.*

1     *SEC. 14. No reimbursement is required by this act pursuant*  
2 *to Section 6 of Article XIII B of the California Constitution because*  
3 *the only costs that may be incurred by a local agency or school*  
4 *district will be incurred because this act creates a new crime or*  
5 *infraction, eliminates a crime or infraction, or changes the penalty*  
6 *for a crime or infraction, within the meaning of Section 17556 of*  
7 *the Government Code, or changes the definition of a crime within*  
8 *the meaning of Section 6 of Article XIII B of the California*  
9 *Constitution.*

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Date of Hearing: April 15, 2008

ASSEMBLY COMMITTEE ON JUDICIARY  
 Dave Jones, Chair  
 AB 1830 (Lieu) - As Amended: April 1, 2008

SUBJECT : RESPONSIBLE LENDINGKEY ISSUE : SHOULD PREDATORY LENDING BE REGULATED TO PREVENT THE MOST EGREGIOUS ABUSES?FISCAL EFFECT : As currently in print this bill is keyed fiscal.

## SYNOPSIS

Supporters of this bill argue that it is needed to prevent the next mortgage collapse and restore trust and credibility in California's mortgage market. Most importantly, it would prohibit certain defined acts for high-cost, subprime and nontraditional home loans, such as prepayment penalties, negative amortization, yield spread premiums and similar controversial provisions in covered loan agreements. Opponents representing the financial services industry argue that the bill will discourage lenders from making legitimate subprime and nontraditional loans, which will significantly impact borrowers who are unable to qualify as a prime borrower.

SUMMARY : Enacts the Subprime Lending Reform Act (Act). Specifically, this bill :

1) Changes the current "covered loan" designation to "high-cost" and defines "high cost loan" as a consumer loan in which the principle balance of the loan does not exceed the most current conforming loan limit as established by the Federal National Mortgage Association (Fannie Mae) and where one of the following exists:

- a) The annual percentage rate (APR) at consummation, will exceed by more than eight points for first lien loans or by more than 10 percentage points for subordinate lien loans the yield on Treasury securities having comparable periods of maturity; or
- b) The total points and fees payable by the consumer at or

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before closing will exceed 5% of the total loan amount.

2) Defines "subprime loan" as a consumer loan in which:

- a) If the loan is a closed-end loan, the difference between the APR for the loan and the yield on Treasury securities having comparable periods of maturity is either equal to or greater than 3 percentage points if the loan is secured by a first lien mortgage or deed of trust, or
- b) 5 percentage points if the loan is secured by a subordinate lien mortgage or deed of trust.
- c) The difference between the annual percentage rate for the loan and the annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as published in statistical release H.15 or any publication that may supersede it, is either equal to or greater than (A) 1.75 percentage points, if the loan is secured by a first lien mortgage or deed of trust, or (B) 3.75 percentage points, if the loan is secured by a subordinate lien mortgage or deed of trust.

3) Defines "Nontraditional loan" as a consumer loan that allows borrowers to defer payment of principal and, sometimes, interest, as set forth in the "Interagency Guidance on Nontraditional Nontraditional Mortgage Products Risk" (Guidance).

4) Proposes a list of prohibited acts and limitations for high-cost loans:

- a) A high-cost loan shall not include a prepayment fee or penalty;
- b) A high-cost may not provide at origination for a payment schedule with regular periodic payments that when aggregated do not fully amortize the principal balance as of the maturity date of the loan;

- c) A high-cost loan may not contain a negative amortization provision;
- d) A high-cost loan shall not contain a provision that increases the interest rate as a result of a default;

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- e) A person who originates high-cost loans shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments, including taxes and insurance to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan;
- f) A person who originates a covered loan shall not refinance or arrange for the refinancing of a consumer loan such that the new loan is a high-cost loan that is made for the purpose of refinancing, debt consolidation or cash out, that does not result in net tangible benefit to the consumer, considering the consumer's stated purpose for seeking the loan, fees, interest rates, finance charges, and points;
- g) Prohibits a high-cost loan from being originated as a stated income loan based solely on a consumer's statement of income;
- h) A high-cost loan shall not contain a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness;
- i) Prohibits a licensed person, as defined, from receiving an incentive compensation, including a Yield Spread Premium (YSP) for originating a high cost loan with an interest rate above the wholesale par rate for which the consumer qualifies;
- j) Provides that a licensed person in connection with a high cost loan may not steer, counsel, or direct a consumer to a loan with rate charges, principle amount, or prepayment terms that are more costly than that for which the consumer qualifies;
- aa) Requires that a high-cost loan contract include the monthly escrow of property taxes and hazard insurance; and,
- bb) Prohibits the origination of a high-cost loan unless

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the consumer provides certification that they have received counseling on the advisability of the loan transaction from a United State Department of Housing and Urban Development (HUD) certified housing counselor.

- 5) Proposes the following limitations and prohibitions for subprime and non-traditional loans:
- a) Provides that a licensed person may not originate a subprime or non-traditional loans unless they reasonable believe that the borrower will be able to make the scheduled loan payments, real estate tax payments, and insurance payments associated with the loan;
  - b) Requires that consumer's ability to repay the loan be based on documentation of sources of verifiable income;
  - c) Provides that there is a rebuttable presumption that a subprime or non-traditional loans mortgage was made without regard to repayment ability if, at the time the loan is consummated, the consumer's total monthly debts, including total monthly housing payments, taxes, property and private mortgage insurance, any required homeowner or condominium fees, and any subordinate mortgages including those that will be made contemporaneously to the same consumer, exceed 45 percent of the consumer's monthly gross income established;
  - d) A person who originates a subprime or nontraditional loan shall not refinance or arrange for the refinancing of a consumer loan such that the new loan made for the purpose

of refinancing, debt consolidation or cash out, that does not result in an identifiable benefit to the consumer, considering the consumer's stated purpose for seeking the loan, fees, interest rates, finance charges, and points;

- e) Provides that for a period of one year after consummation of a subprime or nontraditional loan the licensed person who made the loan, nor an affiliate may refinance the existing loan unless the new loan is no cost to the borrower;
- f) Prohibits a licensed person, as defined, from receiving an incentive compensation, including a Yield Spread Premium (YSP) for originating a subprime or nontraditional loan

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with an interest rate above the wholesale par rate for which the consumer qualifies;

- g) Provides a licensed person may receive compensation of no more than 200 basis points above par if the loan is no-cost and the licensed person receives no other compensation;
  - h) Provides that a licensed person in connection with a subprime or nontraditional loan may not steer, counsel, or direct a consumer to a loan with rate charges, principle amount, or prepayment terms that are more costly than that for which the consumer qualifies;
  - i) Requires that a high-cost loan contract include the monthly escrow of property taxes and hazard insurance;
  - j) A high-cost loan shall not contain a provision that increases the interest rate as a result of a default;
  - aa) Requires, prior to the origination of a subprime or nontraditional loan, which a consumer must receive a disclosure warning them of the risky nature of the loan and that it may be in their interest to receive counseling on the advisability of the loan product; and,
  - bb) Prohibits a subprime or nontraditional loan from containing a provision that would lead to negative amortization of the loan.
- 6) Proposes various penalties and enforcement actions relative to high-cost, subprime and nontraditional loans.
- a) Provides that a failure to comply with the Act, that was not willful shall be corrected no later than 45 days after discovery of the error;
  - b) Provides that a person who originates a high cost, subprime or nontraditional loan and the person knew, or should have known of, and showed reckless disregard for a violation of this division by a broker, the person and broker shall be jointly and severally liable for all damages;
  - c) After a knowing and willful violation the licensing

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agency may suspend the license of the licensed person;

- d) After a knowing and willful violation resulting in a second or subsequent administrative or civil action, the licensing agency may bring a proceeding to permanently revoke the license of licensed person;
- e) Allows for administered penalties in the amount of \$10,000 for each violation as administered by the licensing agency;
- f) Allows the Attorney General, city Attorney, or District Attorney, or licensing agency to bring an action;
- g) Provides for civil liability in the amount of \$25,000 or the consumer's actual damages;
- h) Provides that if a provision of a high-cost loan, subprime loan, or nontraditional violates the Act, that provision of the loan is unenforceable.

7) Provides that a high cost, subprime or nontraditional loan that violates the Act shall constitute a defense to foreclosure.

EXISTING LAW :

- 1) Establishes that a "covered loan" means a consumer loan in which the original principal balance of the loan does not exceed \$250,000 in the case of a mortgage or deed of trust, and where one of the following conditions are met:
- a) For a mortgage or deed of trust, the APR at consummation of the transaction will exceed by more than eight percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; and,
  - b) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6 percent of the total loan amount. (Financial Code Section 4970(b)(1).)

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- 2) Specifies that the loan limit for covered loans shall be adjusted every five years in accordance with the California Consumer Price Index. (Financial Code Section 4970(b)(2).)
- 3) Establishes that "points and fees" include the following:
- a) All items required to be disclosed as finance charges under specified sections of the Code of Federal Regulations (CFR), including the Official Staff Commentary, as amended from time to time, except interest;
  - b) All compensation and fees paid to mortgage brokers in connection with the loan transaction; and,
  - c) All items as specified in the CFR, only if the person originating the covered loan receives direct compensation in connection with the charge. (Financial Code Section 4970(c)(1).)
- 1) Includes a list of 14 prohibited acts and limitations for covered loans, including:
- a) A covered loan shall not include a prepayment fee or penalty after the first 36 months after the date of consummation of the loan. Prepayment penalties are subject to various limitations and restrictions as specified;
  - b) A covered loan with a term of 5 years or less may not provide at origination for a payment schedule with regular periodic payments that when aggregated do not fully amortize the principal balance as of the maturity date of the loan;
  - c) A covered loan may not contain a negative amortization provision unless the loan is a first mortgage and the lender discloses specified information about the provision;
  - d) A covered loan shall not contain a provision that increases the interest rate as a result of a default;
  - e) A person who originates covered loans shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer,

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or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan;

- f) A person who originates a covered loan shall not refinance or arrange for the refinancing of a consumer loan such that the new loan is a covered loan that is made for the purpose of refinancing, debt consolidation or cash out, that does not result in an identifiable benefit to the

consumer, considering the consumer's stated purpose for seeking the loan, fees, interest rates, finance charges, and points. (Financial Code Section 4973.)

1) Establishes various penalties and enforcement provisions for lenders and real estate brokers who violate the covered loan law, including:

- a) Administrative penalties of not more than \$2,500 for each violation;
- b) Civil penalties of not more than \$25,000 for each knowing and willful violation; and,
- c) Civil liability to the consumer in an amount equal to any actual damages, plus attorney's fees and costs. For a willful and knowing violation, the lenders shall be liable to the consumer for \$15,000 or the consumer's actual damages, whichever is greater, plus attorney's fees and costs.

1) Establishes that upon adoption of a resolution by the county board of supervisors, a fee of up to \$2 shall be paid at the time of recording of every real estate instrument, as specified, required or permitted by law to be recorded within that county. After deduction of administrative costs, the fees shall be placed in the Real Estate Fraud Prosecution Trust Fund to fund programs to deter, investigate, and prosecute real estate fraud crimes. The fees shall only be used for the Fund and the Fund shall be used only in connection with criminal investigations or prosecutions involving recorded real estate documents. (Government Code

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Section 27388(a). All further references are to the Government Code.)

COMMENTS : The author describes the reason for the bill as follows:

The sub-prime turmoil has become a perfect storm of less than adequate regulatory oversight, loose underwriting standards, and a severe lack of basic financial literacy. Recent news stories have highlighted the disastrous consequences of this perfect storm, as well as the price that is being paid by homeowners and lenders. This left the door open for many borrowers and lenders to gamble-overstating borrower income and taking out loans beyond their means in the hopes the housing market would keep going up. In some cases, when loan files were red-flagged for irregularities such as inflated appraisals or loans bordering on predatory, many lenders looked the other way. Unfortunately, the gamble didn't pay off. The housing market took a nose dive, properties became worth less when it was purchased and foreclosure reached historic levels.

It is important to maintain the dream of homeownership and expand credit opportunities to everyone. However, we must be cautious that the enticement to own a home does not become the burden, or worse yet, lead to a consumer's financial collapse. While we need to empower low-income communities to become owners, we should not promote this at the expense of long-term economic soundness. Responsible subprime lending has given many homeowners the opportunity to secure the American dream and it should be promoted. It is irresponsible subprime lending that needs to be eradicated.

AB 1830 is the solution we need to prevent the next mortgage collapse. The fact that this issue has managed to shake the global economy makes it clear that, regardless of who is to blame, this can never be allowed to happen again.

Whether it is the mortgage brokers, the stock brokers, or anyone in between, reining in the practices that led to this mess should be our top priority. Strong regulations like the ones found in AB 1830 are the solutions that will establish trust and credibility in California's mortgage market.

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Background on Predatory Lending Crisis. A Credit Suisse report, Mortgage Liquidity Du Jour: Underestimated No More (March 12, 2007) conducted by Equity Research, found that "in the last



nine months anybody with a pulse that was interested in buying a home was able to get financing."

Anyone with a pulse now knows that the lack of appropriate regulation limiting abusive lending practices has crippled not only the financial services industry but the economy as a whole as one domino falls upon the next. Few areas have been hit as hard as California. Several California communities rank in the top ten nationwide in the number of foreclosures and defaults. According to statistics from RealtyTrac, Stockton, California leads the way with 1 out of every 88 homes in foreclosure, with California cities occupying 8 of the top ten spots. Indeed, the state is now facing the prospect of reduced revenues due to foreclosures, while local governments have seen increased costs to mitigate foreclosure related issues.

The Congressional Joint Economic Committee estimates that the subprime lending crisis in the United States will result in almost 2 million foreclosures nationwide. In California, lenders filed 72,571 "notices of default" on borrowers in the third quarter of 2007, eclipsing a record of 61,541 set in 1996, according to DataQuick Information Systems. Most of the loans that went into default last quarter were originated between July 2005 and August 2006. Actual losses of homes to foreclosure statewide totaled 24,209 during the third quarter, the highest number since DataQuick began recording data in 1988, up 38.7 percent from last quarter and up six-fold year-over-year.

Among the largest contributing factors have been relaxed underwriting standards and subsequent deterioration in mortgage payment performance. In addition, many market participants have suggested that fraud, such as misrepresentations made by mortgage brokers, appraisers and the borrowers themselves, has also played a significant role and exacerbated the problem. Numerous sources have indicated that home values, borrowers' incomes, as well as, other information may have been overstated and the intended use of the home was often misstated (i.e., as a primary residence rather than an investment property).

Not surprisingly, foreclosure rates are higher for subprime borrowers. Discussed below are several of the key components of

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subprime loans that many feel are detrimental to borrowers and offer little apparent benefit.

Prepayment Penalties : Prepayment penalties are usually attached to ARMs and require that a borrower pay a percentage amount of their loan should they pay-off (refinance) the loan within a certain time frame. As recent media accounts have portrayed, these penalties are a source of much controversy. Media reports abound with stories of borrowers "trapped" into ARMs with rates set to rise above what they can afford, but they are unable to refinance due to the prepayment penalty. On the other side of this debate, some contend that prepayment penalties can actually provide for an interest rate reduction for the borrower because loans with this feature command more value on the secondary market. For a borrower who is educated on their mortgage loan options, a prepayment penalty may make perfect sense for them to reduce their interest rate. However, far too many stories reveal that most borrowers do not understand the trade off they are making, nor is the imposition of the penalty properly explained in context of the interest rate. Furthermore, due to the secondary market appetite for these provisions, the incentive to offer a loan with a prepayment penalty may have altered some lender's concerns with risk.

Stated Income Loans : Stated income loans were designed for self-employed borrowers or others who would have difficulty in documenting all sources of their income. These loans have been referred to as "liar loans" as borrower and sometimes brokers simply made up an income number in order to qualify the mortgage. The anecdotal information indicates a wide swath of stories of borrowers either lying about their income outright, or being coerced by a broker into raising their income just enough through the claim of a side job or other undisclosed income. A 2006 study by the Mortgage Asset Research Institute sampling 100 stated income loans found that 60% of borrowers had "exaggerated" their incomes by more than 50%.

Interest Only And Negative Amortization : Interest only (IO) loans are those loans that allow the borrower to make a monthly payment that is less than that which would cover both interest and principle in the loan. For example, if a 30-year loan of \$300,000 at 6.25% is interest only, the required payment in the first month is roughly \$1,560 per month during the initial IO period. The payment to cover both principle and interest would be \$1,850. These loans can come in several varieties with the

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IO period being for a fixed rate of time such as 5 years, or they can occur on a month-to-month basis if the loan is an option-ARM. An option ARM is a loan where each month the borrower may choose to pay either the fully amortized payment, a payment that covered just interest, or a payment that is less than the interest. These types of loans are for a fixed time frame that can set the stage for a significant payment shock when payments are recast to the fully amortizing rate. These types of mortgages are also known to run the risk of negative amortization, meaning that because the IO payments do not keep up with the compounding nature of the principle and interest, then at a certain point the loans becomes larger than the original amount that was borrowed. These mortgages were historically offered to borrowers with inconsistent patterns of income, such as Wall Street Bankers. However, they became popular for borrowers who either needed a foot in the door to homeownership, or were looking for investment properties.

IO and option ARMS are not in themselves bad products. If these products are properly underwritten to ensure that a borrower can fully repay the obligations over the life of the loan they can be a sensible option for many borrowers. AB 1830 requires proper underwriting of these types of loans.

Yield Spread Premiums (YSPs) : YSPs are points paid by the lender to the broker for originating a loan at an above par rate, meaning slightly higher than that for which the borrower may qualify. A YSP is financed over the life of the loan. This practice, in recent years, has come under increasing scrutiny due to the appearance that it is an enticement for brokers to steer borrowers into more costly loans than they could otherwise get. Industry has responded that YSPs serve as a way for borrowers to pay no money toward closing cost as the YSP is used to refund the broker their payment for cost associated with the transaction. This view is a subject of dispute among several parties.

A study conducted by Howell E. Jackson and Laurie Burlingame, "Kickbacks Or Compensation: The Case Of Yield Spread Premiums," found that lenders pay YSPs to brokers in 85% to 90% of all brokered mortgages and brokers get paid, on average, 65% more in loans with YSPs, than in loans without. Little evidence also exist that borrowers are given a choice to fund closing costs with a YSP arrangement, or that they understand the trade-off they may be making.

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A Wall Street Journal article, Subprime Debacle Traps Even Very Credit Worthy (December 3, 2007), found that in 2005, the peak year of the subprime spree, 55% of subprime mortgages that were packaged into securities went to borrowers who had credit scores to qualify for conventional products. First American Loan Performance found that proportion rose even higher in 2006, to 61%.

In addition to this issue, AB 1830 also bans loan steering. Loan steering is also tied into the YSP controversy. Under provisions of this bill, pushing a borrower into a loan that is more costly than that which they qualify for would be banned.

Deficiencies In Covered Loan Law. With the enactment of AB 489 in 2001 (Division 1.6 of the Financial Code) and the subsequent clean-up bill (AB 344 (Migden) Ch. 733, Stats 2001), lenders who make "covered loans" must meet various requirements that give borrowers additional protections against predatory practices. The covered loan law as it has become known, was the Legislature's attempt to prohibit the most egregious lending practices. This law effectively provided for a usury ceiling beyond which no one would pass. For example, the points trigger is 8% above comparable yield on treasury securities or 6% of the loan amount in fees. AB 489 started as a bill to cover loans five points above comparable securities. Much later, it was amended to establish the covered loan law with points and fees triggers more closely related to the federal standard.

The intent of AB 489 was to prohibit egregious practices related to those loans, such as loan flipping, equity stripping, negative amortization loans and other practices. What in effect happened was the covered loan law become a threshold or cap that lenders would not cross. Many lenders had underwriting automation processes that would prohibit them from underwriting a covered loan. By all accounts, the Covered Loan Law has been a great success in that it has prohibit loans with extremely high rates and fees. The downside is that the Covered Loan Law is viewed by many as the end of mortgage regulation. However the Covered Loan Law did not address other high-cost and subprime loans that have become so common in the marketplace. With such a high threshold, millions of loans could be made

below the thresholds, and without appropriate underwriting standards.

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On February 28, 2005 the Assembly Committee on Banking Finance held an information hearing "Covered and Subprime Loans in California: Are Consumers Getting the Protection They Need?" At that hearing New Century Financial, a lender with 16 offices in California working with thousands of independent mortgage brokers, testified to the following:

The current mortgage lending law, AB 489, is working because it strikes the proper balance between outlawing predatory lending practices and placing appropriate limits and restrictions on so-called covered loans while allowing deserving consumers access to mortgage credit. Given the state of the California mortgage market and the rising cost of housing, a great degree of caution should be exercised when altering consumers' ability to access much needed mortgage credit.

New Century was one of the first victims of the subprime crisis, filing for bankruptcy on April 7, 2007.

Federal Guidance On Non-Traditional Products. In September 2006, the five federal banking agencies (OCC, OTS, FRB, FDIC, and NCUA) issued guidance on nontraditional mortgage product risks. The guidance applies to both prime and nonprime loans and covers federally-regulated financial institutions, their subsidiaries and affiliates, and federally-insured financial institutions. Nontraditional loans are those that allow borrowers to defer repayment of principal, and in some cases, interest. They are also known as alternative or exotic mortgages. Borrowers who obtain these loans are given the opportunity to make relatively low payments during an initial low interest rate period in exchange for agreeing to make much higher payments during a later amortization period. Nontraditional loans are not unique to the subprime market; they are sold in the prime, alt-A, and subprime markets. Common loan types covered by the federal guidance include payment option mortgages and interest-only mortgages.

Key components of the federal guidance include the following:

- 1) Financial institutions' analyses of borrowers' repayment capacity should include an evaluation of ability to pay the fully indexed rate, not just the initial low introductory

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rate. Analyses of repayment capacity should avoid over-reliance on credit scores as a substitute for income verification;

- 2) Institutions should avoid the use of loan terms and underwriting practices that will heighten the need for a borrower to rely on the sale or refinancing of the property once amortization begins;
- 3) Higher pricing of loans with elevated risks should not replace the need for sound underwriting;
- 4) Second mortgages with minimal or no owner equity should not have a payment structure that allows for delayed or negative amortization unless the risk is mitigated;
- 5) Institutions with high concentrations of nontraditional products should have good risk management practices in place and capital levels commensurate with the risk; and,
- 6) Institutions that offer nontraditional mortgage products should make the potential consumer of these products aware of all possible risks and should provide this information to potential borrowers in a clear, balanced, and timely manner. Payment shock, negative amortization, prepayment penalties, and the cost of reduced documentation loans should be explained. Monthly statements on payment-option adjustable rate mortgages should explain the consequences of each payment option.

In issuing the guidance, the federal regulators urged states to work quickly to apply similar guidance to state-regulated entities engaged in mortgage lending and brokering. Last year,

this Committee passed SB 385 (Machado) Chapter 301, Statutes of 2007 which implemented the Guidance for state licensed entities.

Where does the Guidance and AB 1830 differ? First, AB 1830 also addresses subprime loans and high cost loans, specifically in regards to certain practices and products. The Guidance did not address the issue of YSPs, or the downside risk of prepayment penalties. Instead, the Guidance takes an approach that examines the risk of certain products and offers that these risks should be disclosed to borrowers. AB 1830 takes a different approach, by limiting certain types of product behavior, such as prepayment penalties on subprime loans. While there is some overlap of these approaches, they are

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complementary in regulation.

ARGUMENTS IN OPPOSITION: A coalition of industry trade associations opposes the bill, arguing:

This measure seeks to place origination restrictions for subprime and nontraditional mortgages within California's existing Covered Loan Law. That placement is problematic given the extensive legal exposure contained within the Covered Loan Law which has resulted in lenders avoiding origination of covered loans. While this may have been the legislature's intent when the Covered Loan Law was enacted, the unintended consequence of placing subprime and nontraditional loans within this same area of law will similarly discourage lenders from considering the origination of legitimate subprime and nontraditional loans.

The measure extends the authority that was previously reserved for regulators when enforcing violations of the covered loan law, to the Attorney General, city attorney, or district attorney. We believe that this extension of authority to impose civil penalties and commence actions for relief, including disgorgement, recovery of court fees, reasonable attorney's fees and investigative expenses are objectionable. The extension of authority mentioned previously is separate and apart from the ability to bring a private right of action that is also allowed by the bill. Finally, the measure indicates that if a loan is in violation of the provisions of the expanded Subprime Lending Reform Act it shall constitute a defense against foreclosure. We are uncertain what this means.

To the extent that legitimate lenders avoid the origination of subprime and nontraditional loans, there will be a significant impact to borrowers who are unable to qualify as a prime borrower. While subprime and nontraditional loan volumes are currently low, these loan categories may be attractive in the future when the efforts to increase homeownership become a priority.

AB 1830 creates a confusing maze of limitations and restrictions depending on whether the loan is considered high-cost, subprime, or nontraditional. For example,

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determining which loan features apply to each loan category is complex and confusing. Depending on the loan category, the measure contains different debt-to-income thresholds, differing standards on compensation, etc.

Related federal legislation. S. 2452 (Dodd) The Home Ownership Preservation & Protection Act of 2007, bans prepayment penalties, YSPs and other practices from subprime loans, and provides for assignee liability. H.R. 3915 (Rep. Miller) Mortgage Reform and Anti-Predatory Lending Act of 2007 sets up a nationwide mortgage licensing system, and provides for various other loan standards.

Related state legislation. AB 69 (Lieu) requires loan servicers to report data regarding their loan modification efforts. AB 180 (Bass) revises the law related to foreclosure consultants to ensure that those facing foreclosure do not become further victimized by scams or outrageous fees. Provide for a registration process for persons acting as foreclosure consultants. AB 529 (Torrico) requires lenders to notify borrowers of an impending interest rate reset of an adjustable rate mortgage. AB 2161 (Swanson) would enact a mortgage lender complaint processing system. Furthermore, it requires lenders to have a dedicated complaint processing system to handle

borrower complaints and assist borrowers with workout opportunities. Also requires lenders to document complaints and submit complaint logs to their regulator. AB 2187 (Caballero) requires each notice of default and foreclosure to include a homeowner bill of rights that provides a list of their legal rights and responsibilities in the foreclosure process. AB 2880 (Wolk) specifies, among other things, that mortgage brokers have a fiduciary responsibility to their clients, and requires licensees to maintain a surety bond with their regulator. AB 2359 (Jones) holds investors liable for buying loans in violation of AB 1830. AB 2740 (Brownley) provides that a loan servicer, or a bank, credit union, or finance lender that services loans secured by residential real property, owes a duty of good faith and fair dealing to a borrower. The bill would regulate the fees and charges that may be imposed by loan servicers or mortgage loan servicers. The bill would also establish various other prohibited acts and requirements applicable to the servicing of residential mortgage loans.

REGISTERED SUPPORT / OPPOSITION :

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Support

California ACORN (co-sponsor)  
California Reinvestment Coalition (co-sponsor)  
Center for Responsible Lending (co-sponsor)  
Consumer's Union (co-sponsor)  
AARP  
AFSCME  
Affordable Housing Services  
Amador-Tuolumne Community Action Agency  
Asset Policy Initiative of California (APIC)  
California Alliance for Retired Americans  
California Coalition for Rural Housing  
California Labor Federation  
California Public Interest Research Group (CalPIRG)  
California Resources and Training (CARAT)  
Center for California Homeowner Association Law  
CHARO Community Development Corp  
City of Sacramento  
Civic Center Barrio Housing Corporation  
Community Housing Development Corporation of North Richmond  
Community Legal Services in East Palo Alto  
Consumer Action  
Consumer Attorneys of California  
Consumer Federation of California  
Council on Aging Silicon Valley  
EARN  
East Bay Asian Local Development Corp.  
East Bay Housing Organizations  
East L.A. Community Corporation (ELACC)  
East Oakland CDC  
East Palo Alto Council of Tenants (EPACT) Education Fund  
Fair Housing Council of San Diego  
Fair Housing Council of Orange County  
Fair Housing Council of the San Fernando Valley  
Fair Housing Law Project  
Gray Panthers California  
Housing and Economic Rights Advocates  
Housing California  
Housing Rights Center Los Angeles  
La Raza Centro Legal  
Los Angeles Coalition to End Hunger & Homelessness  
MAAC Project  
Mission Economic Development Agency  
Neighborhood Partnership Housing Services, Inc.

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Older Women's League  
Orange County Community Housing Corporation  
People Helping People  
Project Sentinel  
Public Interest Law Firm  
Rural Community Assistance Corporation  
San Diego Home Loan Counseling & Education Center  
S.F. Consortium for Elder Abuse Prevention  
Sierra Planning & Housing Alliance, Inc.  
STAND Affordable Housing  
Unity Council Homeownership Center  
Vermont Slauson Economic Development Corp.  
Watsonville Law Center  
West Company  
San Francisco Assessor-Recorder Phil Ting

Christi Baker, Chrysalis Consulting Group, LLC  
Matthew Edling

Opposition

California Bankers Association  
California Financial Services Association  
California Independent Bankers  
California Mortgage Bankers Association  
Civil Justice Association of California

Analysis Prepared by : Kevin G. Baker / JUD. / (916) 319-2334

**CITY OF OAKLAND  
BILL ANALYSIS**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2008 MAY 29 PM 7:53



**Date:** June 12, 2008

**Bill Number:** AB 2359

**Bill Author:** Jones

**DEPARTMENT INFORMATION**

**Contact:** Jeffrey Levin  
**Department:** CEDA/HCD  
**Telephone:** 238-6188 **FAX:** 238-3691 **E-mail:** jplevin@oaklandnet.com

**RECOMMENDED POSITION: SUPPORT**

**Summary of the Bill**

This bill would prohibit the originators of mortgage loans from requiring borrowers to involuntarily waive their legal rights or making such waivers a condition of the loans.

More importantly, the bill would establish assignee liability so that borrowers could hold subsequent purchasers of a loan subject to all claims or defenses that borrowers could have asserted against the original lender or broker.

**Positive Factors for Oakland**

Oakland has been particularly hard hit by foreclosures of subprime and non-traditional mortgage loans. Establishing assignee liability would likely create incentives for secondary mortgage market entities to exercise greater oversight and due diligence in order to avoid legal liability

**Negative Factors for Oakland**

None identified.

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

     **Critical (top priority for City lobbyist, city position required ASAP)**

Item: \_\_\_\_\_  
Rules & Legislation Comte.  
June 12, 2008

- Very Important** (priority for City lobbyist, city position necessary)  
 **Somewhat Important** (City position desirable if time and resources are available)  
 **Minimal or**  **None** (do not review with City Council, position not required)

**Known support:**

AARP  
Affordable Housing Services  
Amador-Tuolumne Community Action Agency  
Asset Policy Initiative of California (APIC)  
California ACORN  
California Alliance for Retired Americans  
California Coalition for Rural Housing  
California Labor Federation  
California Reinvestment Coalition  
California Resources and Training (CARAT)  
CALPIRG  
Center for California Homeowner Association Law  
Center for Responsible Lending  
CHARO Community Development Corp  
Christi Baker, Chrysalis Consulting Group, LLC  
City of Sacramento  
Civic Center Barrio Housing Corporation  
Community Housing Development Corporation of North Richmond  
Community Legal Services in East Palo Alto  
Consumer Action  
Consumer Attorneys of California  
Consumer Federation of California  
Consumers Union  
EARN  
East Bay Asian Local Development Corp.  
East L.A. Community Corporation (ELACC)  
East Oakland CDC  
Fair Housing Council of Orange County  
Fair Housing Council of San Diego  
Fair Housing Council of the San Fernando Valley  
Fair Housing Law Project  
Gray Panthers California



Housing and Economic Rights Advocates  
Housing Rights Center Los Angeles  
La Raza Centro Legal  
Los Angeles Coalition to End Hunger & Homelessness  
MAAC Project  
Matthew Edling  
Mission Economic Development Agency  
Neighborhood Partnership Housing Services, Inc.  
Orange County Community Housing Corporation  
People Helping People  
Project Sentinel  
Public Interest Law Firm  
S.F. Consortium for Elder Abuse Prevention  
San Diego Home Loan Counseling & Education Center  
San Francisco Assessor-Recorder Phil Ting  
Sierra Planning & Housing Alliance, Inc.  
STAND Affordable Housing  
Vermont Slauson Economic Development Corp.  
Watsonville Law Center  
West Company

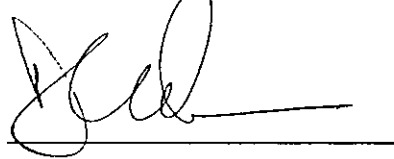
**Known Opposition:**

California Association of Realtors  
California Bankers Association  
California Financial Services Association  
California Independent Bankers  
California Mortgage Bankers Association  
Securities Industry and Financial Markets Association (SIFMA)

**Attach bill text and state/federal legislative committee analysis, if available.**


Bill and bill analysis are attached.

Respectfully Submitted,



Dan Lindheim  
Director, Community and  
Economic Development Agency

Approved for Forwarding to  
Rules Committee

  
Office of City Administrator

AMENDED IN ASSEMBLY MAY 15, 2008  
AMENDED IN ASSEMBLY APRIL 28, 2008  
AMENDED IN ASSEMBLY MARCH 28, 2008  
CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2359**

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**Introduced by Assembly Member Jones**

February 21, 2008

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An act to amend Section 2953 of the Civil Code, to amend Section 1281 of the Code of Civil Procedure, and to repeal and add Section 4979.8 of the Financial Code, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 2359, as amended, Jones. Loans.

(1) Existing law regulates the process of foreclosure on real property subject to a mortgage or deed of trust. Existing law provides that any express agreement made or entered into by a borrower at the time of or in connection with the making of or renewing of any loan secured by any instrument creating a lien on real property, whereby the borrower agrees to waive specified rights or privileges conferred upon him or her, shall be void. Existing law excepts from these provisions any deed of trust, mortgage, or other liens given to secure the payment of bonds or other indebtedness authorized or permitted to be issued by the Commissioner of Corporations or made by a public utility, as specified.

This bill would prohibit a broker, trustee, or mortgagee, or his or her agent, beneficiary, or assigns from requiring as a condition of an agreement regarding a high-cost loan, subprime loan, or nontraditional mortgage, as defined, that a borrower or an applicant for the loan waive

any rights, remedies, obligations, or procedures of California law with respect to a residential mortgage or mortgage foreclosure.

This bill would also prohibit a broker, trustee, or mortgagee, or his or her agent, beneficiary, or assigns from refusing to enter into an agreement with a borrower or an applicant regarding a high-cost loan, subprime loan, or nontraditional mortgage solely because he or she refuses to waive rights, remedies, obligations, or procedures provided for in those provisions. The bill would also provide that the exercise by a borrower or applicant of the right to refuse to waive legal rights, remedies, obligations, or procedures, including a rejection of an agreement to arbitrate, shall not affect any other term of the agreement. This bill would also place on the broker, trustee, or mortgagee or his or her agent, beneficiary, or assigns, the burden of proving that any waiver of rights, remedies, obligations, or procedures of California law with respect to these loans, including any agreement to arbitrate a claim or dispute, was knowingly and voluntarily made by the borrower or applicant and was not a condition of the agreement. This provision would apply to an agreement to waive any rights, remedies, obligations, and procedures of California law with respect to those loans, including an agreement to arbitrate, that is entered into, altered, modified, renewed, or extended on or after January 1, 2009.

(2) Under existing law, a written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable, and irrevocable, except upon those grounds that exist for the revocation of any contract.

This bill would specify that provision would not apply to any arbitration agreement that is involuntary, unconscionable, against public policy, or otherwise unenforceable.

(3) Existing law imposes certain limitations and prohibitions on licensed persons, including real estate brokers, finance lenders, residential mortgage lenders, and financial institutions, with respect to consumer loans and covered loans, as defined. Existing law exempts an assignee that is a holder in due course from liability under these provisions regulating consumer and covered loans. Existing law exempts persons chartered by Congress to engage in the secondary mortgage market from the provisions regulating consumer and covered loans.

This bill would delete that exemption from liability for an assignee that is a holder in due course and the exemption for persons chartered by Congress to engage in the secondary mortgage market. The bill would instead make any purchaser or assignee of a high-cost loan, *on*

or after January 1, 2009, subject to all affirmative claims and any defenses with respect to the loan that the consumer could assert against the original creditor or broker of the loan, except as specified. The bill would also authorize a borrower to assert certain claims to reduce or extinguish the borrower's liability under a high-cost loan within specified timeframes against a ~~creditor~~, subsequent holder, or assignee of the loan.

(4) This bill would also make other conforming, nonsubstantive, technical changes to those provisions.

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. The Legislature finds and declares that it is the  
2 public policy of the State of California to ensure that homeowners  
3 and prospective home buyers have the full benefit of the rights,  
4 remedies, obligations, and procedures of California law with  
5 respect to agreements regarding high-cost loans, subprime loans,  
6 and nontraditional mortgages, and that homeowners and applicants  
7 for those loans shall not be deprived of those rights, remedies,  
8 obligations, or procedures by the use of coerced and involuntary  
9 waivers. It is the purpose of this act to ensure that any agreement  
10 between (a) a broker, trustee, or mortgagee or their agents,  
11 beneficiaries, or assigns and (b) a borrower or applicant for a loan  
12 that purports to waive any rights, remedies, obligations, or  
13 procedures under California law regarding a high-cost loan,  
14 subprime loan, or nontraditional mortgage is a matter of voluntary  
15 consent and not coercion.

16 The Legislature finds and declares that involuntary contractual  
17 waiver provisions with respect to a high-cost loan, subprime loan,  
18 or nontraditional mortgage, including, but not limited to, an  
19 agreement to arbitrate a dispute, that limit or purport to limit a  
20 borrower's or applicant's access to any administrative complaint  
21 or dispute resolution procedure of the State of California or any  
22 other public agency, including, but not limited to, the right to file  
23 and pursue a complaint against a licensed person or entity, to file  
24 and pursue a civil action, or to limit the authority of the State of  
25 California or other public agency to investigate and pursue claims

1 alleging violation of law or regulations, imposed as a condition of  
2 a loan, are against the public policy of this state.

3 SEC. 2. Section 2953 of the Civil Code is amended to read:

4 2953. (a) Any express agreement made or entered into by a  
5 borrower at the time of or in connection with the making of or  
6 renewing of any loan secured by a deed of trust, mortgage, or other  
7 instrument creating a lien on real property, whereby the borrower  
8 agrees to waive the rights, or privileges conferred upon him or her  
9 by Sections 2924, 2924b, 2924c of the Civil Code or by Sections  
10 580a or 726 of the Code of Civil Procedure, shall be void. The  
11 provisions of this section shall not apply to any deed of trust,  
12 mortgage, or other liens given to secure the payment of bonds or  
13 other evidences of indebtedness authorized or permitted to be  
14 issued by the Commissioner of Corporations or made by a public  
15 utility subject to the provisions of the Public Utilities Act.

16 (b) A broker, trustee, or mortgagee, or his or her agent,  
17 beneficiary, or assigns shall not require as a condition of an  
18 agreement regarding a high-cost loan, subprime loan, or  
19 nontraditional mortgage that a borrower or an applicant for the  
20 loan waive any rights, remedies, obligations, or procedures of  
21 California law with respect to a residential mortgage or mortgage  
22 foreclosure, including, but not limited to, the right to file and pursue  
23 an administrative complaint or invoke a dispute resolution  
24 procedure of the state or any other public agency, the right to file  
25 and pursue an administrative complaint or other proceeding against  
26 a licensed person or entity, or to file and pursue a civil action, or  
27 require as a condition of an agreement that the borrower or  
28 applicant limit the authority of the state or any other public agency  
29 to investigate and pursue claims alleging violation of law or  
30 regulations.

31 (c) A broker, trustee, or mortgagee, or his or her agent,  
32 beneficiary, or assigns shall not refuse to enter into an agreement  
33 with a borrower or an applicant regarding a high-cost loan,  
34 subprime loan, or nontraditional mortgage solely because he or  
35 she refuses to waive rights, remedies, obligations, or procedures  
36 provided for in this section. The exercise by a borrower or applicant  
37 of the right to refuse to waive legal rights, remedies, obligations,  
38 or procedures, including a rejection of an agreement to arbitrate,  
39 shall not affect any other term of the agreement.

1 (d) Any waiver of rights, remedies, obligations, or procedures  
2 of California law with respect to a high-cost loan, subprime loan,  
3 or nontraditional mortgage by a mortgagor or trustor, or applicant  
4 for that loan, shall be knowing and voluntary, and shall not be a  
5 condition of the agreement. Any waiver, including an agreement  
6 to arbitrate a dispute with respect to that loan, that is required as  
7 a condition of the agreement in violation of this section, shall be  
8 deemed involuntary, unconscionable, against public policy, and  
9 unenforceable.

10 (e) A broker, trustee, or mortgagee or his or her agent,  
11 beneficiary, or assigns has the burden of proving that any waiver  
12 of rights, remedies, obligations, or procedures of California law  
13 with respect to a high-cost loan, subprime loan, or nontraditional  
14 mortgage, including any agreement to arbitrate a claim or dispute,  
15 was knowingly and voluntarily made by the borrower or applicant  
16 and was not a condition of the agreement. This subdivision shall  
17 apply to an agreement to waive any rights, remedies, obligations,  
18 and procedures of California law with respect to those loans,  
19 including an agreement to arbitrate, that is entered into, altered,  
20 modified, renewed, or extended on or after January 1, 2009.

21 (f) For purposes of this section, the following definitions shall  
22 apply:

23 (1) "Creditor" has the same meaning as "lender" as defined in  
24 Section 3500.2 of Title 12 of the Code of Federal Regulations and  
25 includes a mortgage broker.

26 (2) "High-cost loan" has the same meaning as set forth in  
27 Section 4970 of the Financial Code.

28 (3) "Subprime loan" or "subprime mortgage" means a loan  
29 secured by a dwelling that is, or will be, the consumer's principal  
30 dwelling and in which the annual percentage rate exceeds the  
31 greater of either of the following:

32 (A) If the loan is a closed-end loan, the difference between the  
33 annual percentage rate for the loan and the yield on treasury  
34 securities having comparable periods of maturity is either equal  
35 to or greater than (i) 3 percentage points if the loan is secured by  
36 a first lien mortgage or deed of trust or (ii) 5 percentage points if  
37 the loan is secured by a subordinate lien mortgage or deed of trust.  
38 If the loan is an open-end credit plan, the difference between the  
39 annual percentage rate for the loan and the yield on treasury  
40 securities having comparable periods of maturity is equal to or

1 greater than 3 percentage points, regardless of whether the  
2 open-end credit plan is secured by a first or subordinate lien  
3 mortgage or deed of trust. Without regard to whether the loan is  
4 subject to or reportable under the provisions of the federal Home  
5 Mortgage Disclosure Act (HMDA) (12 U.S.C. Sec. 2801 et seq.),  
6 the difference between the annual percentage rate and the yield on  
7 treasury securities having comparable periods of maturity shall be  
8 determined using the same procedures and calculation methods  
9 applicable to loans that are subject to the reporting requirements  
10 of the HMDA.

11 (B) The difference between the annual percentage rate for the  
12 loan and the annual yield on conventional mortgages published  
13 by the Board of Governors of the Federal Reserve System, as  
14 published in the Federal Reserve Statistical Release (H.15) or any  
15 publication that may supersede it, is either equal to or greater than  
16 (i) 1.75 percentage points, if the loan is secured by a first lien  
17 mortgage or deed of trust or (ii) 3.75 percentage points, if the loan  
18 is secured by a subordinate lien mortgage or deed of trust.

19 (4) “Nontraditional loan” or “nontraditional mortgage” means  
20 a mortgage product that allows a consumer to defer payment of  
21 principal and, sometimes, interest, as set forth in the “Interagency  
22 Guidance on Nontraditional Mortgage Product Risks” (71 Fed.  
23 Reg. 58609 (Oct. 4, 2006)).

24 (5) “Points and fees” shall include the following:

25 (A) All items included in the definition of finance charge in  
26 Sections 226.4 (a) and 226.4 (b) of Title 12 of the Code of Federal  
27 Regulations, except interest or the time price differential.

28 (B) All items described in Section 226.32(b)(1)(iii) of Title 12  
29 of the Code of Federal Regulations.

30 (C) All compensation paid directly or indirectly to a mortgage  
31 broker from any source, including, but not limited to, any payment  
32 of a yield spread premium, and including a payment to a mortgage  
33 broker that originates a loan in its own name in a table-funded  
34 transaction.

35 (D) The cost of all premiums financed by the creditor directly  
36 or indirectly for any credit life, credit disability, credit  
37 unemployment or credit property insurance, or any other life or  
38 health insurance, or any payments financed by the creditor directly  
39 or indirectly for any debt cancellation or suspension agreement or  
40 contract, except that insurance premiums or debt cancellation or



1 suspension fees calculated and paid in full on a monthly basis shall  
2 not be considered financed by the creditor.

3 (E) The maximum prepayment fees and penalties that may be  
4 charged or collected under the terms of the loan documents.

5 (F) All prepayment fees or penalties that are incurred by the  
6 borrower if the loan refinances a previous loan made or currently  
7 held by the same creditor or an affiliate of the creditor.

8 (G) For open-end loans, the points and fees are calculated by  
9 adding the total points and fees known at or before closing,  
10 including the maximum prepayment penalties that may be charged  
11 or collected under the terms of the loan documents, plus the  
12 minimum additional fees the consumer would be required to pay  
13 to draw down an amount equal to the total credit line.

14 (6) "Points and fees" shall not include the following:

15 (A) Taxes, filing fees, recording fees, and other charges and  
16 fees paid or to be paid to public officials for determining the  
17 existence of or for perfecting, releasing, or satisfying a security  
18 interest.

19 (B) Bona fide and reasonable fees paid to a person other than  
20 the creditor or an affiliate of the creditor for fees for tax payment  
21 services, flood certification, pest infestation and flood  
22 determination, appraisal fees, fees for inspections performed prior  
23 to closing, credit report fees, survey fees, attorney's fees if the  
24 consumer has the right to select the attorney from an approved list  
25 or otherwise, notary fees, escrow charges, so long as not otherwise  
26 included in the definition of finance charge in subparagraph (A)  
27 of paragraph (5), title insurance premiums, and fire and hazard  
28 insurance and flood insurance premiums, provided that the  
29 conditions in Section 226.4(d)(2) of Title 12 of the Code of Federal  
30 Regulations are met.

31 SEC. 3. Section 1281 of the Code of Civil Procedure is  
32 amended to read:

33 1281. (a) Except as provided in subdivision (b), a written  
34 agreement to submit to arbitration an existing controversy or a  
35 controversy thereafter arising is valid, enforceable, and irrevocable,  
36 except upon those grounds that exist for the revocation of any  
37 contract.

38 (b) Subdivision (a) does not apply to any arbitration agreement  
39 that is involuntary, unconscionable, against public policy, or  
40 otherwise unenforceable.

- 1 SEC. 4. Section 4979.8 of the Financial Code is repealed.
- 2 SEC. 5. Section 4979.8 is added to the Financial Code, to read:
- 3 4979.8. (a) Notwithstanding any other provision of law, any
- 4 person who, *on or after January 1, 2009*, purchases or is otherwise
- 5 assigned a high-cost loan shall be subject to all affirmative claims
- 6 and any defenses with respect to the loan that the borrower could
- 7 assert against the original creditor or broker of the loan, provided
- 8 that this subdivision shall not apply if the purchaser or assignee
- 9 demonstrates, by a preponderance of the evidence, that ~~a reasonable~~
- 10 ~~person exercising reasonable due diligence could not determine~~
- 11 ~~that the mortgage was a high-cost loan.~~
- 12 ~~(b) It shall be presumed that a purchaser or assignee has~~
- 13 ~~exercised due diligence if the purchaser or assignee demonstrates~~
- 14 ~~by a preponderance of the evidence that it does all of the following:~~
- 15 ~~it does all of the following:~~
- 16 (1) Has in place at the time of the purchase or assignment of
- 17 the loan, policies that expressly prohibit its purchase or acceptance
- 18 of assignment of any high-cost loan.
- 19 (2) Requires by contract that a seller or assignor of consumer
- 20 loans to the purchaser or assignee represents and warrants to the
- 21 purchaser or assignee either of the following:
- 22 (A) That it will not sell or assign any high-cost home loan to
- 23 the purchaser or assignee.
- 24 (B) That the seller or assignor is a beneficiary of a representation
- 25 and warranty from a previous seller or assignor to that effect.
- 26 (3) Exercises reasonable due diligence at the time of purchase
- 27 or assignment of consumer loans or within a reasonable period of
- 28 time thereafter intended by the purchaser or assignee to prevent
- 29 the purchaser or assignee from purchasing or taking assignment
- 30 of any high-cost loan. *Reasonable due diligence shall provide for*
- 31 *sampling and shall not require loan-by-loan review.*
- 32 ~~(c)~~
- 33 ~~(b)~~ Notwithstanding any other law to the contrary, but limited
- 34 to amounts required to reduce or extinguish the borrower's liability
- 35 under the loan plus amounts required to recover costs, including
- 36 reasonable attorney's fees, a borrower acting only in an individual
- 37 capacity may assert ~~the following against the creditor or any claims~~
- 38 ~~that the borrower could assert against the original creditor or~~
- 39 ~~broker of the loan against the subsequent holder or assignee of~~
- 40 ~~the loan high-cost loan pursuant to any of the following:~~

1 (1) Within six years of the closing of a high-cost loan, a claim  
2 for a violation of this section in connection with the loan as an  
3 original action.

4 (2) At any time during the term of a high-cost loan, after an  
5 action to collect on the high-cost loan or an action to foreclose on  
6 the collateral securing the high-cost loan has been initiated or the  
7 debt arising from the high-cost loan has been accelerated or the  
8 high-cost loan has become 60 days in default, any defense, claim,  
9 or counterclaim.

10 ~~(d)~~

11 (c) It is a violation of this section, for the purposes of subdivision  
12 ~~(e)~~ (b), for any person, in bad faith, to attempt to avoid the  
13 application of this section by doing any of the following:

14 (1) Dividing any loan transaction into separate parts.

15 (2) Engaging in any other such subterfuge, with the intent of  
16 evading the provisions of this section.

17 ~~(e)~~

18 (d) Nothing in this section shall be construed to limit the  
19 substantive rights, remedies, or procedural rights, including, but  
20 not limited to, recoupment rights under the common law, available  
21 to a borrower against any creditor, assignee, or holder under any  
22 other law. The limitations on assignee liability in subdivision ~~(e)~~  
23 (a) shall not apply to the assignee liability in subdivision (b), ~~(d)~~,  
24 ~~or (e)~~ or (c).

25 ~~(f)~~

26 (e) (1) A creditor in a high-cost loan who, when acting in good  
27 faith, fails to comply with the provisions of this section, shall not  
28 be deemed to have violated this section if the creditor establishes  
29 either of the following:

30 (A) Within 45 days of the loan closing, the creditor has made  
31 appropriate restitution to the borrower, and appropriate adjustments  
32 are made to the loan.

33 (B) Within 365 days of the loan closing and prior to receiving  
34 any notice from the borrower of the compliance failure, if the  
35 compliance failure was not intentional and resulted from a bona  
36 fide error notwithstanding the maintenance of procedures  
37 reasonably adopted to avoid those errors, the borrower is notified  
38 of the compliance failure, appropriate restitution is made to the  
39 borrower, and appropriate adjustments are made to the loan.

- 1 (2) For purposes of subparagraph (B) of paragraph (1), examples
- 2 of bona fide errors include clerical, calculation, computer
- 3 malfunction and programming, and printing errors. An error of
- 4 legal judgment with respect to a person's obligations under this
- 5 section is not a bona fide error.
- 6 (g)
- 7 (f) The remedies provided in this section are cumulative.
- 8 (h)
- 9 (g) For purposes of this section, "high-cost loan" has the same
- 10 meaning as defined in Section 4970.

ASSEMBLY THIRD READING  
AB 2359 (Jones)  
As Amended May 15, 2008  
Majority vote

BANKING & FINANCE 6-3

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-----
|Ayes:|Nava, Coto, Fuentes, Mendoza, |
|      |Swanson, Wolk                    |
|-----|
|Nays:|Gaines, Houston, Walters        |
|-----|
    
```

SUMMARY : Provides that any person who purchases, or is otherwise assigned a high-cost loan shall be subject to all affirmative claims and any defense with respect to the loan that the borrower could assert against the originator of the loan. Specifically, this bill :

- 1) Makes various legislative findings and declarations relative to the rights of homeowners and mortgage loans.
- 2) Specifies that liability shall not apply to an assignee or purchaser, provided they demonstrate that a person exercising due diligence could not determine the mortgage was high-cost.
- 3) Provides for a safe harbor, that includes polices and procedures, for those who inadvertently purchase or assign a high-cost loan.
- 4) Includes a right to correct errors related to the purchase of high-cost loan.
- 5) Clarifies that the provisions of the bill only apply to loans made on or after January 1, 2009.
- 6) Provides that reasonable due diligence shall include sampling and shall not require loan by loan review.
- 7) Clarifies that the claims a borrower could assert against an assignee of high-cost loan only include the claims a borrower could assert against the creditor or broker of the loan.

0

- 8) Defines "high-cost loan" as having the same meaning as "covered loan" under existing law.
- 9) Defines "points and fees" as:
  - a) All items required to be disclosed as finance charges under Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations (CFR), including the Official Staff Commentary, as amended from time to time, except interest;
  - b) All compensation paid directly or indirectly to a mortgage broker from any source, including, but not limited to, any payment of a yield spread premium, and including a payment to a mortgage broker that originates a loan in its own name in a table-funded transaction;
  - c) All items listed in Section 226.4(c)(7) of Title 12 of CFR, only if the person originating the covered loan receives direct compensation in connection with the charge; and,
  - d) The maximum prepayment penalties and fees that may be charged.
- 10) Provides that "points and fees" shall not include any of the following:
  - a) Taxes, filing fees, recording fees, and other charges and fees paid, or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; or,
  - b) Bona fide and reasonable fees paid to a person other than the creditor or an affiliate of the creditor for fees for tax payment services, flood certification, or pest infestation and flood determination, appraisal fees, fees for inspections performed prior to closing, credit report fees, survey fees, attorneys' fees if the borrower has the right to select the attorney from an approved list or

otherwise, notary fees, escrow charges, title insurance premiums, and fire and hazard insurance and flood insurance premiums.

11) Provides that an originator, beneficiary, trustee or assignee

□

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shall not require as a condition of an agreement regarding a high-cost loan, subprime loan, or non-traditional loan that the applicant waive any rights, remedies, obligations, or procedures of California law with respect to a residential mortgage or mortgage foreclosure.

12) Provides the originator of a mortgage loan or a trustee, beneficiary, or assignee shall not refuse to enter into an agreement with a borrower solely because the borrower refuses to waive their rights, remedies, obligations, or procedures.

13) Requires that any waiver of rights must be knowing and voluntary.

14) Provides that the originator, beneficiary, trustee or assignee shall have the burden of proof in proving that an agreement to arbitrate a dispute is voluntary.

EXISTING FEDERAL LAW provides, under the Home Ownership and Equity Protection Act (15 USC 1602) (HOEPA), that subsequent purchasers of loans covered under HOEPA rate triggers, liable for any violations or misrepresentations that occurred at the time the loan was extended.

EXISTING STATE LAW :

1) Specifies that provisions of the covered loan law shall not apply to a holder in due course. [Financial Code, Section 4970].

2) Establishes that a "covered loan" means a consumer loan in which the original principal balance of the loan does not exceed the most current conforming loan limit for a single-family first mortgage loan established by the Federal National Mortgage Association mortgage or deed of trust, and where one of the following conditions are met:

- a) For a mortgage or deed of trust, the Annual Percentage Rate at consummation of the transaction will exceed by more than eight percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or,

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Page 4

- b) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6% of the total loan amount. [Financial Code, Section 4970(b)(1)].

3) Specifies that the loan limit for covered loans shall be adjusted every five years in accordance with the California Consumer Price Index. [Financial Code, Section 4970(b)(2)];

4) Establishes that "points and fees" include the following:

- a) All items required to be disclosed as finance charges under specified sections of the CFR, including the Official Staff Commentary, as amended from time to time, except interest;
- b) All compensation and fees paid to mortgage brokers in connection with the loan transaction; and,
- c) All items as specified in the CFR, only if the person originating the covered loan receives direct compensation in connection with the charge. [Financial Code, Section 4970(c)(1)]

5) Includes a list of 14 prohibited acts and limitations for covered loans, including:

- a) A covered loan shall not include a prepayment fee or penalty after the first 36 months after the date of consummation of the loan. Prepayment penalties are subject to various limitations and restrictions as specified;

- b) A covered loan with a term of five years or less may not provide at origination for a payment schedule with regular periodic payments that when aggregated do not fully amortize the principal balance as of the maturity date of the loan;
- c) A covered loan may not contain a negative amortization provision unless the loan is a first mortgage and the lender discloses specified information about the provision;
- d) A covered loan shall not contain a provision that increases the interest rate as a result of a default;

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- e) A person who originates covered loans shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes the consumer, or consumers, when considered collectively in the case of multiple consumers, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources, other than the consumer's equity in the dwelling that secures repayment of the loan; and,
  - f) A person who originates a covered loan shall not refinance or arrange for the refinancing of a consumer loan such that the new loan is a covered loan that is made for the purpose of refinancing, debt consolidation or cash out, that does not result in an identifiable benefit to the consumer, considering the consumer's stated purpose for seeking the loan, fees, interest rates, finance charges, and points. [Financial Code, Section 4973]
- 6) Establishes various penalties and enforcement provisions for lenders and real estate brokers who violate the covered loan law, including:
- a) Administrative penalties of not more than \$2,500 for each violation;
  - b) Civil penalties of not more than \$25,000 for each knowing and willful violation; and,
  - c) Civil liability to the consumer in an amount equal to any actual damages, plus attorney's fees and costs. For a willful and knowing violation, the lenders shall be liable to the consumer for \$15,000 or the consumer's actual damages, whichever is greater, plus attorney's fees and costs.
- 7) Provides that any agreement entered into by a borrower at the time of, or in connecting with the making or renewing of a mortgage loan is void if the borrower waives certain rights as proscribed in current law. [Civil Code, Section 2953].
- 8) Specifies that a written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as

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exist for the revocation of any contract. [Code of Civil Procedure, Section 1281].

**FISCAL EFFECT** : None

**COMMENTS** : This bill provides for two distinct provisions relating to mortgage lending. First, it prohibits a lender from forcing a consumer to involuntarily waive their legal rights and remedies. The author and supporters contend that homeowners may voluntarily agree to waive their rights, if such waiver should be knowing and voluntary, and not be made a condition of the agreement.

The larger focus of this bill concerns an issue known as assignee liability. Assignee liability holds that subsequent purchasers of a loan, typically Wall Street firms, are liable for acts or omissions caused by the originator of the loan. Under the "holder in due course" theory, current law allows financial institutions or investors that purchase subprime loans to claim legal immunity for violations of law that occur in the origination of the loan.

While securitization provides liquidity and access to the market for many potential homeowners who would not otherwise have an opportunity to buy a home, this process opens the door for potential abuses when the originator of the loan will simply pass that loan onto the secondary market. Secondary market participants contend that it is problematic to monitor all potential abuses that could happen at origination of the loan. Furthermore, the stigma attached to predatory loans, or even high-cost loans, and the risk of losing money on a loan that is *not properly underwritten are market forces that prevent the securitization of predatory loans.* Of course, whether the market can account for this risk is the subject of much debate.

Approximately, 23 other states have implemented some form of assignee liability. Based on research conducted by the committee, the 23 other states have focused on assignee liability for high-cost or covered loans (Those loans 8-10 points above comparable securities).

This bill, as proposed to be amended, is narrowly targeted toward high-cost loans, or what current law calls "covered loans." These are loans with extremely high points and fees and have been determined to be the most predatory.

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There has been a recent push in many states to enact broader assignee liability for non-high cost loans, or those loans that have lower points and fees thresholds. In states where this has occurred, the market reaction has been swift and severe. For example, the Georgia Fair Lending Act (GAFLA) contained liability for assignees that authorized punitive damages against passive investors and required that loans provided to borrowers contained a "net tangible benefit." The market reaction to GAFLA was both negative and severe. In response, Standard and Poor's, Moody's, and Fitch Ratings all refused to rate mortgage-backed securities (MBSs) that contained loans under GAFLA. This effectively shut down lending for loans under the GAFLA standard. The Georgia legislature was forced to modify GAFLA to remove its more onerous provisions. The bill currently under consideration, as proposed to be amended, is more narrowly focused than GAFLA so the committee may conclude that the market would not overreact to this approach.

In a report, Kathleen C. Engel & Patricia A. McCoy, "Predatory Lending: What Does Wall Street Have to Do with It?" Vol. 15, Issue 3 Housing Policy Debate 715 (2004), discuss the role of mortgage securitization issues. The authors provided comments and suggestions for increased secondary liability of those that buy mortgage loans. They found:

Given that investors in securities backed by predatory loans are adequately protected by pricing, credit enhancement, legal hurdles, and deal provision, they have little or no incentive to police originators through loan screening criteria and other techniques designed to halt predatory practices?

?Any assignee liability provisions must strike a balance between creating incentive for secondary market actors to screen loan pools for predatory loans and policy originators on one hand and the need to continue the flow of mortgage capital to low- and moderate-income borrowers on the other. Unrestricted assignee liability could create such uncertainty that securitization would likely be limited to prime loans?

Finally, the report recommends a framework of assignee liability that includes a safe harbor for investors if they set up certain loan controls and parameters to prevent the purchase of

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predatory loans.

The American Securitization Forum (ASF), an association of secondary market percipients, published a position paper on assignee liability, Assignee Liability in the Secondary Mortgage Market, 2007. This report describes difficulties, according to ASF, of the liability provisions and risks those provisions have toward market liquidity. ASF does provide a framework for assignee liability covering only high-cost loans. Furthermore, they would prefer a uniform federal standard. Among their suggestions:

Maintain the existing protections for assignees that purchase



covered loans unintentionally, and adopting a safe harbor that affords shelter to assignees that, at the time of the purchase or assignment of the loan or within a certain period soon thereafter:

- 1) Had in place policies expressly prohibiting the acceptance of covered loans or covered loans that violate the statute.
- 2) Required by applicable contract that the assignor of covered loans represent and warrant at the time of assignment either:
  - a) that it will not assign either any covered loan or any covered loan that violates the statute; or, b) that it is a beneficiary of a representation or warranty from a previous assignor to that effect, and the assignee will benefit from that representation or warranty.
- 3) Had procedures in place to review either a fixed percentage of loans or a reasonable percentage of loans in a pool, even if this review failed to detect the loan that is the subject of a claim.
- 4) Statistical sampling - Evidence from the securities markets demonstrates that a legal requirement that market participants screen based on a statistically-significant, representative sample is effective in encouraging such screening and driving bad actors from the marketplace.
- 5) In order to take shelter in the safe harbor, assignees should only have to review the documentation required by a specific law, the itemization of the amount financed, and other disclosures of disbursements.

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- 6) Post-purchase due diligence - Assignees should be able to take advantage of the safe harbor by performing the requisite due diligence either pre-purchase or at a reasonable time after the purchase date.
- 7) Cure applicable to the entire chain of title - Assignees should be entitled to rely on satisfactory due diligence performed by either the seller or any other entity in the chain of title.

ASF continues:

The creation of a safe harbor that is both effective and reasonable for secondary actors to satisfy will promote the dual goals of encouraging participation in the covered subprime market and further buttressing the incentives for those market participants that do participate to scrutinize a statistically significant sample of the loans that they purchase. Thus, it will ensure continued increases in the availability of low cost capital with its attendant benefits for worthy subprime borrowers, while also reinforcing the existing economic forces encouraging the secondary market to make wise investment decisions?

The assumption that secondary market participants are indifferent to the wrongful conduct of primary loan originators and care only about funneling new capital to the primary market, is mistaken?

From the perspective of an investor, a predatory loan is a bad loan, since borrowers targeted by predatory lenders tend to be economically vulnerable and financially unsophisticated, and the terms of predatory loans frequently are inappropriately onerous, thus increasing the risk of the borrower delinquency and foreclosure.

Mortgage securitization: Most important to the growth of the subprime market, however was the creation of a secondary market for subprime loans. In the early 1990s, Wall Street's acceptance of mortgage-backed securities comprised of pools of subprime loans greatly increased. A few years ago, Fannie Mae and Freddie Mac began purchasing these loans as well. These market-based activities have provided lenders with the funds

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needed to make new mortgages, thus bringing additional capital into the subprime arena.

In recent history, banks funded mortgage loans through their

customer's deposits with mortgage credit dictated by the volume of bank deposits. Furthermore, banks kept loans on their books. Today, banks and other non-depository lenders have the option to sell their loan on the secondary market. Some lenders issue their own securities based of loans they originate or purchase.

MBSs are securities sold to investors like stocks and bonds. MBSs are created when originators or financial intermediaries pool large volumes of mortgage loans and sell securities backed by the monthly payments made by borrowers on the underlying mortgage loans. When a homeowner, whose loan is secured in an investment pool, makes his or her monthly payment, the payment combined with the payments of other loans goes into the pool and forms the basis of cash flows for investors. Investors choose their position in mortgage pool based on priority of payments from the pool in the event of a default. The pools typically have several investment grade tranches, ranging from AAA ratings down to subprime rated tranches that would absorb the most losses in the event of default but offer the most return. Bonds are also structured as tranches that collect only interest on the underlying mortgage obligation, or tranches that received payments from the principle payments on the mortgage.

Most of these sub-prime mortgage loans are granted by financial institutions that are non-deposit-taking entities and therefore are subject to lower regulatory and supervision requirements compared with those for other banks and deposit institutions. Once the customer uses the loan to buy a house, the debt is noted in the balance sheet of the institution granting the loan.

However, in order to boost their business, these institutions relieve themselves of these mortgages and sell them to commercial banks or investment banks. The new holders, in turn, package the mortgages in blocks and issue securitization bonds Collateralized Debt Obligations (CDOs) using the sub-prime mortgages as security or collateral. That is to say, based on subprime mortgages, they create a new kind of asset that is more easily negotiable in the markets and it is this bond that carries the risk in the operation. To the extent that the holders of the mortgages keep paying off their debt every month, these funds are used to pay those who have bought these bonds.

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The MBS market is the largest fixed income market in the United States (U.S.). At the end of 2006, according to Securities Industry and Financial Markets Association, Research Quarterly, February 2007, approximately \$6.5 trillion of securitized mortgage-related debt was outstanding compared to \$4.3 trillion of U.S. Treasury securities and \$5.4 trillion of corporate debt.

CDOs are a global phenomenon extending far beyond national boundaries or domestic capitol controls. JPMorgan Chase estimates that \$1.5 trillion in CDOs exist globally with \$500 billion in structured finance CDOs meaning those made up of bonds backed by subprime mortgages.

Those buying CDOs are usually investment funds, insurance companies, liquid asset holders, traders, etc. who obtain higher yields from these assets than the market average although, naturally, running greater risk. This new product is broken down according to the credit risk assumed and a qualification or credit rating is assigned by the rating agencies.

For a more detailed discussion of subprime lending, please see this committee's April 7, 2008 analysis of AB 1830 (Lieu) of 2008.

Related state legislation:

AB 69 (Lieu) of 2007, requires loan servicers to report data regarding their loan modification efforts. This bill is pending before Senate Banking, Finance and Insurance committee.

AB 180 (Bass) of 2007, revises the law related to foreclosure consultants to ensure that those facing foreclosure do not become further victimized by scams or outrageous fees. Provides for a registration process for persons acting as foreclosure consultants. This bill is pending before Senate Judiciary committee.

AB 529 (Torrico) of 2007, requires lenders to notify borrowers of an impending interest rate reset of an adjustable rate mortgage. This bill is currently pending in Senate Banking, Finance and Insurance committee.

AB 1837 (Garcia) of 2008, bans payment of compensation for originating a subprime loan or nontraditional loan with an interest rate above the wholesale par rate for which the

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consumer qualifies. Currently in Assembly Banking and Finance committee.

AB 2161 (Swanson) of 2008, would enact a mortgage lender complaint processing system. Furthermore, it requires lenders to have a dedicated complaint processing system to handle borrower complaints and assist borrowers with workout opportunities. Also requires lenders to document complaints and submit complaint logs to their regulator. This bill is currently pending in Assembly Banking and Finance committee.

AB 2187 (Caballero) of 2008, requires each notice of default and foreclosure to include a homeowner bill of rights that provides a list of their legal rights and responsibilities in the foreclosure process. This bill is currently pending in Assembly Judiciary committee.

AB 2880 (Wolk) of 2008, specifies, among other things, that that mortgage brokers have a fiduciary responsibility to their clients, and requires licensees to maintain a surety bond with their regulator. This bill is currently pending in Assembly Judiciary committee.

AB 2740 (Brownley) of 2008, provides that a loan servicer, or a bank, credit union, or finance lender that services loans secured by residential real property, owes a duty of good faith and fair dealing to a borrower. The bill would regulate the fees and charges that may be imposed to loan servicers and mortgage loan servicers. The bill would also establish various other prohibited acts and requirements applicable to the servicing of residential mortgage loans.

SB 1053 (Machado) of 2008, requires every real estate broker licensed by California Department of Real Estate (DRE) who makes, brokers, or services mortgages to notify DRE about those activities on an annual basis; requires supervising real estate brokers (those in charge of mortgage brokerage businesses) to submit detailed compliance reviews of their books and records to DRE annually, along with business activity reports detailing the loans their businesses brokered, made, and serviced during the prior year. Currently in Senate Banking, Finance and Insurance committee.

SB 1054 (Machado) of 2008, in relevant part, gives DRE the ability to ban individuals who have been found guilty of

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violating the Real Estate Law from real estate-related employment for up to three years. Currently in Senate Banking, Finance and Insurance committee.

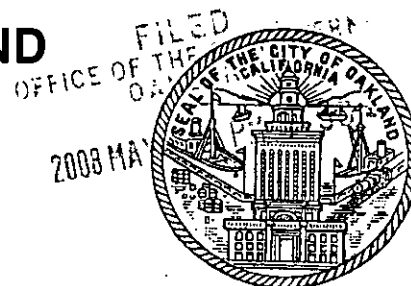
SB 1604 (Machado) of 2008, under finance lenders law, requires that applicants show a minimum tangible net worth of \$25,000 for "brokers," \$50,000 for "a broker engaged in the business of negotiating or performing acts in connecting with residential mortgage loans," and \$250,000 for finance lenders (of residential mortgage loans), and requires that licensees maintain the applicable net worth at all times; maintains surety bond generally at \$25,000, but increases to \$50,000 for finance lenders (of residential mortgage loans); requires any person seeking employment with a finance lender or broker to complete a specified employment. Currently in Senate Banking, Finance and Insurance committee.

Analysis Prepared by : Mark Farouk / B. & F. / (916) 319-3081

FN: 0004718



**CITY OF OAKLAND  
BILL ANALYSIS**



**Date:** June 12, 2008

**Bill Number:** AB 2740

**Bill Author:** Brownley

**DEPARTMENT INFORMATION**

**Contact:** Jeffrey Levin  
**Department:** CEDA/HCD  
**Telephone:** 238-6188 **FAX:** 238-3691 **E-mail:** jplevin@oaklandnet.com

**RECOMMENDED POSITION: SUPPORT**

**Summary of the Bill**

This bill would establish greater regulation of loan servicing firms, including requiring a duty of good faith and fair dealing to borrowers, regulate the charging of certain fees, require timely response to requests from borrowers for information or dispute resolution, and authorize the recovery of damages by a borrower who is injured by a servicer's violation of the provisions of the bill.

**Positive Factors for Oakland**

Oakland has been particularly hard hit by foreclosures of subprime and non-traditional mortgage loans. Loan servicers are currently relatively unregulated, yet their actions and decisions can affect whether borrowers retain or lose their homes. Establishing basic regulations and responsibilities would avoid some of the problems that have occurred with loan servicers.

**Negative Factors for Oakland**

None identified.

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

- Critical** (top priority for City lobbyist, city position required ASAP)  
 **Very Important** (priority for City lobbyist, city position necessary)

Item: \_\_\_\_\_  
Rules & Legislation Comte.  
June 12, 2008

**Somewhat Important** (City position desirable if time and resources are available)

**Minimal or**  **None** (do not review with City Council, position not required)

**Known support:**

AARP

Affordable Housing Services

Amador-Tuolumne Community Action Agency

Asset Policy Initiative of California (APIC)

California Alliance for Retired Americans

California Coalition for Rural Housing

California Labor Federation

California Reinvestment Coalition

California Resources and Training (CARAT)

Center for California Homeowner Association Law

Center for Responsible Lending

CHARO Community Development Corp

Christi Baker, Chrysalis Consulting Group, LLC

Civic Center Barrio Housing Corporation

Community Housing Development Corporation of North Richmond

Community Legal Services in East Palo Alto

Consumer Action

Consumer Federation of California

EARN

East Bay Asian Local Development Corp.

East L.A. Community Corporation (ELACC)

East Oakland CDC

Fair Housing Council of Orange County

Fair Housing Council of San Diego

Fair Housing Council of the San Fernando Valley

Fair Housing Law Project

Gray Panthers California

Housing and Economic Rights Advocates

Housing Rights Center Los Angeles

La Raza Centro Legal  
Los Angeles Coalition to End Hunger & Homelessness  
MAAC Project  
Matthew Edling  
Mission Economic Development Agency  
Neighborhood Partnership Housing Services, Inc.  
Orange County Community Housing Corporation  
People Helping People  
Project Sentinel  
Public Interest Law Firm  
S.F. Consortium for Elder Abuse Prevention  
San Diego Home Loan Counseling & Education Center  
San Francisco Assessor-Recorder Phil Ting  
Sierra Planning & Housing Alliance, Inc.  
STAND Affordable Housing  
Vermont Slauson Economic Development Corp.  
Watsonville Law Center  
West Company

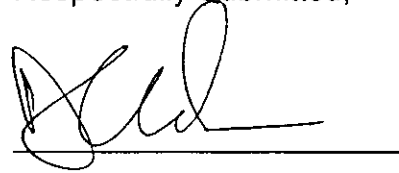
**Known Opposition:**

California Credit Union League  
California Financial Services Association  
California Independent Bankers  
California Mortgage Association (CMA)  
California Mortgage Bankers Association  
Civil Justice Association of California

**Attach bill text and state/federal legislative committee analysis, if available.**

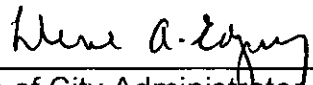
Bill and bill analysis are attached.

Respectfully Submitted,



Dan Lindheim  
Director, Community and  
Economic Development Agency

Approved for Forwarding to  
Rules Committee

  
Office of City Administrator



AMENDED IN ASSEMBLY APRIL 22, 2008  
AMENDED IN ASSEMBLY MARCH 28, 2008  
CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2740**

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**Introduced by Assembly Member Brownley**

February 22, 2008

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~~An act to add Section 50131 to, to add Article 4 (commencing with Section 3400) to Chapter 18 of Division 1 of, to add Article 5 (commencing with Section 15120) to Chapter 7 of Division 5 of, and to add Article 5 (commencing with Section 22180) to Chapter 1 of Division 9 of, the Financial Code, relating to residential mortgage loans. An act to add Section 2938.1 to the Civil Code, relating to mortgages.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2740, as amended, Brownley. ~~Residential mortgage~~ Home loans: servicing.

Existing law provides for the regulation and licensure of state chartered banks and credit unions by the Commissioner of Financial Institutions. Existing law provides for the regulation and licensure of residential mortgage lenders, residential mortgage loan servicers, and finance lenders by the Commissioner of Corporations. A willful violation of the laws regulating these credit unions, residential mortgage lenders, residential mortgage loan servicers, and finance lenders is a crime *establishes various requirements applicable to mortgages and real property interests.*

This bill would provide that a residential mortgage loan servicer, or a bank, credit union, or finance lender *regulate the fees that may be imposed by a home loan servicer, as defined, that services home loans*

~~secured by residential real property, owes a duty of good faith and fair dealing to a borrower. The bill would regulate the fees and charges that may be imposed by these banks, credit unions, finance lenders, or mortgage loan servicers, as defined. The bill would establish various other prohibited acts and requirements applicable to the servicing of residential mortgage home loans, including, among other things, requiring these entities that service mortgage loans a servicer that collects escrow amounts on the loan to make all payments from the escrow account so that no late penalties are assessed. The bill would require a servicer to respond within 10 days specified periods to a borrower's request for information, documents, and for dispute resolution and to promptly correct errors. The bill's provisions would apply to mortgage loan servicing contracts entered into on and after January 1, 2009. The bill would authorize the recovery of damages by a borrower or other party who is injured by a servicer's violation of the bill's provisions and would also authorize the Commissioner of Financial Institutions, the Commissioner of Corporations, and the Attorney General to bring an action to recover these damages.~~

~~Because a willful violation of the bill's provisions with regard to credit unions, residential mortgage lenders, residential mortgage loan servicers, and finance lenders would be a crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

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

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

- 1     SECTION 1. Section 2938.1 is added to the Civil Code, to read:
- 2     2938.1. (a) As used in this section, the following definitions
- 3     apply:
- 4     (1) "Home loan" means a loan secured by real property located
- 5     in this state used, or intended to be used, by an individual borrower
- 6     or individual borrowers in this state as a dwelling, regardless of
- 7     whether the loan is used to purchase the property or refinance the

1 prior purchase of the property or whether the proceeds of the loan  
2 are used for personal, family, or business purposes.

3 (2) "Servicer" has the meaning set forth in Section 2605 (i) of  
4 the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601  
5 et seq.). A licensed attorney, who in the practice of law or  
6 performing as a trustee, accepts payments related to a loan closing,  
7 default, foreclosure, or settlement of a dispute or legal claim  
8 related to a loan, shall not be considered a servicer for the  
9 purposes of this section.

10 (b) A servicer shall comply with all of the following for every  
11 home loan at all times:

12 (1) Any fee that is incurred by a servicer shall satisfy both of  
13 the following:

14 (A) The fee shall be assessed within 45 days of the date on which  
15 the fee was incurred; provided, however, that attorney or trustee  
16 fees and costs incurred as a result of a foreclosure action shall be  
17 assessed within 45 days of the date they are charged by either the  
18 attorney or trustee to the servicer.

19 (B) The fee shall be explained clearly and conspicuously in a  
20 statement mailed to the borrower at the borrower's last known  
21 address at least 30 days after assessing the fee, provided the  
22 servicer shall not be required to take any action in violation of the  
23 provisions of the federal bankruptcy code.

24 (2) All amounts received by a servicer on a home loan at the  
25 address where the borrower has been instructed to make payments  
26 shall be accepted and credited, or treated as credited, within one  
27 business day of the date received, provided that the borrower has  
28 made the full contractual payment and has given sufficient  
29 information to credit the account. If a servicer uses the scheduled  
30 method of accounting, any regularly scheduled payment made  
31 prior to the scheduled due date shall be credited no later than the  
32 due date. If any payment is received and not credited, or treated  
33 as credited, the borrower shall be notified within 10 business days  
34 by mail at the borrower's last known address of the disposition of  
35 the payment, the reason the payment was not credited, or treated  
36 as credited, to the account, and any actions necessary by the  
37 borrower to make the loan current.

38 (3) Failure to charge the fee or provide the information within  
39 the allowable time and in the manner required under paragraph

40 (1) constitutes a waiver of the fee.

1     (4) All fees charged by a servicer must be otherwise permitted  
2 under applicable law and the contracts between the parties.  
3 Nothing in this section is intended to permit the application of  
4 payments or method of charging interest that is less protective of  
5 the borrower than the contracts between the parties and other  
6 applicable law.

7     (c) Any servicer of a home loan that exercises the authority to  
8 collect escrow amounts held or to be held for the borrower for  
9 insurance, taxes, and other charges with respect to the property  
10 shall collect and make all payments from the escrow account, so  
11 as to ensure that no late penalties are assessed or other negative  
12 consequences result. This subdivision shall apply regardless of  
13 whether the loan is delinquent or in default unless the servicer has  
14 a reasonable basis to believe that recovery of these funds will not  
15 be possible or the loan is more than 90 days in default.

16     (d) The servicer shall make reasonable attempts to comply with  
17 a borrower's request for information about the home loan account  
18 and to respond to any dispute initiated by the borrower about the  
19 loan account, as provided in this subdivision. The servicer shall  
20 maintain, until the home loan is paid in full, otherwise satisfied,  
21 or sold, written or electronic records of each written request for  
22 information regarding a dispute or error involving the borrower's  
23 account. The servicer shall do all of the following:

24     (1) Provide a written statement to the borrower within 10  
25 business days of receipt of a written request from the borrower  
26 that includes or otherwise enables the servicer to identify the name  
27 and account of the borrower and includes a statement that the  
28 account is or may be in error or otherwise provides sufficient detail  
29 to the servicer regarding information sought by the borrower. The  
30 borrower is entitled to one statement in any six-month period, free  
31 of charge, and additional statements shall be provided if the  
32 borrower pays the servicer a reasonable charge for preparing and  
33 furnishing the statement not to exceed twenty-five dollars (\$25).  
34 The statement shall include the following information, if requested:

35     (A) Whether the account is current or, if the account is not  
36 current, an explanation of the default and the date the account  
37 went into default.

38     (B) The current balance due on the loan, including the principal  
39 due, the amount of funds, if any, held in a suspense account, the  
40 amount of the escrow balance, if any, known to the servicer, and

1 *whether there are any escrow deficiencies or shortages known to*  
2 *the servicer.*

3 *(C) The telephone number and mailing address of the*  
4 *Department of Corporations, Enforcement Division.*

5 *(2) Provide the following information and documents within 25*  
6 *business days of receipt of a written request from the borrower*  
7 *that includes or otherwise enables the servicer to identify the name*  
8 *and account of the borrower and includes a statement that the*  
9 *account is or may be in error or otherwise provides sufficient detail*  
10 *to the servicer regarding information sought by the borrower:*

11 *(A) A copy of the original note, or if unavailable, an affidavit*  
12 *of lost note.*

13 *(B) A statement that identifies and itemizes all fees and charges*  
14 *assessed under the loan transaction and provides a full payment*  
15 *history identifying, in a clear and conspicuous manner, all of the*  
16 *debits, credits, application of and disbursement of all payments*  
17 *received from or for the benefit of the borrower, and other activity*  
18 *on the home loan including escrow account activity and suspense*  
19 *account activity, if any. The period of the account history shall*  
20 *cover, at a minimum, the two-year period prior to the date of the*  
21 *receipt of the request for information. If the servicer has not*  
22 *serviced the home loan for the entire two-year-time period, the*  
23 *servicer shall provide the information to the date on which the*  
24 *servicer began servicing the home loan. For purposes of this*  
25 *paragraph, the date of the request for the information shall be*  
26 *presumed to be no later than 30 days from the date of the receipt*  
27 *of the request. If the servicer claims that any delinquent or*  
28 *outstanding sums are owed on the home loan prior to the two-year*  
29 *period or the period during which the servicer has serviced the*  
30 *loan, the servicer shall provide an account history beginning with*  
31 *the month that the servicer claims any outstanding sums are owed*  
32 *on the loan up to the date of the request for the information. The*  
33 *borrower is entitled to one statement in any six-month period free*  
34 *of charge. Additional statements shall be provided if the borrower*  
35 *pays the servicer a reasonable charge for preparing and furnishing*  
36 *the statement not to exceed fifty dollars (\$50).*

37 *(3) Promptly correct errors relating to the allocation of*  
38 *payments, the statement of account, or the payoff balance identified*  
39 *in any notice from the borrower provided in accordance with*

1 paragraph (2), or discovered through the due diligence of the  
2 servicer or other means.

3 (e) In addition to any equitable remedies and any other remedies  
4 at law, any borrower injured by any violation of this section may  
5 bring an action for recovery of actual damages, including  
6 reasonable attorneys' fees. The Commissioner of Corporations,  
7 the Commissioner of Financial Institutions, the Attorney General,  
8 or any injured party to a home loan may enforce the provisions of  
9 this section. With the exception of an action by the Commissioner  
10 of Corporations, the Commissioner of Financial Institutions, or  
11 the Attorney General, at least 30 days before a borrower or injured  
12 party institutes a civil action for damages against a servicer for  
13 a violation of this section, the borrower or injured party shall  
14 notify the servicer in writing of any claimed errors or disputes  
15 regarding the borrower's home loan that forms the basis of the  
16 civil action. The notice shall be sent to the address as designated  
17 on any of the servicer's bills, statements, invoices, or other written  
18 communication, and shall enable the servicer to identify the name  
19 and loan account of the borrower. For purposes of this subdivision,  
20 notice shall not include a complaint or summons. Nothing in this  
21 subdivision shall limit the rights of a borrower to enjoin a civil  
22 action, or make a counterclaim, cross-claim, or plead a defense  
23 in a civil action.

24 (f) A servicer shall not be in violation of this section if the  
25 servicer shows both of the following by a preponderance of  
26 evidence:

27 (1) The violation was not intentional or the result of bad faith.

28 (2) Within 30 days after discovering or being notified of an  
29 error, and prior to the institution of any legal action by the  
30 borrower against the servicer under this section, the servicer  
31 corrected the error and compensated the borrower for any fees or  
32 charges incurred by the borrower as a result of the violation.

33 (g) The provisions of this section shall be severable and if any  
34 phrase, clause, sentence, or provision is declared to be invalid or  
35 is preempted by federal law or regulation, the validity of the  
36 remainder of this section shall not be affected thereby. If any  
37 provision of this section is declared to be inapplicable to any  
38 specific category, type, or kind of fees, the provisions of this section  
39 shall nonetheless continue to apply with respect to all fees.

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**All matter omitted in this version of the bill  
appears in the bill as amended in the  
Assembly, March 28, 2008. (JR11)**

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ASSEMBLY THIRD READING  
AB 2740 (Brownley)  
As Amended April 22, 2008  
Majority vote

BANKING & FINANCE 7-4      APPROPRIATIONS 12-5

Ayes: Nava, Coto, Fuentes,  Mendoza, Swanson,  Torrico, Wolk   	Ayes: Leno, Caballero, Davis,  DeSaulnier, Furutani,  Huffman, Karnette, Berg,  Mullin, Ma, Nava, Solorio 
Nays: Gaines, Houston, Parra,  Walters 	Nays: Walters, Emerson, La  Malfa, Nakanishi, Sharon  Runner 

SUMMARY : Establishes various prohibited acts and requirements applicable to the servicing of home loans. Specifically, this bill :

- 1) Defines "home loan" as a loan secured by real property located in this state used, or intended to be used, by an individual borrower as a dwelling, regardless of whether the loan is used to purchase the property or refinance the prior purchase of the property or whether the proceeds of the loan are used for personal, family or business purposes.
- 2) Defines "servicer" as a person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan) as set forth in Section 2605 (i) of the Real Estate Settlement Procedures Act (RESPA).
- 3) Regulates how and when a fee may be imposed by a home loan servicer.
- 4) Requires a servicer to respond within specified periods to a borrower's request for information, documents, and dispute resolution and to promptly correct errors.
- 5) Authorizes the recovery of damages by a borrower or other party who is injured by a servicer's violation, and authorizes

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the Commissioner of Financial Institutions, the Commissioner of Corporations, and the Attorney General to bring an action to recover damages.

EXISTING FEDERAL LAW :

- 1) Authorizes federally-chartered financial institutions to engage in the business of mortgage lending, brokering, and servicing and governs the rules under which such activities may be conducted under a wide variety of laws, including, but not limited to, the Home Ownership and Equity Protection Act (HOEPA), Real Estate Settlement Procedures Act (RESPA), Truth in Lending Act (TILA), Home Mortgage Disclosure Act (HMDA), and regulations that interpret those acts (most notably Regulation C, which interprets the Home Mortgage Disclosure Act and Regulation Z, which interprets the Truth in Lending Act)
- 2) Provides that under Section 6 of RESPA, borrowers who have a problem with the servicing of their loan (including escrow account questions), should contact their loan servicer in writing, outlining the nature of their complaint. The servicer must acknowledge the complaint in writing within 20 business days of receipt of the complaint. Within 60 business days the servicer must resolve the complaint by correcting the account or giving a statement of the reasons for its position. Until the complaint is resolved, borrowers should continue to make the servicer's required payment.  
  
A borrower may bring a private law suit, or a group of borrowers may bring a class action suit, within three years, against a servicer who fails to comply with Section 6's provisions. Borrowers may obtain actual damages, as well as additional damages if there is a pattern of noncompliance.
- 3) Specifies that under Section 10 of RESPA there is sets limits on the amounts that a lender may require a borrower to put into an escrow account for purposes of paying taxes, hazard insurance and other charges related to the property.



During the course of the loan, RESPA prohibits a lender from charging excessive amounts for the escrow account. Each month the lender may require a borrower to pay into the escrow account no more than 1/12 of the total of all disbursements

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Page 3

payable during the year, plus an amount necessary to pay for any shortage in the account. In addition, the lender may require a cushion, not to exceed an amount equal to 1/6 of the total disbursements for the year.

The lender must perform an escrow account analysis once during the year and notify borrowers of any shortage. Any excess of \$50 or more must be returned to the borrower.

EXISTING STATE LAW :

- 1) Defines a "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.
- 2) Provides that a mortgage servicer may apply for licensure by doing all of the following: filing with the commissioner an application containing the information required, and any additional information the commissioner may require by rule, paying the investigation and application fees, submitting the statements, complying with the applicable provisions.
- 3) Explains that any person transferring the servicing of indebtedness to a different servicing agent and any person assuming from another responsibility for servicing the instrument evidencing indebtedness, shall give written notice to the borrower or subsequent obligor before the borrower or subsequent obligor becomes obligated to make payments to a new servicing agent.

FISCAL EFFECT : Unknown

COMMENTS :

Mortgage Servicer : At closing, your lender must inform the borrower of any plans to turn over the rights to administer a loan to a mortgage servicer. The new servicer could be another lender, a banker, an investor or a third-party processing company that specializes in servicing mortgages. Over the term of a loan a borrower could have several mortgage services.

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Page 4

A number of the responsibilities of a mortgage servicer includes: collect and process your monthly mortgage payments, forward your payments to the investor who owns the loan (if other than the servicer. The servicer acts on the investor's behalf, should problems arise with the loans, pay your property tax and homeowners insurance from your escrow account, send you an annual mortgage statement that details which portions of your mortgage payments were applied to principal, interest, taxes and insurance, and any adjustments in payments to cover taxes and insurance in the coming year, and counsel and assist you to overcome delinquencies if you miss loan payments. For instance, a forbearance, or deferral of principal and interest payments, may be extended to help a borrower out of financial difficulties. If the loan becomes seriously in default, foreclosure might be necessary to protect the investor's interest in the property and salvage the borrower's equity, if any.

Should the home loan change to another mortgage servicers, that mortgage servicer must notify the borrower in writing of the change by both the original servicer and the new one, noting the date of transfer and contact information of the new servicer. The new servicer must honor the terms and conditions of your original mortgage agreement, with the exception of those directly related to servicing the loan. The borrower must be notified of any changes to term of their homeowners insurance. During the transfer, the borrower has a 60-day grace period during which they cannot be charged a late fee if they mistakenly send a mortgage payment to your old servicer.

The National Consumer Law Center reports that misconduct in the servicing industry includes misapplying mortgage payments, charging bogus late fees, prematurely initiating foreclosure proceedings and imposing high-cost homeowner insurance on borrowers, despite evidence the borrower's having their own insurance. Further, the Federal Trade Commission (FTC) in a consumer alert describes examples of deceptive loan servicing as not providing the borrower with accurate or complete account statements and payoff figures, making it almost impossible to determine how much the borrower has paid and how much they still owe. Thus, the borrower may end up paying more than they owe.

The Department of Housing and Urban Development (HUD) reports

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Page 5

that two of every five complaints they receive from borrowers involve servicing issues. J.D. Powers and Associates, which measures consumer satisfaction with business services of many kinds, reports that only 10% of borrowers are happy with their home mortgage servicer.

Servicers can employ a scheme called "pyramiding," by which they hold a payment until it is late, use a portion of the payment to cover the late fee, thereby causing the remaining payment to be insufficient. When the next month's payment is made, it is insufficient to cover the previous shortfall and the new payment, generating another penalty fee.

Currently, some servicers claim that the borrower does not have insurance on the property and "force-places" such insurance on the loan. Sometimes, that insurance is purchased from an affiliate; oftentimes the servicer is given a significant commission for doing so. Many times, as was the case with the Fairbanks Capital case settled by the FTC in 2003, the borrowers already had insurance, but were charged for the additional insurance in any case. As with the pyramiding problems, these extra charges could often result in the borrower being put into default.

Even in the dire circumstances existing in the mortgage market today, and despite the nearly universal calls for action from regulators, government officials, and consumer advocates, mortgage servicers have been extremely slow to offer meaningful alternatives to foreclosure for most borrowers. According to Moody's, only 1% of subprime ARM borrowers have received any loan modifications during the current crisis. Furthermore, a new study shows how servicers use the foreclosure process to make additional fees from the troubled borrowers, even borrowers in bankruptcy. These conclusions are consistent with practices uncovered by the FTC in its 2003 investigation of mortgage servicing practices of Fairbanks Capital, one of the largest subprime mortgage servicers at the time.

Duty of Mortgage Servicers : While much of the popular press has been devoted to predatory lending, borrowers should be aware that deceptive practices do occur in the mortgage servicing area and an effort is being made to clamp down on these practices. For example, one of largest servicers of sub-prime loans, Fairbanks Capital Corporation, in late 2003 agreed to a \$40

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million settlement to resolve a complaint by FTC relating to Fairbanks' unfair, deceptive and illegal practices in the servicing of sub-prime mortgage loans, including failing to post consumers' mortgage payments in a timely manner and charging borrowers illegal late fees and other unauthorized fees. On July 1, 2004, Fairbanks changed its name to Select Portfolio Servicing, Inc. Later, in 2005, The PMI Group, Inc. sold Select Portfolio (i.e., Fairbanks) to Credit Suisse First Boston (USA).

Fees : A report titled, Limited Abuse and Opportunism by Mortgage Servicers, stated, "Claiming that borrowers are in default when they are actually current allows servicers to charge unwarranted fee, either late fees or fees related to default and foreclosure. Servicers receive as a conventional fee a percentage of the total value of the loans they service, typically 25 basis points for prim loans and 50 basis points for subprime loans (Office of the Comptroller of the Currency 2003). In addition contracts typically provide that the servicer, not the trustee or investors, has the right to keep any and all late fees or fees associated with defaults. Such fees are a crucial part of servicers' income. For example, one servicer's CEO

reportedly stated that extra fee, such as late fees, appeared to be paying for all of the operating costs of the company's entire servicing department, leaving the conventional fee almost completely profit (Cornwell 2004b)"

The complexity of the terms of many loans makes it difficult for borrowers to discover whether they are being overcharged.

Other States : This bill as written mirrors a North Carolina law enacted on April 1, 2008, HB 1374, the Mortgage Debt Collection and Servicing Act. The measure will require that any fee incurred by a servicer must be assessed within 45 days (or in the case of foreclosure attorney or trustee fees, 45 days from when actually charged) and explained "clearly and conspicuously" in a statement that the servicer must mail to the borrower at least 30 days after assessing the fee. If these procedures are not followed, the servicer is not entitled to the fee, all payments to the servicer must be credited within one business day, provided that the borrower has made full contractual payment and provided sufficient information regarding the account, all fees charged by a servicer must be permitted by law or set forth in the loan documents, borrower rights to submit a "request for information" and also dispute his or her account,

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Page 7

requiring the servicer to respond within 10 business days. An additional qualified written request procedure, enabling the borrower to allege error in his or her account and obtain an explanation from the servicer, which must include a copy of the underlying promissory note. The servicer must provide the information to the borrower in 25 business days. The Act contains a unique and unprecedented remedies provision, permitting limited cure in the event the borrower desires to bring a civil action against the servicer.

Analysis Prepared by : Kathleen OMalley / B. & F. / (916)  
319-3081

FN: 0004628

# CITY OF OAKLAND

## BILL ANALYSIS



Date: June 12, 2008

Bill Number: AB 2880

Bill Author: Wolk

### DEPARTMENT INFORMATION

Contact: Jeffrey Levin  
Department: CEDA/HCD  
Telephone: 238-6188 FAX: 238-3691 E-mail: jplevin@oaklandnet.com

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2008 MAY 9 PM 7:53

RECOMMENDED POSITION: SUPPORT

### Summary of the Bill

This bill would establish greater regulation of mortgage brokers. In particular it would establish that mortgage brokers have a fiduciary responsibility to borrowers and that they must act in the borrowers' best interests. The bill would also prohibit brokers from steering borrowers to loans that are more expensive than other loans that borrowers would qualify for, and would prohibit brokers from receiving compensation for putting borrowers in such loans. Brokers who violate these provisions would be civilly liable to borrowers for damages, including punitive damages.

### Positive Factors for Oakland

Oakland has been particularly hard hit by foreclosures of subprime and non-traditional mortgage loans. One factor in this crisis was actions of mortgage brokers such as steering borrowers into high cost loans, failing to fully disclose all terms, or acting in the interest of lenders rather than borrowers.

This bill would prevent many of those abuses from happening again.

### Negative Factors for Oakland

The bill's provisions would only apply prospectively to new loans and would offer no relief to existing borrowers.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

\_\_\_ Critical (top priority for City lobbyist, city position required ASAP)

Item: \_\_\_\_\_  
Rules & Legislation Comte.  
June 12, 2008

- Very Important** (priority for City lobbyist, city position necessary)  
 **Somewhat Important** (City position desirable if time and resources are available)  
 **Minimal or**  **None** (do not review with City Council, position not required)

**Known support:**

California ACORN (co-sponsor)  
California Reinvestment Coalition (co-sponsor)  
Center for Responsible Lending (co-sponsor)  
Consumer's Union (co-sponsor)  
AARP  
Affordable Housing Services  
Amador-Tuolumne Community Action Agency  
Asset Policy Initiative of California (APIC)  
California Alliance for Retired Americans  
California Coalition for Rural Housing  
California Reinvestment Coalition  
California Resources and Training (CARAT)  
Center for California Homeowner Association Law  
CHARO Community Development Corp  
Civic Center Barrio Housing Corporation  
Community Housing Development Corporation of North Richmond  
Community Legal Services in East Palo Alto  
Consumer Action  
Consumer Federation of California  
Council on Aging Silicon Valley  
EARN  
East Bay Asian Local Development Corp.  
East Bay Housing Organizations  
East L.A. Community Corporation (ELACC)  
East Oakland CDC  
East Palo Alto Council of Tenants (EPACT) Education Fund  
Fair Housing Council of San Diego  
Fair Housing Council of Orange County  
Fair Housing Council of the San Fernando Valley  
Fair Housing Law Project  
Gray Panthers California  
Housing and Economic Rights Advocates

Housing California  
Housing Rights Center Los Angeles  
La Raza Centro Legal  
Los Angeles Coalition to End Hunger & Homelessness  
MAAC Project  
Mission Economic Development Agency  
Neighborhood Partnership Housing Services, Inc.  
Older Women's League  
Orange County Community Housing Corporation  
People Helping People  
Project Sentinel  
Public Interest Law Firm  
Rural Community Assistance Corporation  
San Diego Home Loan Counseling & Education Center  
S.F. Consortium for Elder Abuse Prevention  
Sierra Planning & Housing Alliance, Inc.  
STAND Affordable Housing  
Unity Council Homeownership Center  
Vermont Slauson Economic Development Corp.  
Watsonville Law Center  
West Company  
San Francisco Assessor-Recorder Phil Ting  
Christi Baker, Chrysalis Consulting Group, LLC  
Matthew Edling

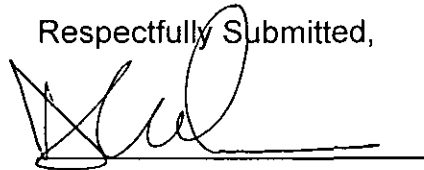
**Known Opposition:**

California Association of Realtors  
California Mortgage Association

**Attach bill text and state/federal legislative committee analysis, if available.**


Bill and bill analysis are attached.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dan Lindheim", written over a horizontal line.

Dan Lindheim  
Director, Community and  
Economic Development Agency

Approved for Forwarding to  
Rules Committee

  
Office of City Administrator

AMENDED IN ASSEMBLY APRIL 10, 2008

AMENDED IN ASSEMBLY APRIL 1, 2008

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2880**

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**Introduced by Assembly Member Wolk  
(Coauthor: Assembly Member Galgiani)**

February 22, 2008

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An act to amend Section 10156.8 of, and to add Sections 10133.25 and 10150.1 to, the Business and Professions Code, ~~and to amend Sections 22103, 22104, 22112, 50121, and 50205 of, and to add Sections 22004.5, 22168, 50003.5, and 50513 to, the Financial Code,~~ relating to mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 2880, as amended, Wolk. Mortgage lending.

Existing law provides for the licensure and regulation of real estate brokers by the Real Estate Commissioner. ~~Existing law provides for the licensure and regulation of finance lenders and brokers and residential mortgage lenders and servicers by the Department of Corporations. Existing law requires these licensees a real estate broker to pay specified licensing fees to, and requires finance lenders and residential mortgage lenders and servicers to maintain specified surety bonds with, their regulators the commissioner.~~ A willful violation of the law regulating ~~these licensees~~ *real estate brokers* is a crime.

This bill would require a real estate broker who makes, arranges, or services loans secured by real property to maintain a surety bond with the commissioner, as specified. The bill would provide that a mortgage



broker, as defined, who provides brokerage services to a borrower is the fiduciary of the borrower. The bill would create various duties that these mortgage brokers would be required to satisfy when making, arranging, or servicing consumer loans, as defined. The bill would prohibit mortgage brokers from receiving compensation for placing a borrower in a consumer loan that is more costly than that for which the borrower qualifies, *except as specified*. The bill would prohibit a mortgage broker from, for a one-year period after consummation of a consumer loan that the broker negotiated or arranged, engaging in direct marketing with the borrower regarding refinancing the loan, as specified. The bill would make a mortgage broker who violates these provisions civilly liable to the borrower for damages and would authorize the court to award punitive damages to the borrower. Because a willful violation of these provisions by a real estate broker, ~~a broker under the Finance Lenders Law, or a residential mortgage lender~~ would be a crime, this bill would impose a state-mandated local program.

~~The bill would also increase the amounts of certain of the fees that finance lenders and residential mortgage lenders are required to pay to, and the amounts of the surety bonds mortgage brokers, as defined, are required to maintain with, their regulators, and the amount of net worth that must be maintained by a finance lender.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 10133.25 is added to the Business and
- 2 Professions Code, to read:
- 3 10133.25. (a) For purposes of this section, the following
- 4 definitions shall apply:
- 5 (1) "Mortgage broker" means a real estate broker who acts
- 6 pursuant to Section 10131.1 or subdivision (d) of Section 10131,
- 7 and who makes, arranges, or services consumer loans.
- 8 (2) "Consumer loan" has the meaning set forth in Section 4970
- 9 of the Financial Code.

1 (b) A mortgage broker who provides brokerage services to a  
2 borrower is the fiduciary of the borrower, and any violation of the  
3 person's fiduciary duties shall be a violation of this section. A  
4 mortgage broker who arranges a consumer loan owes this fiduciary  
5 duty to the borrower regardless of whether the mortgage broker  
6 may be acting for anyone else as an agent in the course of the loan  
7 transaction.

8 (c) In addition to duties imposed by other statutes or at common  
9 law, a mortgage broker shall comply with all of the following  
10 duties, which may not be waived by the borrower or modified by  
11 the mortgage broker:

12 (1) A mortgage broker shall act in the borrower's best interest  
13 and in the utmost good faith toward the borrower and shall not  
14 compromise a borrower's right or interest in favor of another's  
15 right or interest, including, but not limited to, a right or interest of  
16 the mortgage broker.

17 (2) A mortgage broker shall safeguard and account for any  
18 money handled for the borrower.

19 (3) A mortgage broker shall follow reasonable and lawful  
20 instructions from the borrower.

21 (4) A mortgage broker shall use reasonable skill, care, and  
22 diligence.

23 (5) A mortgage broker shall clearly disclose to the borrower, in  
24 a timely fashion, all material information that might reasonably  
25 affect the borrower's rights, interests, or ability to receive the  
26 borrower's intended benefit from the consumer loan, including,  
27 but not limited to, total compensation the mortgage broker would  
28 receive from any of the loan options the mortgage broker presents  
29 to the borrower.

30 (6) A mortgage broker shall make reasonable efforts to secure  
31 a loan that is in the best interests of the borrower considering all  
32 the circumstances, including, but not limited to, the product type,  
33 rates, charges, and repayment terms of the consumer loan.

34 (7) A mortgage broker shall not make or cause to be made,  
35 directly or indirectly, any false, deceptive, or misleading statement,  
36 representation, or omission in connection with a consumer loan.

37 (8) A mortgage broker shall not accept, give, or charge any  
38 undisclosed compensation or realize any undisclosed remuneration,  
39 whether through direct or indirect means, that inures to the benefit  
40 of the mortgage broker on an expenditure made for the borrower.

- 1 (d) ~~(1)~~ A mortgage broker shall not steer, counsel, or direct a  
2 borrower to a consumer loan with rates, charges, principal amount,  
3 or prepayment terms that are more costly than that for which the  
4 borrower qualifies.
- 5 ~~(2)~~ If unable to suggest, offer, or recommend to a borrower a  
6 consumer loan that is not more expensive than that for which the  
7 consumer qualifies, a mortgage broker shall disclose both of the  
8 following to the consumer:
- 9 ~~(A)~~ That the lenders with whom the mortgage broker has a  
10 business relationship do not offer a consumer loan that is not more  
11 expensive than that for which the borrower qualifies, but that other  
12 creditors may offer such a loan.
- 13 ~~(B)~~ The reasons that the products and services offered by the  
14 lenders with whom the mortgage broker has a business relationship  
15 are not available to, or reasonably advantageous for, the borrower.
- 16 (e) (1) A mortgage broker shall not receive, directly or  
17 indirectly, any compensation for placing a borrower in a consumer  
18 loan that is more costly than that for which the borrower qualifies,  
19 or that is based on, or varies with, the terms of any home mortgage  
20 loan, other than the amount of loan principal.
- 21 (2) Notwithstanding paragraph (1), in a consumer loan other  
22 than a high-cost loan, a subprime loan, or a nontraditional loan, a  
23 mortgage broker may receive compensation in the form of an  
24 increased rate not to exceed ~~100~~ 200 basis points above the par  
25 rate for which the borrower qualifies, provided all of the following  
26 are satisfied:
- 27 (A) The mortgage broker receives no other compensation,  
28 however denominated, directly or indirectly, from the borrower,  
29 creditor, or other mortgage originator.
- 30 (B) The loan does not include discount points, origination points,  
31 or rate reduction points, however denominated, or any payment  
32 reduction fee, however denominated.
- 33 (C) The loan does not include a prepayment penalty.
- 34 (D) There are no other closing costs associated with the loan,  
35 except for fees to government officials or amounts to fund escrow  
36 accounts for taxes and insurance.
- 37 (f) For a period of one year from the consummation of a  
38 consumer loan that was negotiated or arranged by a mortgage  
39 broker, that mortgage broker shall not engage in direct marketing  
40 or initiate any communication with the borrower regarding

1 refinancing of that consumer loan. “Direct marketing” and  
2 “communication” shall include any communication directed at a  
3 specific person without the use of intervening media, including,  
4 but not limited to, the following methods: telephone, electronic  
5 mail, United States mail or other form of courier service, and  
6 in-person communication. This subdivision shall not restrict a  
7 broker from responding to specific customer inquiries regarding  
8 refinancing.

9 (g) A mortgage broker who fails to comply with the provisions  
10 of this section shall be civilly liable to the consumer in an amount  
11 equal to any actual damages suffered by the consumer, plus  
12 attorneys fees and costs. A court may, in addition to any other  
13 remedy, award punitive damages to the consumer upon a finding  
14 that damages are warranted pursuant to Section 3294 of the Civil  
15 Code.

16 (h) The duties, rights, and remedies provided in this section are  
17 cumulative and in addition to any other duties, rights, and remedies  
18 provided by law.

19 SEC. 2. Section 10150.1 is added to the Business and  
20 Professions Code, to read:

21 10150.1. (a) Any real estate broker who acts pursuant to  
22 Section 10131.1 or subdivision (d) or (c) of Section 10131, and  
23 who makes, arranges, or services loans secured by real property  
24 containing one to four residential units, shall maintain a surety  
25 bond in accordance with this section. The principal amount of the  
26 bond shall be in an amount and form prescribed by regulations of  
27 the commissioner. The regulations shall provide for a varying bond  
28 amount based upon a licensee’s volume of business as a real estate  
29 broker that negotiates loans as a mortgage broker and any other  
30 relevant factors as determined by the commissioner, but in no case  
31 shall the bond be less than one hundred thousand dollars (\$100,000)  
32 nor more than five hundred thousand dollars (\$500,000); provided,  
33 however, that upon a determination by the commissioner that the  
34 licensee is not in compliance with any provision of this chapter,  
35 or Division 1.6 (commencing with Section 4970) of the Financial  
36 Code, or any rule or order adopted or issued to implement or  
37 enforce any of these provisions, the commissioner may require the  
38 licensee to post a surety bond twice the amount of the bond as is  
39 required consistent with the regulations. The bond shall be payable  
40 to the commissioner and issued by an insurer authorized to do

1 business in this state. A copy of the bond, including any and all  
2 riders and endorsements executed subsequent to the effective date  
3 of the bond, shall be filed with the commissioner for review and  
4 approval prior to execution, and filed with the commissioner within  
5 10 days of execution. For licensees with multiple licensed  
6 locations, only one surety bond is required.

7 (b) The bond required under this section shall be used for the  
8 recovery of expenses, fines, and fees levied by the commissioner  
9 in accordance with this division or for losses or damages incurred  
10 by borrowers or consumers as the result of a licensee's  
11 noncompliance with the requirements of this chapter or Division  
12 1.6 (commencing with Section 4970) of the Financial Code.

13 SEC. 3. Section 10156.8 of the Business and Professions Code  
14 is amended to read:

15 10156.8. As one of the conditions to the issuance of a restricted  
16 license authorized by Section 10156.5 the commissioner may  
17 require the filing of surety bonds in such form and condition as he  
18 may require in respect to the restricted licensee for the protection  
19 of persons or classes of persons with whom said licensee may deal.  
20 With respect to a licensee who acts pursuant to Section 10131.1  
21 or subdivision (d) or (e) of Section 10131, and who makes,  
22 arranges, or services loans secured by real property containing one  
23 to four residential units, the commissioner shall require, as one of  
24 the conditions to the issuance of a restricted license, the filing of  
25 a surety bond in an amount no less than two hundred fifty thousand  
26 dollars (\$250,000).

27 ~~SEC. 4. Section 22004.5 is added to the Financial Code, to~~  
28 ~~read:~~

29 ~~22004.5. For purposes of this division, "mortgage broker"~~  
30 ~~means a licensee who engages in the business of negotiating~~  
31 ~~consumer loans, as defined in Section 4970, or who performs any~~  
32 ~~act as a negotiator in connection with those consumer loans made~~  
33 ~~by a finance lender licensed under this division.~~

34 ~~SEC. 5. Section 22103 of the Financial Code is amended to~~  
35 ~~read:~~

36 ~~22103. At the time of filing the application, the applicant shall~~  
37 ~~pay to the commissioner the sum of two hundred fifty dollars~~  
38 ~~(\$250) as a fee for investigating the application, plus the cost of~~  
39 ~~fingerprint processing and the criminal history record check under~~  
40 ~~Section 22101.5, and seven hundred fifty dollars (\$750) as an~~

1 application fee. The licensee shall also pay an annual renewal fee  
2 of six hundred dollars (\$600). The investigation fee, including the  
3 amount for the criminal history record check, and the application  
4 fee are not refundable if an application is denied or withdrawn.

5 SEC. 6. Section 22104 of the Financial Code is amended to  
6 read:

7 22104. ~~The applicant shall file with the application financial~~  
8 ~~statements prepared in accordance with generally accepted~~  
9 ~~accounting principles and acceptable to the commissioner that~~  
10 ~~indicate a net worth of at least fifty thousand dollars (\$50,000). A~~  
11 ~~licensee shall maintain a net worth of at least fifty thousand dollars~~  
12 ~~(\$50,000) at all times.~~

13 SEC. 7. Section 22112 of the Financial Code is amended to  
14 read:

15 22112. (a) ~~A finance lender licensed under this division shall~~  
16 ~~maintain a surety bond in accordance with this subdivision in the~~  
17 ~~amount of twenty-five thousand dollars (\$25,000).~~

18 (b) ~~A mortgage broker licensed under this division shall maintain~~  
19 ~~a surety bond in an amount and form prescribed by regulations of~~  
20 ~~the commissioner. The regulations shall provide for a varying bond~~  
21 ~~amount based upon a licensee's volume of business and any other~~  
22 ~~relevant factors as determined by the commissioner, but in no case~~  
23 ~~shall the bond be less than one hundred thousand dollars (\$100,000)~~  
24 ~~nor more than five hundred thousand dollars (\$500,000); provided,~~  
25 ~~however, that upon a determination by the commissioner that the~~  
26 ~~licensee is not in compliance with any provision of this division,~~  
27 ~~or Division 1.6 (commencing with Section 4970), or any rule or~~  
28 ~~order adopted or issued to implement or enforce any of these~~  
29 ~~provisions, the commissioner may require the licensee to post a~~  
30 ~~surety bond twice the amount of the bond as is required consistent~~  
31 ~~with the regulations.~~

32 (c) ~~The bonds required under subdivisions (a) and (b) shall be~~  
33 ~~payable to the commissioner and issued by an insurer authorized~~  
34 ~~to do business in this state. An original surety bond, including any~~  
35 ~~and all riders and endorsements executed subsequent to the~~  
36 ~~effective date of the bond, shall be filed with the commissioner~~  
37 ~~within 10 days of execution. For licensees with multiple licensed~~  
38 ~~locations, only one surety bond is required. The bond shall be used~~  
39 ~~for the recovery of expenses, fines, and fees levied by the~~  
40 ~~commissioner in accordance with this division or for losses or~~

1 damages incurred by borrowers or consumers as the result of a  
2 licensee's noncompliance with the requirements of this division;  
3 or Division 1.6 (commencing with Section 4970).

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

11 SEC. 8. ~~Section 22168 is added to the Financial Code, to read:~~

12 ~~22168. (a) For purposes of this section, and notwithstanding~~  
13 ~~Section 22203, "consumer loan" has the meaning set forth in~~  
14 ~~Section 4970.~~

15 (b) ~~A mortgage broker who provides brokerage services to a~~  
16 ~~borrower in connection with a consumer loan is the fiduciary of~~  
17 ~~the borrower, and any violation of the person's fiduciary duties~~  
18 ~~shall be a violation of this section. A mortgage broker who arranges~~  
19 ~~a consumer loan owes this fiduciary duty to the borrower regardless~~  
20 ~~of whether the mortgage broker may be acting for anyone else as~~  
21 ~~an agent in the course of the loan transaction.~~

22 (c) ~~In addition to duties imposed by other statutes or at common~~  
23 ~~law, a mortgage broker shall comply with all of the following~~  
24 ~~duties, which may not be waived by the borrower or modified by~~  
25 ~~the mortgage broker:~~

26 (1) ~~A mortgage broker shall act in the borrower's best interest~~  
27 ~~and in the utmost good faith toward the borrower and shall not~~  
28 ~~compromise a borrower's right or interest in favor of another's~~  
29 ~~right or interest, including, but not limited, to a right or interest of~~  
30 ~~the mortgage broker.~~

31 (2) ~~A mortgage broker shall safeguard and account for any~~  
32 ~~money handled for the borrower.~~

33 (3) ~~A mortgage broker shall follow reasonable and lawful~~  
34 ~~instructions from the borrower.~~

35 (4) ~~A mortgage broker shall use reasonable skill, care, and~~  
36 ~~diligence.~~

37 (5) ~~A mortgage broker shall clearly disclose to the borrower, in~~  
38 ~~a timely fashion, all material information that might reasonably~~  
39 ~~affect the borrower's rights, interests, or ability to receive the~~  
40 ~~borrower's intended benefit from the consumer loan, including;~~

1 but not limited to, total compensation the mortgage broker would  
2 receive from any of the loan options the mortgage broker presents  
3 to the borrower.

4 ~~(6) A mortgage broker shall make reasonable efforts to secure~~  
5 ~~a loan that is in the best interests of the borrower considering all~~  
6 ~~the circumstances, including, but not limited to, the product type,~~  
7 ~~rates, charges, and repayment terms of the consumer loan.~~

8 ~~(7) A mortgage broker shall not make or cause to be made,~~  
9 ~~directly or indirectly, any false, deceptive, or misleading statement,~~  
10 ~~representation, or omission in connection with a consumer loan.~~

11 ~~(8) A mortgage broker shall not accept, give, or charge any~~  
12 ~~undisclosed compensation or realize any undisclosed remuneration,~~  
13 ~~whether through direct or indirect means, that inures to the benefit~~  
14 ~~of the mortgage broker on an expenditure made for the borrower.~~

15 ~~(d) (1) A mortgage broker shall not steer, counsel, or direct a~~  
16 ~~borrower to a consumer loan with rates, charges, principal amount,~~  
17 ~~or prepayment terms that are more costly than that for which the~~  
18 ~~borrower qualifies.~~

19 ~~(2) If unable to suggest, offer, or recommend to a borrower a~~  
20 ~~consumer loan that is not more expensive than that for which the~~  
21 ~~consumer qualifies, a mortgage broker shall disclose both of the~~  
22 ~~following to the consumer:~~

23 ~~(A) That the lenders with whom the mortgage broker has a~~  
24 ~~business relationship do not offer a consumer loan that is not more~~  
25 ~~expensive than that for which the borrower qualifies, but that other~~  
26 ~~creditors may offer such a loan.~~

27 ~~(B) The reasons that the products and services offered by the~~  
28 ~~lenders with whom the mortgage broker has a business relationship~~  
29 ~~are not available to, or reasonably advantageous for, the borrower.~~

30 ~~(e) (1) A mortgage broker shall not receive, directly or~~  
31 ~~indirectly, any compensation for placing a borrower in a consumer~~  
32 ~~loan that is more costly than that for which the borrower qualifies;~~  
33 ~~or that is based on, or varies with, the terms of any home mortgage~~  
34 ~~loan, other than the amount of loan principal.~~

35 ~~(2) Notwithstanding paragraph (1), in a consumer loan other~~  
36 ~~than a high-cost loan, a subprime loan, or a nontraditional loan, a~~  
37 ~~mortgage broker may receive compensation in the form of an~~  
38 ~~increased rate not to exceed 100 basis points above the par rate~~  
39 ~~for which the borrower qualifies, provided all of the following are~~  
40 ~~satisfied:~~



1 ~~(A) The mortgage broker receives no other compensation,~~  
2 ~~however denominated, directly or indirectly, from the borrower,~~  
3 ~~creditor, or other mortgage originator.~~

4 ~~(B) The loan does not include discount points, origination points,~~  
5 ~~or rate reduction points, however denominated, or any payment~~  
6 ~~reduction fee, however denominated.~~

7 ~~(C) The loan does not include a prepayment penalty.~~

8 ~~(D) There are no other closing costs associated with the loan,~~  
9 ~~except for fees to government officials or amounts to fund escrow~~  
10 ~~accounts for taxes and insurance.~~

11 ~~(f) For a period of one year from the consummation of a~~  
12 ~~consumer loan that was negotiated or arranged by a mortgage~~  
13 ~~broker, that mortgage broker shall not engage in direct marketing~~  
14 ~~or initiate any communication with the borrower regarding~~  
15 ~~refinancing of that consumer loan. "Direct marketing" and~~  
16 ~~"communication" shall include any communication directed at a~~  
17 ~~specific person without the use of intervening media, including,~~  
18 ~~but not limited to, the following methods: telephone, electronic~~  
19 ~~mail, United States mail or other form of courier service, and~~  
20 ~~in-person communication. This subdivision shall not restrict a~~  
21 ~~mortgage broker from responding to specific customer inquiries~~  
22 ~~regarding refinancing.~~

23 ~~(g) A mortgage broker who fails to comply with the provisions~~  
24 ~~of this section shall be civilly liable to the consumer in an amount~~  
25 ~~equal to any actual damages suffered by the consumer, plus~~  
26 ~~attorneys fees and costs. A court may, in addition to any other~~  
27 ~~remedy, award punitive damages to the consumer upon a finding~~  
28 ~~that damages are warranted pursuant to Section 3294 of the Civil~~  
29 ~~Code.~~

30 ~~(h) The duties, rights, and remedies provided in this section are~~  
31 ~~cumulative and in addition to any other duties, rights, and remedies~~  
32 ~~provided by law.~~

33 ~~SEC. 9. Section 50003.5 is added to the Financial Code, to~~  
34 ~~read:~~

35 ~~50003.5. For purposes of this division, "mortgage broker"~~  
36 ~~means any licensee under this division who provides brokerage~~  
37 ~~services pursuant to Chapter 9 (commencing with Section 50700)~~  
38 ~~in connection with a consumer loan, as defined in Section 4970.~~

39 ~~SEC. 10. Section 50121 of the Financial Code is amended to~~  
40 ~~read:~~

1 ~~50121. The commissioner shall issue a license upon the~~  
2 ~~satisfaction of all of the following:~~

3 ~~(a) The filing with the commissioner of a complete and verified~~  
4 ~~application for licensure:~~

5 ~~(b) The filing as an exhibit to the application of a listing of~~  
6 ~~material judgments filed against, and bankruptcy petitions filed~~  
7 ~~by, the applicant for the preceding five years, and the disposition~~  
8 ~~thereof:~~

9 ~~(c) The payment of a nonrefundable investigation fee of two~~  
10 ~~hundred fifty dollars (\$250), plus the cost of fingerprint processing~~  
11 ~~and clearance, and an application filing fee of nine hundred dollars~~  
12 ~~(\$900):~~

13 ~~(d) An investigation of the statements required by Section 50124~~  
14 ~~based upon which the commissioner is able to issue findings that~~  
15 ~~the financial responsibility, criminal records (verified by~~  
16 ~~fingerprint, at the discretion of the commissioner), experience,~~  
17 ~~character, and general fitness of the applicant and of the partners~~  
18 ~~or members thereof, if the applicant is a partnership or association;~~  
19 ~~and of the principal officers and directors thereof, if the license~~  
20 ~~applicant is a corporation, support a finding that the business will~~  
21 ~~be operated honestly, fairly, and in accordance with the~~  
22 ~~requirements of this division:~~

23 ~~SEC. 11. Section 50205 of the Financial Code is amended to~~  
24 ~~read:~~

25 ~~50205. (a) A licensee shall maintain a surety bond in~~  
26 ~~accordance with this subdivision. The bond shall be used for the~~  
27 ~~recovery of expenses, fines, and fees levied by the commissioner~~  
28 ~~in accordance with this division or for losses or damages incurred~~  
29 ~~by borrowers or consumers as the result of a licensee's~~  
30 ~~noncompliance with the requirements of this division. Except as~~  
31 ~~specified in subdivision (b), the bond shall be payable when the~~  
32 ~~licensee fails to comply with a provision of this division and shall~~  
33 ~~be in the amount of fifty thousand dollars (\$50,000), and may be~~  
34 ~~increased by order of the commissioner to one hundred thousand~~  
35 ~~dollars (\$100,000) upon a determination by the commissioner that~~  
36 ~~the licensee is not in compliance with any provision of this chapter~~  
37 ~~or any rule or order adopted or issued by the commissioner to~~  
38 ~~implement or enforce provisions of this chapter:~~

39 ~~(b) A mortgage broker shall maintain a surety bond in an~~  
40 ~~amount prescribed by regulations of the commissioner. The~~

1 regulations shall provide for a varying bond amount based upon  
2 a licensee's volume of business and any other relevant factors as  
3 determined by the commissioner, but in no case shall the bond be  
4 less than one hundred thousand dollars (\$100,000) nor more than  
5 five hundred thousand dollars (\$500,000); provided, however, that  
6 upon a determination by the commissioner that the licensee is not  
7 in compliance with any provision of this division, or Division 1.6  
8 (commencing with Section 4970), or any rule or order adopted or  
9 issued to implement or enforce any of these provisions, the  
10 commissioner may require the licensee to post a surety bond twice  
11 the amount of the bond as is required consistent with the  
12 regulations:

13 (c) ~~The bonds required under subdivisions (a) and (b) shall be~~  
14 ~~payable to the commissioner and issued by an insurance company~~  
15 ~~authorized to do business in this state. An original surety bond,~~  
16 ~~including any and all riders and endorsements executed subsequent~~  
17 ~~to the effective date of the bond, shall be filed with the~~  
18 ~~commissioner within 10 days of its execution.~~

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

26 SEC. 12. Section 50513 is added to the Financial Code, to read:  
27 50513. (a) A mortgage broker who provides brokerage services  
28 to a borrower is the fiduciary of the borrower, and any violation  
29 of the person's fiduciary duties shall be a violation of this section.  
30 A mortgage broker who arranges a consumer loan owes this  
31 fiduciary duty to the borrower regardless of whether the mortgage  
32 broker may be acting for anyone else as an agent in the course of  
33 the loan transaction:

34 (b) ~~In addition to duties imposed by other statutes or at common~~  
35 ~~law, a mortgage broker shall comply with all of the following~~  
36 ~~duties, which may not be waived by the borrower or modified by~~  
37 ~~the mortgage broker:~~

38 (1) ~~A mortgage broker shall act in the borrower's best interest~~  
39 ~~and in the utmost good faith toward the borrower and shall not~~  
40 ~~compromise a borrower's right or interest in favor of another's~~

1 right or interest, including, but not limited to, a right or interest of  
2 the mortgage broker.

3 ~~(2) A mortgage broker shall safeguard and account for any~~  
4 ~~money handled for the borrower.~~

5 ~~(3) A mortgage broker shall follow reasonable and lawful~~  
6 ~~instructions from the borrower.~~

7 ~~(4) A mortgage broker shall use reasonable skill, care, and~~  
8 ~~diligence.~~

9 ~~(5) A mortgage broker shall clearly disclose to the borrower, in~~  
10 ~~a timely fashion, all material information that might reasonably~~  
11 ~~affect the borrower's rights, interests, or ability to receive the~~  
12 ~~borrower's intended benefit from the consumer loan, including,~~  
13 ~~but not limited to, total compensation the mortgage broker would~~  
14 ~~receive from any of the loan options the mortgage broker presents~~  
15 ~~to the borrower.~~

16 ~~(6) A mortgage broker shall make reasonable efforts to secure~~  
17 ~~a loan that is in the best interests of the borrower considering all~~  
18 ~~the circumstances, including, but not limited to, the product type,~~  
19 ~~rates, charges, and repayment terms of the consumer loan.~~

20 ~~(7) A mortgage broker shall not make or cause to be made,~~  
21 ~~directly or indirectly, any false, deceptive, or misleading statement,~~  
22 ~~representation, or omission in connection with a consumer loan.~~

23 ~~(8) A mortgage broker shall not accept, give, or charge any~~  
24 ~~undisclosed compensation or realize any undisclosed remuneration,~~  
25 ~~whether through direct or indirect means, that inures to the benefit~~  
26 ~~of the mortgage broker on an expenditure made for the borrower.~~

27 ~~(e) (1) A mortgage broker shall not steer, counsel, or direct a~~  
28 ~~borrower to a consumer loan with rates, charges, principal amount,~~  
29 ~~or prepayment terms that are more costly than that for which the~~  
30 ~~borrower qualifies.~~

31 ~~(2) If unable to suggest, offer, or recommend to a borrower a~~  
32 ~~consumer loan that is not more expensive than that for which the~~  
33 ~~consumer qualifies, a mortgage broker shall disclose both of the~~  
34 ~~following to the consumer:~~

35 ~~(A) That the lenders with whom the mortgage broker has a~~  
36 ~~business relationship do not offer a consumer loan that is not more~~  
37 ~~expensive than that for which the borrower qualifies, but that other~~  
38 ~~creditors may offer such a loan.~~

1 ~~(B) The reasons that the products and services offered by the~~  
2 ~~lenders with whom the mortgage broker has a business relationship~~  
3 ~~are not available to, or reasonably advantageous for, the borrower.~~

4 ~~(d) (1) A mortgage broker shall not receive, directly or~~  
5 ~~indirectly, any compensation for placing a borrower in a consumer~~  
6 ~~loan that is more costly than that for which the borrower qualifies,~~  
7 ~~or that is based on, or varies with, the terms of any home mortgage~~  
8 ~~loan, other than the amount of loan principal.~~

9 ~~(2) Notwithstanding paragraph (1), in a consumer loan other~~  
10 ~~than a high-cost loan, a subprime loan, or a nontraditional loan, a~~  
11 ~~mortgage broker may receive compensation in the form of an~~  
12 ~~increased rate not to exceed 100 basis points above the par rate~~  
13 ~~for which the borrower qualifies, provided all of the following are~~  
14 ~~satisfied:~~

15 ~~(A) The mortgage broker receives no other compensation,~~  
16 ~~however denominated, directly or indirectly, from the borrower,~~  
17 ~~creditor, or other mortgage originator.~~

18 ~~(B) The loan does not include discount points, origination points,~~  
19 ~~or rate reduction points, however denominated, or any payment~~  
20 ~~reduction fee, however denominated.~~

21 ~~(C) The loan does not include a prepayment penalty.~~

22 ~~(D) There are no other closing costs associated with the loan,~~  
23 ~~except for fees to government officials or amounts to fund escrow~~  
24 ~~accounts for taxes and insurance.~~

25 ~~(e) For a period of one year from the consummation of a~~  
26 ~~consumer loan that was negotiated or arranged by a mortgage~~  
27 ~~broker, that mortgage broker shall not engage in direct marketing~~  
28 ~~or initiate any communication with the borrower regarding~~  
29 ~~refinancing of that consumer loan. "Direct marketing" and~~  
30 ~~"communication" shall include any communication directed at a~~  
31 ~~specific person without the use of intervening media, including,~~  
32 ~~but not limited to, the following methods: telephone, electronic~~  
33 ~~mail, United States mail or other form of courier service, and~~  
34 ~~in-person communication. This subdivision shall not restrict a~~  
35 ~~mortgage broker from responding to specific customer inquiries~~  
36 ~~regarding refinancing.~~

37 ~~(f) A mortgage broker who fails to comply with the provisions~~  
38 ~~of this section shall be civilly liable to the consumer in an amount~~  
39 ~~equal to any actual damages suffered by the consumer, plus~~  
40 ~~attorneys fees and costs. A court may, in addition to any other~~

1 ~~remedy, award punitive damages to the consumer upon a finding~~  
2 ~~that damages are warranted pursuant to Section 3294 of the Civil~~  
3 ~~Code.~~

4 ~~(g) The duties, rights, and remedies provided in this section are~~  
5 ~~cumulative and in addition to any other duties, rights, and remedies~~  
6 ~~provided by law.~~

7 ~~SEC. 13.~~

8 *SEC. 4.* No reimbursement is required by this act pursuant to  
9 Section 6 of Article XIII B of the California Constitution because  
10 the only costs that may be incurred by a local agency or school  
11 district will be incurred because this act creates a new crime or  
12 infraction, eliminates a crime or infraction, or changes the penalty  
13 for a crime or infraction, within the meaning of Section 17556 of  
14 the Government Code, or changes the definition of a crime within  
15 the meaning of Section 6 of Article XIII B of the California  
16 Constitution.

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Page 1

Date of Hearing: April 15, 2008

ASSEMBLY COMMITTEE ON JUDICIARY  
Dave Jones, Chair  
AB 2880 (Wolk) - As Amended: April 10, 2008

SUBJECT : MORTGAGE BROKERS

KEY ISSUE : SHOULD MORTGAGE BROKERS BE REQUIRED TO HONOR LEGAL DUTIES TO BORROWERS AND BE PROHIBITED FROM DEMANDING EXCESSIVE COMPENSATION?

FISCAL EFFECT : As currently in print this bill is keyed fiscal.

SYNOPSIS

Mortgage brokers have become an increasing presence in the mortgage origination market, reportedly originating 45 percent of all mortgages, and 72 percent of subprime loans. Although many mortgage brokers serve the interests of their clients professionally and responsibly, the author argues that existing rules contain skewed financial incentives that invite abuse, while offering little recourse for borrowers who are harmed. This bill focuses on DRE-regulated mortgage brokers, covered under the Real Estate Law, and seeks to remedy the situation by setting forth specific enforceable broker duties, banning broker kickbacks for steering borrowers to higher interest loans, and increasing broker bonding requirements. Supporters argue that these common sense solutions will realign the interests of mortgage brokers with the interests of borrowers, and increase broker accountability. The bill is opposed by the Mortgage Association and REALTORS, who object to the new bonding requirements and additionally argue that some provisions are confusing or ambiguous.

SUMMARY : Regulates mortgage brokers in the interest of consumer protection and responsible lending. Specifically, this bill :

- 1) Under the Real Estate Law (REL), defines "mortgage broker" as a real estate broker who acts according to provisions in the Business and Professions Code, who makes, arranges or services consumer loans.
- 2) Provides that a mortgage broker, as defined, that provides .

□

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Page 2

brokerage services under the REL has a fiduciary duty to the borrower and accordingly requires a mortgage broker, acting under the REL to do the following:

- a) Act in the borrower's best interest and utmost good faith;
  - b) Safeguard and account for any money handled for the borrower;
  - c) Follow reasonable instructions from the borrower;
  - d) Use reasonable skill, care, and diligence;
  - e) Disclose all material information that might reasonably affect the borrower's rights, interest, or ability to receive the borrower's intended benefit from the consumer loan, including, but not limited to, total compensation the broker would receive from any loan options the broker presents to the borrower;
  - f) Not make any false or misleading statements;
  - g) Not charge, give or receive any undisclosed compensation or remuneration;
  - h) Not steer, counsel, or direct a borrower to a consumer loan with rates, charges, principle amount or prepayment terms that are more costly than that for which the borrower qualifies.
- 3) Prohibits a mortgage broker, as defined, from receiving any compensation for placing a borrower into a consumer loan that is more costly than that for which the borrower qualifies, or that is based on or varies with the terms of any home mortgage loan, except that a broker may receive compensation in the form of an increased rate of 200 basis points above par if: the broker receives no other compensation; the loan does not include discount points, origination points, or rate reduction points, however denominated; the loan does not include a

prepayment penalty; and there are no other closing cost associated with the loan, except for fees to government officials or amounts to fund escrow accounts for taxes and insurance.

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Page 3

- 4) Provides that for a period of one year from the consummation of a consumer loan that was negotiated or arranged by a broker, the mortgage broker shall not engage in directing marketing or initiating any communication with the borrower regarding refinancing of that consumer loan.
- 5) Specifies that a mortgage broker that violates these new provisions is civilly liable to the consumer for actual damages, plus attorney's fees and that a court may award punitive damages.

EXISTING LAW :

- 1) Provides for the regulation of mortgage brokers and real estate agents under the Real Estate Law as administered by the Department of Real Estate (DRE). (Business and Profession Code 10000 et seq.)
- 2) Specifies that anyone who provides brokerage services for a borrower under the covered loan law is a fiduciary of the borrower. (Financial Code Section 4979.5.)
- 3) Defines "consumer loan" as consumer credit transaction that is secured by real property located in this state used, or intended to be used or occupied, as the principal dwelling of the consumer that is improved by a one-to-four residential unit. "Consumer loan" does not include a reverse mortgage, an open line of credit as defined in Part 226 of Title 12 of the Code of Federal Regulations (Regulation Z), or a consumer credit transaction that is secured by rental property or second homes. "Consumer loan" does not include a bridge loan. (Financial Code Section 4970(d).)

COMMENTS : The author explains the reason for the bill by stating, "Mortgage brokers have become an increasing presence in the mortgage origination market. According to the Mortgage Bankers Association, as of 2006, brokers were originating 45 percent of all mortgages, and 72 percent of subprime loans. Although many mortgage brokers serve the interests of their clients professionally and responsibly, the existing rules contain skewed financial incentives that invite abuse, while offering little recourse for borrowers who are harmed. AB 2880 seeks to remedy the situation by setting forth specific enforceable broker duties, banning broker kickbacks for steering borrowers to higher interest loans, and increasing broker

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Page 4

bonding requirements. These common sense solutions will realign the interests of mortgage brokers with the interests of borrowers, and increase broker accountability."

As others have noted, the recent subprime mortgage market turmoil has brought increasing awareness to the role that mortgage brokers play in the lending process. Unfortunately, the law is unclear with regard to the duty brokers owe to borrowers. While consumers frequently believe that a mortgage broker represents the borrower's best interest, the National Association of Mortgage Brokers believes that brokers work for neither the consumer nor the lender.

Background On Mortgage Brokering. The greatest number of independent mortgage brokers in California are licensed and subject to regulation by DRE. They act as an intermediary between borrowers and lenders. This is different than a loan originator at a financial institution who offers loans on behalf of only that entity. When potential borrowers go to a bank for a mortgage loan, their choices are limited to the products that are offered by that institution, whereas a mortgage broker has relationships with multiple institutions and can offer more product choices. A broker may have a relationship with ten, fifteen or even twenty lending institutions and in the course of a day, many of these lenders supply brokers with a rate sheet that details the price at which they will fund a mortgage. These prices can differ depending on, among other things, the amount of the loan financed, loan to value ratio, borrowers FICO score, and length of time of the loan.

Mortgage brokers are funded based on fees for originating loans.



For example, they may collect a set fee, or a percentage based on the amount of the loan, typically 1-2% from the borrower paid up front. An additional way in which brokers can receive compensation is through the use of Yield Spread Premiums (YSPs): These are points paid by the lender to the broker for originating a loan at an above-par rate, meaning slightly higher than that for which the borrower may qualify. A YSP is financed over the life of the loan. This practice, in recent years, has come under increasing scrutiny due to the appearance that it is an enticement for brokers to steer borrowers into costly loans than they could otherwise get. Industry has responded that YSPs serve as a way for borrowers to pay no money toward closing cost as the YSP is used to refund the broker their payment for cost associated with the transaction. This

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Page 5

view is a subject of dispute among supporters and opponents of this bill.

This Bill Refines The Definition Of Mortgage Broker . With regard to DRE licensed brokers, this bill creates the definition of "mortgage broker" as a real estate broker as defined under current law. This definition is in line with commonly accepted descriptions of loan brokering activity as it relates to DRE licensees. This approach would set apart those licensees from the real estate broker definition of someone who can both negotiate the buying and selling of property, but also the brokering of loans.

Fiduciary relationship : A fiduciary is a person having a duty, created by his or her undertaking, to act primarily for another's benefit in matters connected with such undertaking. A fiduciary duty is a duty to act for someone else's best interest.

The fiduciary duty has existed in common law for some time, and the DRE apparently considers its licensees that broker loans to owe a fiduciary duty to borrowers. The Spring, 2008 issue of the DRE-published Real Estate Bulletin discusses different types of mortgage brokering, and comments:

Real estate brokers, including when they are acting as mortgage loan brokers, are fiduciaries of their clients. A fiduciary relationship is a relationship involving a high degree of trust, fidelity, integrity and confidence, and the exercise of professional expertise or special knowledge. Being a fiduciary imposes the highest standard of care on the broker and imposes duties including, but not limited to: the obligation to exercise diligence and skill in representing a client, to fully and truthfully disclose to a client all material facts, and to exercise the utmost honesty, candor, and unselfishness toward the client. A real estate broker must work in the best interests of his or her principal.

Additionally, the Civil Code specifies that DRE-regulated real estate agents owe a fiduciary duty to the seller or the buyer of property, depending on who they are representing in the transaction. For DOC licensed RML licensees, a fiduciary duty exist for those licensees who enter into a specific brokerage arrangement with borrowers as noted under the "existing law"

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section of this analysis. No such duty is noted under California law for CFL licensees.

A number of court decisions recognize a fiduciary obligation on the part of mortgage brokers. For example, in *Wyatt v. Union Mortgage Co.*, (1979) 924 Cal. 3d 773 the plaintiffs brought an action alleging a civil conspiracy and breach of duty on the part of the mortgage brokers. The court analogized the obligation of the mortgage brokers to that of insurance agents noting that individuals justifiably rely on agents' advice because of the volume and technical nature of the documents. The court concluded:

There is a second reason why appellants breached their fiduciary obligations toward respondents. In the context of insurance policies, this court has recognized that a fiduciary's duty may extend beyond bare written disclosure of the terms of a transaction to duties of oral disclosure and counseling? The reason in these cases applies to transactions with mortgage loan brokers as well? Against such a backdrop, the broker's failure to disclose orally the true rate of interest, the penalty for late payment of

the swollen size of the balloon payment clearly consisted a breach of broker's fiduciary obligations.

Decisions in other states are to the same effect, including Myer v. Preferred Credit, Inc., (117 Ohio Misc. 2d 8, 15-16 (Ct. Com. Pl. 2001) and Armstrong v. Republic Realty Mortgage Corp., \_ 631 F.2d 1344, 1346 (8th Cir. 1980).

New Bonding Requirements. For DRE licensed brokers, this bill would require a bond to be determined by the volume of the licensee's business as a real estate broker, but no less than \$100,000 and no more than \$500,000. Under current law, DRE licensees do not have a bonding requirement. The need for this requirement is that with the growth in DRE brokers over the last 5 years, many of these licensee's had no "skin in the game" when it came to originating loans and making consumers whole in the event of loss or the licensee's violation of current lending laws.

ARGUMENTS IN SUPPORT : The Center for Responsible Lending writes in support:

First, AB 2880 would set forth specific enforceable broker

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duties to ensure that brokers act in the best interests of the borrowers they represent. In doing so, California would join numerous other states (including Massachusetts, Ohio, Minnesota, North Carolina, Maine, Colorado, Rhode Island) that have imposed specific duties upon brokers.

Second, AB 2880 would ban broker kickbacks for steering borrowers to higher interest loans ("yield spread premiums," or "YSPs"), and more generally, the steering of borrowers to loan terms worse than those for which the borrower qualifies?

Third, AB 2880 would add a bond requirement for mortgage brokers working under the Real Estate License (the license held by most mortgage brokers), and would increase the bond requirements for mortgage brokers acting under the other available licenses. . .

?The bonding provisions of AB 2880 require that mortgage brokers have more skin in the game to ensure that they have more of a long-term interest in the loans they broker, and to ensure that borrowers have a source of redress in the event of an abusive or predatory loan. It would provide for a sliding scale bonding requirement, depending on the broker's previous volume of mortgage originations, with the amounts capped at \$500,000, the same level as in New York.

ARGUMENTS IN OPPOSITION : The California Mortgage Association (CMA), is opposed to the measure, stating: "Some of the proposed new language largely restates existing law in the area of fiduciary duty, but other provisions relating to loan products are confusing. For example, proposed new Business and Professions Code Section 10133.25 (d) relates to the obligation to not steer borrowers to loans that are more "costly" than those for which the borrower qualifies. Because loans have a variety of features, it is not always possible to determine which is more "costly." Further, the language itself is confusing: If the broker is unable to "suggest a loan" which is "not more expensive," then a disclosure is to be made that the lenders with whom the broker works "do not offer" a loan that is "not more expensive."

"Beyond the confusing obligations on brokers, we are strongly opposed to the proposed new bonding requirements in Section 2 of the bill. A bonding requirement with a minimum of \$100,000 and

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\$500,000 will simply put honest, hardworking real estate professionals out of business, reducing loan choices for consumers. Bonds of this magnitude will be extraordinarily expensive, and many licensees will not qualify. Further, bond availability comes and goes according to market forces. Finally, the bill contains little guidance on how anyone would recover under the bond."

The California Association of Realtors is likewise opposed, arguing that "the language of proposed Section 10133.25 of the Business and Professions Code creates an impossibly ambiguous standard for licensees to abide by and inappropriately limits subsequent ability to help borrowers re-finance loans when their

circumstances improve." CAR further states, "We also oppose the attempt to impose a bond requirement upon mortgage brokerage. Our experience has been that they are of limited utility and very costly. The recent Westminster Investment case, Schweitzer v. Westminster Investments case: S160152, Supreme Court of California, decided earlier this spring overturned such a bonding requirement on just these grounds."

Related legislation . AB 69 (Lieu) requires loan servicers to report data regarding their loan modification efforts. AB 180 (Bass) revises the law related to foreclosure consultants to ensure that those facing foreclosure do not become further victimized by scams or outrageous fees. Provide for a registration process for persons acting as foreclosure consultants. AB 529 (Torrico) requires lenders to notify borrowers of an impending interest rate reset of an adjustable rate mortgage. AB 1830 (Lieu) of 2008, would enact the subprime lending reform act. This bill provides for increased mortgage lending standards and prohibitions concerning high cost, subprime and non-traditional loans. AB 2359 (Jones) holds investors liable for buying loans in violation of state lending laws. AB 2740 (Brownley) provides that a loan servicer, or a bank, credit union, or finance lender that services loans secured by residential real property, owes a duty of good faith and fair dealing to a borrower, and would regulate the fees and charges that may be imposed loan servicer's mortgage loan servicers in addition to establishing various other prohibited acts and requirements.

REGISTERED SUPPORT / OPPOSITION :

Support

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California ACORN (co-sponsor)  
 California Reinvestment Coalition (co-sponsor)  
 Center for Responsible Lending (co-sponsor)  
 Consumer's Union (co-sponsor)  
 AARP  
 Affordable Housing Services  
 Amador-Tuolumne Community Action Agency  
 Asset Policy Initiative of California (APIC)  
 California Alliance for Retired Americans  
 California Coalition for Rural Housing  
 California Reinvestment Coalition  
 California Resources and Training (CARAT)  
 Center for California Homeowner Association Law  
 CHARO Community Development Corp  
 Civic Center Barrio Housing Corporation  
 Community Housing Development Corporation of North Richmond  
 Community Legal Services in East Palo Alto  
 Consumer Action  
 Consumer Federation of California  
 Council on Aging Silicon Valley  
 EARN  
 East Bay Asian Local Development Corp.  
 East Bay Housing Organizations  
 East L.A. Community Corporation (ELACC)  
 East Oakland CDC  
 East Palo Alto Council of Tenants (EPACT) Education Fund  
 Fair Housing Council of San Diego  
 Fair Housing Council of Orange County  
 Fair Housing Council of the San Fernando Valley  
 Fair Housing Law Project  
 Gray Panthers California  
 Housing and Economic Rights Advocates  
 Housing California  
 Housing Rights Center Los Angeles  
 La Raza Centro Legal  
 Los Angeles Coalition to End Hunger & Homelessness  
 MAAC Project  
 Mission Economic Development Agency  
 Neighborhood Partnership Housing Services, Inc.  
 Older Women's League  
 Orange County Community Housing Corporation  
 People Helping People  
 Project Sentinel  
 Public Interest Law Firm

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Rural Community Assistance Corporation  
 San Diego Home Loan Counseling & Education Center  
 S.F. Consortium for Elder Abuse Prevention  
 Sierra Planning & Housing Alliance, Inc.

STAND Affordable Housing  
Unity Council Homeownership Center  
Vermont Slauson Economic Development Corp.  
Watsonville Law Center  
West Company  
San Francisco Assessor-Recorder Phil Ting  
Christi Baker, Chrysalis Consulting Group, LLC  
Matthew Edling

Opposition

California Association of Realtors  
California Mortgage Association

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Analysis Prepared by : Kevin G. Baker / JUD. / (916) 319-2334

**CITY OF OAKLAND**  
**BILL ANALYSIS**



**Date:** June 12, 2008

**Bill Number:** SB 1137

**Bill Author:** Perata

**DEPARTMENT INFORMATION**

**Contact:** Jeffrey Levin

**Department:** CEDA/HCD

**Telephone:** 238-6188 **FAX:** 238-3691

**E-mail:** jplevin@oaklandnet.com

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2008 MAY 29 PM 7:53

**RECOMMENDED POSITION: SUPPORT**

**Summary of the Bill**

This bill would make a number of changes to the mortgage foreclosure process and make legal owners of vacant foreclosed properties maintain those properties or risk fines up to \$1,000 per day. The bill would also provide some protection for tenants living in foreclosed homes.

**Positive Factors for Oakland**

Oakland has been particularly hard hit by foreclosures of subprime and non-traditional mortgage loans. This bill would add a number of procedural requirements to the foreclosure process that would mandate that lenders and servicers contact borrowers before initiating foreclosure proceedings. The bill would also require that borrowers be provided with information that will help them find a HUD-certified housing counseling agency that can assist them in efforts to restructure their loans.

Secondly, while many families have lost their homes to foreclosure, there is also the issue of the impact on neighborhoods where there is a significant concentration of foreclosed homes. This bill will establish clearer requirements for the owners of vacant foreclosed homes to maintain those properties.

**Negative Factors for Oakland**

The provisions for tenant protections are particularly weak, providing only that, following a foreclosure sale, tenants be given only 60 days notice before an eviction. These provisions provide a lesser degree of protection than the City's own Just Cause for

Item: \_\_\_\_\_  
Rules & Legislation Comte.  
June 12, 2008

Eviction Ordinance, which prohibits banks from evicting tenants except for just cause. However, the bill would not invalidate or supersede the Just Cause ordinance.

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

- Critical** (top priority for City lobbyist, city position required ASAP)
- Very Important** (priority for City lobbyist, city position necessary)
- Somewhat Important** (City position desirable if time and resources are available)
- Minimal or**  **None** (do not review with City Council, position not required)

**Known support:**

AARP  
Affordable Housing Services  
Asset Policy Initiative of California  
ByDesign Financial Solutions  
California Alliance for Retired Americans  
California Capital Financial Development Corp  
California Coalition for Rural Housing  
California Community Economic Development Association  
California Federation of Teachers  
California Labor Federation (AFL-CIO)  
California LULAC Housing Commission  
California Reinvestment Coalition  
California Resources and Training (CARAT)  
Center for California Homeowner Association Law  
Center for Human Rights, Law, and Advocacy  
Center for Responsible Lending  
CHARO  
Civic Center Barrio Housing Corporation  
Community Housing and Credit Counseling Center  
Community Legal Services in East Palo Alto  
Consortium for Elder Abuse Prevention  
Consumer Action  
Consumer Federation of California  
Consumers Union  
East LA Community Corporation

East Oakland CDC  
Fair Housing Council of Orange County  
Fair Housing Council of the San Fernando Valley  
Fair Housing of Marin  
H.O.U.S.E. (Home Ownership Utilizing Supportive Education)  
Housing and Economic Rights Advocates  
Housing Rights Center  
Human Rights/Fair Housing Commission of Sacramento  
Jefferson Economic Development Institute  
Just Cause Oakland  
Love, Inc.  
Low Income Investment Fund  
Mission Community Financial Assistance  
Mission Economic Development Agency  
National Council of La Raza  
Nehemiah Community Reinvestment Fund  
Non Profit Housing of Northern California  
Northbay Family Homes  
Orange County Community Housing Corporation  
Pacific Asian Consortium in Employment (PACE)  
Project Sentinel  
Public Interest Law Firm of the Law Foundation of Silicon Valley  
Renaissance Entrepreneurship Center  
Rural Community Assistance Corporation  
Sacramento Mutual Housing Association  
Self-Help Enterprises  
SF EARN  
Sierra Planning and Housing Alliance, Inc.  
Suburban Alternatives Land Trust  
The Watsonville Law Center  
Unity Council  
Urban Strategies Council

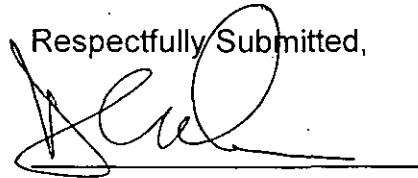
**Known Opposition:**

None registered

**Attach bill text and state/federal legislative committee analysis, if available.**

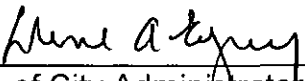
Bill and bill analysis are attached.

Respectfully Submitted,



Dan Lindheim  
Director, Community and  
Economic Development Agency

Approved for Forwarding to  
Rules Committee

  
Office of City Administrator



AMENDED IN ASSEMBLY MAY 6, 2008

AMENDED IN SENATE APRIL 16, 2008

AMENDED IN SENATE APRIL 9, 2008

AMENDED IN SENATE MARCH 27, 2008

AMENDED IN SENATE MARCH 13, 2008

**SENATE BILL**

**No. 1137**

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**Introduced by Senators Perata, Corbett, and Machado**

(Principal coauthor: Assembly Member Lieu)

**(Coauthors: Senators Calderon, Cedillo, Ducheny, Migden,  
Ridley-Thomas, Romero, Scott, and Wiggins)**

(Coauthors: Assembly Members ~~Hernandez, Nava, DeSaulnier, Hayashi,~~  
*Hernandez, Jones, Nava, Ruskin, and Wolk*)

January 31, 2008

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An act to add and repeal Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to add and repeal Section 1161b of the Code of Civil Procedure, relating to mortgages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1137, as amended, Perata. Residential mortgage loans: foreclosure procedures.

(1) Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default, and to mail the notice of default to the mortgagor or trustor. Existing law requires the notice to contain specified statements, including, but not limited to,

those related to the mortgagor's or trustor's legal rights, as specified. Existing law also requires that the notice of sale in the case of default be posted on the property, as specified.

Until January 1, 2013, and as applied to residential mortgage loans made from January 1, 2003, to December 31, 2007, inclusive, that are for owner-occupied residences, this bill would, among other things, require a mortgagee, trustee, beneficiary, or authorized agent to wait 30 days after contact is made with the borrower, or 30 days after satisfying due diligence requirements to contact the borrower, as specified, before filing a notice of default. The bill would require contact with the borrower, as defined, in order to assess the borrower's financial situation and explore options for the borrower to avoid foreclosure. The bill would require the mortgagee, beneficiary, or authorized agent to advise the borrower that he or she has the right to request a subsequent meeting within 14 days, and to provide the borrower the toll-free number made available by the United States Department of Housing and Urban Development to find a HUD-certified housing counseling agency. The bill would require the notice of default to include a specified declaration from the mortgagee, beneficiary, or authorized agent regarding its contact with the borrower or that the borrower has surrendered the property. If a notice of default had already been filed prior to the enactment of this act, the bill would instead require the mortgagee, trustee, beneficiary, or authorized agent, as part of the notice of sale, to include a specified declaration regarding contact with the borrower. The bill would authorize a borrower to designate a HUD-certified housing counseling agency, attorney, or other advisor to discuss with the mortgagee, beneficiary, or authorized agent, on the borrower's behalf, options for the borrower to avoid foreclosure. The contact and meeting requirements of these provisions would not apply if a borrower has surrendered the property or the borrower has contracted with an organization, as specified. The bill would also require specified mailings to the resident of a property that is the subject of a notice of sale, as specified. In addition, the bill would make it a crime to tear down the notice of sale posted on a property within 72 hours of posting, thereby imposing a state-mandated local program.

Until January 1, 2013, this bill would require a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. The bill would authorize a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per

day for a violation. The bill would require a governmental entity that seeks to impose those fines and penalties to give notice of the claimed violation and an opportunity to correct the violation at least 14 days prior to imposing the fines and penalties, and to allow a hearing for contesting those fines and penalties.

(2) Existing law governs the termination of tenancies and generally requires 30 days' notice of the termination thereof, except under specified circumstances. Existing law also establishes the criteria for determining when a tenant is guilty of unlawful detainer.

Until January 1, 2013, this bill would give a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure, 60 days to remove himself or herself from the property, as specified.

(3) This bill would set forth specified findings and declarations and intent provisions with regard to the above, and would provide that its provisions are severable.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) California is facing an unprecedented threat to its state  
4 economy and local economies because of skyrocketing residential  
5 property foreclosure rates in California. Residential property  
6 foreclosures increased sevenfold from 2006 to 2007. In 2007, more  
7 than 84,375 properties were lost to foreclosure in California, and  
8 254,824 loans went into default, the first step in the foreclosure  
9 process.

10 (b) High foreclosure rates have adversely affected property  
11 values in California, and will have greater adverse consequences  
12 as foreclosure rates continue to rise. According to statistics released

1 by the HOPE NOW Alliance, the number of completed California  
2 foreclosure sales in 2007 increased almost threefold from 1,902  
3 in the first quarter to 5,574 in the fourth quarter of that year. Those  
4 same statistics report that 10,556 foreclosure sales, almost double  
5 the number for the prior quarter, were completed just in the month  
6 of January 2008. More foreclosures means less money for schools,  
7 public safety, and other key services.

8 (c) Under specified circumstances, mortgage lenders and  
9 servicers are authorized under their pooling and servicing  
10 agreements to modify mortgage loans when the modification is in  
11 the best interest of investors. Generally, that modification may be  
12 deemed to be in the best interest of investors when the net present  
13 value of the income stream of the modified loan is greater than the  
14 amount that would be recovered through the disposition of the real  
15 property security through a foreclosure sale.

16 (d) It is essential to the economic health of California for the  
17 state to ameliorate the deleterious effects on the state economy  
18 and local economies and the California housing market that will  
19 result from the continued foreclosures of residential properties in  
20 unprecedented numbers by modifying the foreclosure process to  
21 require mortgagees, beneficiaries, or authorized agents to contact  
22 borrowers and explore options that could avoid foreclosure. These  
23 changes in accessing the state's foreclosure process are essential  
24 to ensure that the process does not exacerbate the current crisis by  
25 adding more foreclosures to the glut of foreclosed properties  
26 already on the market when a foreclosure could have been avoided.  
27 Those additional foreclosures will further destabilize the housing  
28 market with significant, corresponding deleterious effects on the  
29 local and state economy.

30 (e) According to a survey released by the Federal Home Loan  
31 Mortgage Corporation (Freddie Mac) on January 31, 2008, 57  
32 percent of the nation's late-paying borrowers do not know their  
33 lenders may offer alternatives to help them avoid foreclosure.

34 (f) As reflected in recent government and industry-led efforts  
35 to help troubled borrowers, the mortgage foreclosure crisis impacts  
36 borrowers not only in nontraditional loans, but also many borrowers  
37 in conventional loans.

38 (g) This act is necessary to avoid unnecessary foreclosures of  
39 residential properties and thereby provide stability to California's  
40 statewide and regional economies and housing market by requiring

1 early contact and communications between mortgagees,  
2 beneficiaries, or authorized agents and specified borrowers to  
3 explore options that could avoid foreclosure and by facilitating  
4 the modification or restructuring of loans in appropriate  
5 circumstances.

6 SEC. 2. Section 2923.5 is added to the Civil Code, to read:

7 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized  
8 agent may not file a notice of default pursuant to Section 2924  
9 until 30 days after contact is made as required by paragraph (2) or  
10 30 days after satisfying the due diligence requirements as described  
11 in subdivision (g).

12 (2) A mortgagee, beneficiary, or authorized agent shall contact  
13 the borrower in person or by telephone in order to assess the  
14 borrower's financial situation and explore options for the borrower  
15 to avoid foreclosure. During the initial contact, the mortgagee,  
16 beneficiary, or authorized agent shall advise the borrower that he  
17 or she has the right to request a subsequent meeting and, if  
18 requested, the mortgagee, beneficiary, or authorized agent shall  
19 schedule the meeting to occur within 14 days. The assessment of  
20 the borrower's financial situation and discussion of options may  
21 occur during the first contact, or at the subsequent meeting  
22 scheduled for that purpose. In either case, the borrower shall be  
23 provided the toll-free telephone number made available by the  
24 United States Department of Housing and Urban Development  
25 (HUD) to find a HUD-certified housing counseling agency. Any  
26 meeting may occur telephonically.

27 (b) A notice of default filed pursuant to Section 2924 shall  
28 include a declaration from the mortgagee, beneficiary, or authorized  
29 agent that it has contacted the borrower, tried with due diligence  
30 to contact the borrower as required by this section, or the borrower  
31 has surrendered the property to the mortgagee, trustee, beneficiary,  
32 or authorized agent.

33 (c) If a mortgagee, trustee, beneficiary, or authorized agent had  
34 already filed the notice of default prior to the enactment of this  
35 section and did not subsequently file a notice of rescission, then  
36 the mortgagee, trustee, beneficiary, or authorized agent shall, as  
37 part of the notice of sale filed pursuant to Section 2924f, include  
38 a declaration that either:

1 (1) States that the borrower was contacted to assess the  
2 borrower's financial situation and to explore options for the  
3 borrower to avoid foreclosure.

4 (2) Lists the efforts made, if any, to contact the borrower in the  
5 event no contact was made.

6 (d) A mortgagee's, beneficiary's, or authorized agent's loss  
7 mitigation personnel may participate by telephone during any  
8 contact required by this section.

9 (e) For purposes of this section, a "borrower" shall include a  
10 mortgagor or trustor.

11 (f) A borrower may designate a HUD-certified housing  
12 counseling agency, attorney, or other advisor to discuss with the  
13 mortgagee, beneficiary, or authorized agent, on the borrower's  
14 behalf, options for the borrower to avoid foreclosure. That contact  
15 made at the direction of the borrower shall satisfy the contact  
16 requirements of paragraph (2) of subdivision (a). Any loan  
17 modification or workout plan offered at the meeting by the  
18 mortgagee, beneficiary, or authorized agent is subject to approval  
19 by the borrower.

20 (g) A notice of default may be filed pursuant to Section 2924  
21 when a mortgagee, beneficiary, or authorized agent has not  
22 contacted a borrower as required by paragraph (2) of subdivision  
23 (a) provided that the failure to contact the borrower occurred  
24 despite the due diligence of the mortgagee, beneficiary, or  
25 authorized agent. For purposes of this section, "due diligence"  
26 shall require and mean all of the following:

27 (1) A mortgagee, beneficiary, or authorized agent shall first  
28 attempt to contact a borrower by sending a first-class letter that  
29 includes the toll-free number made available by HUD to find a  
30 HUD-certified housing counseling agency.

31 (2) (A) After the letter has been sent, the mortgagee,  
32 beneficiary, or authorized agent shall attempt to contact the  
33 borrower by telephone at least three times at different hours and  
34 on different days. Telephone calls shall be made to the primary  
35 telephone number on file.

36 (B) A mortgagee, beneficiary, or authorized agent may attempt  
37 to contact a borrower using an automated system to dial borrowers,  
38 provided that, if the telephone call is answered, the call is  
39 connected to a live representative of the mortgagee, beneficiary,  
40 or authorized agent.

1 (C) A mortgagee, beneficiary, or authorized agent satisfies the  
2 telephone contact requirements of this paragraph if it determines,  
3 after attempting contact pursuant to this paragraph, that the  
4 borrower's primary telephone number and secondary number or  
5 numbers on file, if any, have been disconnected.

6 (3) If the borrower does not respond within two weeks after the  
7 telephone call requirements of paragraph (2) have been satisfied,  
8 the mortgagee, beneficiary, or authorized agent shall then send a  
9 certified letter, with return receipt requested.

10 (4) The mortgagee, beneficiary, or authorized agent shall provide  
11 a means for the borrower to contact it in a timely manner, including  
12 a toll-free telephone number that will provide access to a live  
13 representative during business hours.

14 (5) The mortgagee, beneficiary, or authorized agent has posted  
15 a prominent link on the homepage of its Internet Web site, if any,  
16 to the following information:

17 (A) Options that may be available to borrowers who are unable  
18 to afford their mortgage payments and who wish to avoid  
19 foreclosure, and instructions to borrowers advising them on steps  
20 to take to explore those options.

21 (B) A list of financial documents borrowers should collect and  
22 be prepared to present to the mortgagee, beneficiary, or authorized  
23 agent when discussing options for avoiding foreclosure.

24 (C) A toll-free telephone number for borrowers who wish to  
25 discuss options for avoiding foreclosure with their mortgagee,  
26 beneficiary, or authorized agent.

27 (D) The toll-free telephone number made available by HUD to  
28 find a HUD-certified housing counseling agency.

29 (h) Subdivisions (a), (c), and (g) shall not apply if any of the  
30 following occurs:

31 (1) The borrower has surrendered the property as evidenced by  
32 either a letter confirming the surrender or delivery of the keys to  
33 the property to the mortgagee, trustee, beneficiary, or authorized  
34 agent.

35 (2) The borrower has contracted with an organization, person,  
36 or entity whose primary business is advising people who have  
37 decided to leave their homes on how to extend the foreclosure  
38 process and avoid their contractual obligations to mortgagees or  
39 beneficiaries.

1 (3) The borrower has filed for bankruptcy, and the proceedings  
2 have not been finalized.

3 (i) This section shall apply only to loans made from January 1,  
4 2003, to December 31, 2007, inclusive, that are secured by  
5 residential real property and are for owner-occupied residences.  
6 *For purposes of this subdivision, "owner-occupied" means that*  
7 *the residence is used or intended to be used as the principal*  
8 *residence of the borrower.*

9 (j) This section shall remain in effect only until January 1, 2013,  
10 and as of that date is repealed, unless a later enacted statute, that  
11 is enacted before January 1, 2013, deletes or extends that date.

12 SEC. 3. Section 2923.6 is added to the Civil Code, to read:

13 2923.6. (a) The Legislature finds and declares that any duty  
14 servicers may have to maximize net present value under their  
15 pooling and servicing agreements is owed to all parties in a loan  
16 pool, not to any particular parties, and that a servicer acts in the  
17 best interests of all parties if it agrees to or implements a loan  
18 modification or workout plan for which both of the following  
19 apply:

20 (1) The loan is in payment default, or payment default is  
21 reasonably foreseeable.

22 (2) Anticipated recovery under the loan modification or workout  
23 plan exceeds the anticipated recovery through foreclosure on a net  
24 present value basis.

25 (b) It is the intent of the Legislature that the mortgagee,  
26 beneficiary, or authorized agent offer the borrower a loan  
27 modification or workout plan if such a modification or plan is  
28 consistent with its contractual or other authority.

29 (c) This section shall remain in effect only until January 1, 2013,  
30 and as of that date is repealed, unless a later enacted statute, that  
31 is enacted before January 1, 2013, deletes or extends that date.

32 SEC. 4. Section 2924.8 is added to the Civil Code, to read:

33 2924.8. (a) Upon posting a notice of sale pursuant to Section  
34 2924f, a trustee or authorized agent shall also post the following  
35 notice, in the manner required for posting the notice of sale on the  
36 property to be sold, and a mortgagee, trustee, beneficiary, or  
37 authorized agent shall mail, at the same time in an envelope  
38 addressed to the "Resident of property subject to foreclosure sale"  
39 the following notice in English and the languages described in  
40 Section 1632: "Foreclosure process has begun on this property,



1 which may affect your right to continue to live in this property.  
2 Twenty days or more after the date of this notice, this property  
3 may be sold at foreclosure. If you are renting this property, the  
4 new property owner may either give you a new lease or rental  
5 agreement or provide you with a 60-day eviction notice. However,  
6 other laws may prohibit an eviction in this circumstance or provide  
7 you with a longer notice before eviction. You may wish to contact  
8 a lawyer or your local legal aid or housing counseling agency to  
9 discuss any rights you may have.”

10 (b) It shall be an infraction to tear down the notice described in  
11 subdivision (a) within 72 hours of posting. Violators shall be  
12 subject to a fine of one hundred dollars (\$100).

13 (c) A state government entity shall make available translations  
14 of the notice described in subdivision (a) which may be used by a  
15 mortgagee, trustee, beneficiary, or authorized agent to satisfy the  
16 requirements of this section.

17 (d) This section shall only apply to loans secured by residential  
18 real property, and if the billing address for the mortgage note is  
19 different than the property address.

20 (e) This section shall remain in effect only until January 1, 2013,  
21 and as of that date is repealed, unless a later enacted statute, that  
22 is enacted before January 1, 2013, deletes or extends that date.

23 SEC. 5. Section 2929.3 is added to the Civil Code, to read:

24 2929.3. (a) (1) A legal owner shall maintain vacant residential  
25 property purchased by that owner at a foreclosure sale, or acquired  
26 by that owner through foreclosure under a mortgage or deed of  
27 trust. A governmental entity may impose a civil fine of up to one  
28 thousand dollars (\$1,000) per day for a violation. If the  
29 governmental entity chooses to impose a fine pursuant to this  
30 section, it shall give notice of the alleged violation, including a  
31 description of the conditions that gave rise to the allegation, and  
32 notice of the entity’s intent to assess a civil fine if action to correct  
33 the violation is not commenced within a period of not less than 14  
34 days and completed within a period of not less than 30 days. The  
35 notice shall be mailed to the address provided in the deed or other  
36 instrument as specified in subdivision (a) of Section 27321.5 of  
37 the Government Code, or, if none, to the return address provided  
38 on the deed or other instrument.

39 (2) The governmental entity shall provide a period of not less  
40 than 30 days for the legal owner to remedy the violation prior to

1 imposing a civil fine and shall allow for a hearing and opportunity  
2 to contest any fine imposed. In determining the amount of the fine,  
3 the governmental entity shall take into consideration any timely  
4 and good faith efforts by the legal owner to remedy the violation.  
5 The maximum civil fine authorized by this section is one thousand  
6 dollars (\$1,000) for each day that the owner fails to maintain the  
7 property, commencing on the day following the expiration of the  
8 period to remedy the violation established by the governmental  
9 entity.

10 (3) Subject to the provisions of this section, a governmental  
11 entity may establish different compliance periods for different  
12 conditions on the same property in the notice of alleged violation  
13 mailed to the legal owner.

14 (b) For purposes of this section, “failure to maintain” means  
15 failure to care for the exterior of the property, including, but not  
16 limited to, permitting excessive foliage growth that diminishes the  
17 value of surrounding properties, failing to take action to prevent  
18 trespassers or squatters from remaining on the property, or failing  
19 to take action to prevent mosquito larvae from growing in standing  
20 water or other conditions that create a public nuisance.

21 (c) Notwithstanding subdivisions (a) and (b), a governmental  
22 entity may provide less than 30 days notice to remedy a condition  
23 before imposing a civil fine if the entity determines that a specific  
24 condition of the property threatens public health or safety and  
25 provided that notice of that determination and time for compliance  
26 is given.

27 (d) Fines and penalties collected pursuant to this section shall  
28 be directed to local nuisance abatement programs.

29 (e) A governmental entity may not impose fines on a legal owner  
30 under both this section and a local ordinance.

31 (f) These provisions shall not preempt any local ordinance.

32 (g) This section shall only apply to residential real property.

33 (h) The rights and remedies provided in this section are  
34 cumulative and in addition to any other rights and remedies  
35 provided by law.

36 (i) This section shall remain in effect only until January 1, 2013,  
37 and as of that date is repealed, unless a later enacted statute, that  
38 is enacted before January 1, 2013, deletes or extends that date.

39 SEC. 6. Section 1161b is added to the Code of Civil Procedure,  
40 to read:

1 1161b. (a) Notwithstanding Section 1161a, a tenant or  
2 subtenant in possession of a rental housing unit at the time the  
3 property is sold in foreclosure shall be given 60 days' written  
4 notice to quit pursuant to Section 1162 before the tenant or  
5 subtenant may be removed from the property as prescribed in this  
6 chapter.

7 (b) This section shall not apply if any party to the note remains  
8 in the property as a tenant, subtenant, or occupant.

9 (c) This section shall remain in effect only until January 1, 2013,  
10 and as of that date is repealed, unless a later enacted statute, that  
11 is enacted before January 1, 2013, deletes or extends that date.

12 SEC. 7. Nothing in this act is intended to affect any local  
13 just-cause eviction ordinance. This act does not, and shall not be  
14 construed to, affect the authority of a public entity that otherwise  
15 exists to regulate or monitor the basis for eviction.

16 SEC. 8. The provisions of this act are severable. If any  
17 provision of this act or its application is held invalid, that invalidity  
18 shall not affect other provisions or applications that can be given  
19 effect without the invalid provision or application.

20 SEC. 9. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.

29 SEC. 10. (a) This act is an urgency statute necessary for the  
30 immediate preservation of the public peace, health, or safety within  
31 the meaning of Article IV of the Constitution and shall go into  
32 immediate effect. The facts constituting the necessity are:

33 In order to stabilize and protect the state and local economies  
34 and housing market at the earliest possible time, it is necessary for  
35 this act to take effect immediately.

36 (b) However, the provisions of Section 2 of this act, which adds  
37 Section 2923.5 to the Civil Code, and Section 4 of this act, which

- 1 adds Section 2924.8 to the Civil Code, shall become operative 60
- 2 days after the effective date of this act.

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Date of Hearing: May 15, 2008

ASSEMBLY COMMITTEE ON BANKING AND FINANCE  
Pedro Nava, Chair  
SB 1137 (Perata) - As Amended: May 6, 2008

SENATE VOTE : 28-10

SUBJECT : Residential mortgage loans: foreclosure procedures.

SUMMARY : Enacts changes related the foreclosure process in response to the subprime lending/foreclosure crisis. Specifically, this bill :

- 1) Makes legislative findings and declarations relating to the foreclosure crisis.
- 2) Provides that a mortgage, trustee, beneficiary, or authorized agent (entities) may not file a notice of default (NOD) until 30 days after contact has been made with the borrower who is in default.
- 3) Requires entities to contact a borrower in default in person or by telephone and inform them of their right to a subsequent meeting, and telephone number of the United States Department of Housing and Urban Development (HUD) to find a HUD certified housing counselor.
- 4) Allows a borrower to assign a HUD-certified counselor, attorney or other advisor to discuss with the entities options for the borrower to avoid foreclosure.
- 5) Provides that a NOD may be filed when an entity has not contacted the borrower provided that the failure to contact the borrower occurred despite reasonable due diligence on the part of the entity.
- 6) Provides that "due diligence" means and requires the following:
  - a) The entity sends a first class letter that includes the toll-free number available for the borrower to find a HUD-certified housing counseling agency; and,
  - b) Subsequent to the sending of the letter the entity

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attempts to contact the borrower by telephone at least three times at different hours and on different days.

- 7) Requires an entity to maintain a toll-free number for borrowers that will provide access to a live representative during business hours.
- 8) Requires the entity to maintain a link on the main page of its internet website containing the following information:
  - a) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclose, and instructions to borrowers advising them on steps to take to explore these options; and,
  - b) A list of documents borrowers should collect and be prepared to submit when discussing options to avoid foreclosure.
- 9) Specifies that the notice and contact requirements do not apply in the following circumstances:
  - a) The borrower has surrendered the property as evidenced via a letter or delivery of keys to the property to the entity;
  - b) The borrower has contacted a person or organization whose primary business is advising people who have decided to leave their homes on how to extend the foreclosure process and avoid the contractual obligations; or,
  - c) The borrower has filed for bankruptcy.
- 10) Provides that the notice and contact requirements only apply to loans made from January 1, 2003 to December 31, 2007.
- 11) Makes a legislative finding and declaration that a loan servicer acts in the best interests of all parties if it agrees to, or implements a loan modification or workout plan in one of the following circumstances:

- a) The loan is in payment default, or payment default is reasonably foreseeable; or,
- b) Anticipated recovery under the loan modification or

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workout plan exceeds the anticipated recovery through foreclosure on net present value basis.

- 12) Declares that it is the intent of the Legislature that borrowers receive loan modifications or workout plans if those arrangements are consistent with the entities contractual authority.
- 13) Requires that upon posting of a notice of sale, an entity shall mail to the borrower a notice in English and Spanish, Chinese, Tagalog, Vietnamese, or Korean that states: "Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 60-day eviction notice. However, other laws may prohibit an eviction in this circumstance or provide you with a longer notice before eviction. You may wish to contact a lawyer or your local legal aid or housing counseling agency to discuss any rights you may have."
- 14) Provides that the legal owner of vacant property shall maintain the property in accordance with current law and a failure to do so may result in a \$1,000 per day fine.
- 15) Requires a governmental entity that imposes a fine must give notice of the violation and provide 30 days for the owner to remedy the violation prior to imposing the fine.
- 16) Defines "failure to maintain" as a failure to care for the exterior of the property, including, but not limited to, permitting excessive foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers or squatters from remaining on the property, or failing to take action to prevent mosquito larvae from growing in standing water or other conditions that create a public nuisance.
- 17) Requires that a tenant or sub-tenant of a rental unit shall be provided 60 days notice after a property is sold into foreclosure before the tenant or sub-tenant may be removed from the property.

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- 18) Sunsets the provisions on January 1, 2013.
- 19) Contains an urgency clause.

EXISTING FEDERAL LAW :

- 1) Authorizes federally-chartered financial institutions to engage in the business of mortgage lending, brokering, and servicing and governs the rules under which such activities may be conducted under a wide variety of laws, including, but not limited to, the Home Ownership and Equity Protection Act (HOEPA), Real Estate Settlement Procedures Act (RESPA), Truth in Lending Act (TILA), Home Mortgage Disclosure Act (HMDA), and regulations that interpret those acts (most notably Regulation C, which interprets the Home Mortgage Disclosure Act and Regulation Z, which interprets the Truth in Lending Act);
- 2) Generally regulates the financial institutions that engage in mortgage lending and brokering under five different agencies, including the Office of the Comptroller of the Currency (OCC), Federal Reserve Board (FRB), Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA);
- 3) Additionally regulates the brokerage and lending activities conducted under federal law using two additional federal agencies, including the Department of Housing and Urban Development and the Federal Trade Commission.

EXISTING STATE LAW :

- 1) Defines a mortgage is a contract by which specific property, including an estate for years in real property, is hypothecated for the performance of an act, without the necessity of a change of possession. "Mortgage" also means any security device or instrument, other than a deed of trust that confers a power of sale affecting real property or an estate for years therein, to be exercised after breach of the obligation so secured, including a real property sales contract. [Civil Code, Section 2920]
- 2) Provides that every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the

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case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge. Where a power of sale is conferred upon the mortgagee, trustee, or any other person, to be exercised after a breach of the obligation for which that mortgage or transfer is a security, the power shall not be exercised except where the mortgage or transfer is made pursuant to an order, judgment, or decree of a court of record, or to secure the payment of bonds or other evidences of indebtedness authorized or permitted to be issued by the Commissioner of Corporations until all of the following apply: the trustee, mortgagee, or beneficiary, or any of their authorized agents shall first file for record, in the office of the recorder of each county wherein the mortgaged or trust property or some part or parcel, a notice of default. That notice of default shall include all of the following:

- a) A statement identifying the mortgage or deed of trust by stating the name or names of the trustor or trustors and giving the book and page, or instrument number, if applicable, where the mortgage or deed of trust is recorded or a description of the mortgaged or trust property;
- b) A statement that a breach of the obligation for which the mortgage or transfer in trust is security has occurred; and,
- c) A statement setting forth the nature of each breach actually known to the beneficiary and of his or her election to sell or cause to be sold the property to satisfy that obligation and any other obligation secured by the deed of trust or mortgage that is in default. [Civil Code, Section 2924]
- 3) Provides for the regulation of residential mortgage lenders and California finance lenders by the Department of Corporations (DOC) and for the regulations of state banks and credit unions by the Department of Financial Institutions (DFI).

FISCAL EFFECT : Unknown

COMMENTS :

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This bill is the Senate's response to the foreclosure crisis that has gripped California and the nation over the last year and a half. It is made up of several provisions to address key issues that have been identified as most problematic concerning the foreclosure process. It is important to note that this bill, as currently drafted, represents a compromise that was reached between industry, consumers and the author.

A major problem facing both borrowers and servicers is the lack of communication between parties concerning the inability to make a mortgage payment, or the possibility of impending financial difficulties. Government officials, lenders and community organizations have all pleaded with borrowers to communicate as soon as possible if they are in trouble of missing a mortgage payment. Most data reflects that the earlier a borrower communicates with their lender, the easier it can be to find a solution. Going beyond the public pledges of increased contact, this bill requires that the mortgagee or trustee contact the borrower, or attempt to make contact, at least 30 days prior to mailing a NOD.

Another indirect consequence of the foreclosure crisis are the

numerous renters who made their rental payments on time and remained in good standing only to find themselves evicted due to the legal owner of the property failing to pay their mortgage on the property. During the housing boom many buyers purchased properties with non-traditional financing in order to acquire rental properties. This arrangement began to turn south last year with the collapsing mortgage market. Some renters found notices attached to their door addressed to the owners. Often, these notices were overlooked because they were addressed to someone other than the renter, and then the occupants found themselves days away from being on the street. This bill provides additional time to the current law timeframe of 30 days for eviction to a total of 60 days subsequent to the foreclosure sale to give renters in a foreclosed home sufficient time to make other housing arrangements.

The glut of abandoned foreclosed properties has led to distress in local communities as cash-strapped local governments deal with blighted property. These properties, in some cases, are magnets for criminal activity such as vandalism and theft. Additionally, vacant properties with swimming pools can become a health hazard due to standing water becoming a breeding ground for mosquitoes that may carry the West Nile virus. Empty rooms

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lure squatters and vandals and brown lawns and dead vegetation are creating eyesores in well-tended neighborhoods. The L.A. Times wrote an article in 2007 titled, "Untended properties become eyesores. Then there are the uninvited guests: mosquitoes, vandals and squatters." The City of L.A. is increasing the number of inspectors in the L.A. vacant-building program from 15 to 27 trying to stay current with the number of vacant homes they have to deal with.

Neglected foreclosed properties subject the neighborhood and municipality to drug crimes, prostitution, vagrants living in the foreclosed property, vandalism and a host of other social ills. As the foreclosed property falls deeper into disrepair the values of the surrounding homes and business also deteriorate alarmingly, further adding to the 'foreclosure blight' and destruction of whole neighborhoods.

This bill responds to the vacant property issue by requiring that the owner maintain a vacant property or face \$1,000 per day fine. It also provides the owner 30 days to correct a violation once notification has been received from the local government.

Finally, this bill makes legislative findings and declarations concerning the suitability and fiscal necessity of loan modifications. Specifically, the findings declare that servicers act in the best interests of all parties when they agree to implement loan modifications or workout plans where long term performance of the loan exceeds recovery through the foreclosure process. This section is a welcome explanation of the Legislature's policy and direction concerning what is expected of loan servicers in California related to trouble borrowers. The reviews are mixed, as far as the actual results of loan modifications and borrower outreach. It is clear that very few loan servicers have had the necessary infrastructure to meet the surge in borrower demand. Recently, counseling agencies and servicers have staffed up their operations to increase outreach and response to customer inquires concerning loan modifications.

Recently the Hope Now Coalition, a coalition of mortgage industry participants, that have come together to streamline loan modifications and workout plans released their data for the first quarter of 2008. From July 2007 to the end of the first quarter of 2008 lenders have helped 1.2 million borrowers. The vast majority, 848,000, were repayment plans, which are

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generally not as helpful to borrowers. A study by Freddie Mac, Interventions in Mortgage Default: Policies and Practices to Prevent Home Loss and Lower Costs, found that the cure rate among loans that are only 30 days delinquent is just under 60%, but that rate falls to less than 30% if the borrower is 3 or more payments behind at the onset of the plan. In 2008, nearly 37% of the workouts, reported by Hope Now, were classified as modifications. Most troubling, 40% of the subprime, adjustable rate mortgage borrowers who went into foreclosure in the three months ended September 30 - the most recent figures available - had already gone through a workout with their lenders, according to a study from the Mortgage Bankers Association.



Subprime crisis.

In response to the extreme financial losses incurred by investors, the market for subprime mortgages has adjusted sharply. Investors demanded that mortgage originators employ tighter underwriting standards, and some large lenders have pulled back from the use of brokers.

Delinquency rates on subprime loans remained at historically low levels through most of 2004 and 2005. The staggering increases in home price appreciation provided subprime borrowers with an equity buffer that allowed borrowers to refinance into a more affordable loan or sell their property for a profit. However, this price appreciation, not only provided a needed buffer for subprime borrowers, but also, may have fueled a further easing of underwriting standards. A Credit Suisse report, Mortgage Liquidity Du Jour: Underestimated No More (March 12, 2007) conducted by Equity Research, found that "in the last nine months anybody with a pulse that interested in buying a home was able to get financing?"

Additionally, California is now facing the prospect of reduced revenues due to foreclosures and increase local government costs to mitigate foreclosure related issues. This crisis has also been labeled as a "turning back of the clock" on the recent gains of homeownership and asset building opportunities for many communities that have been left out of other wealth building opportunities. Several California communities rank in the top ten nationwide in the number of foreclosures and defaults.

The Congressional Joint Economic Committee estimates that the subprime lending crisis in the United States will result in

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almost 2 million foreclosures nationwide. In California, lenders filed 72,571 "notices of default" on borrowers in the third quarter of 2007, eclipsing a record of 61,541 set in 1996, according to DataQuick Information Systems. Most of the loans that went into default last quarter were originated between July 2005 and August 2006. Actual losses of homes to foreclosure statewide totaled 24,209 during the third quarter, the highest number since DataQuick began recording data in 1988, up 38.7% from last quarter and up six-fold year-over-year.

In the midst of this market correction, borrowers are facing increased pressures as adjustable rate mortgages (ARMs) reset to higher rates, home prices decline, and new borrowers are limited in options as the market engages in retrenchment.

The crisis is the result of a confluence of circumstances that has played into the unusually poor performance of subprime mortgages that were originated in 2006. Among the largest contributing factors were relaxed underwriting standards and subsequent deterioration in mortgage payment performance. In addition, many market participants have suggested that fraud, such as misrepresentations made by mortgage brokers, appraisers and the borrowers themselves, has also played a significant role and exacerbated the problem. Numerous sources have indicated that home values, borrowers' incomes, as well as, other information may have been overstated and the intended use of the home was often misstated (i.e., as a primary residence rather than an investment property).

Second, the mortgage lending system allowed incentives to push some people into loans that they should never have taken. For instance, some brokers received incentives if they placed a person in a subprime loan even though the person also qualified for a prime loan. Some brokers were also enticed through increased sales commissions to sell as many loans as they could, since they receive their commissions regardless of whether or not a person defaulted on the loan a year or two later.

Third, the decline in home prices on a national basis has been a significant factor in the decline in subprime mortgage loan credit performance. People who now had homes at lower values, or had loans larger than the value of their homes, were frequently unable to refinance with other lenders.

Also, variety of mortgage companies that had issued subprime

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Page 10

loans overextended themselves in the market causing many of their creditors to demand payments on lines of credit immediately. This meant that several of the largest non-bank lenders of subprime loans were forced to file bankruptcy and

foreclose on loans. Stricter lending practices by remaining mortgage companies have also been a factor in the subprime mortgage crisis, since some of the homeowners were ineligible for any type of loans based on new criteria.

According to Moody's Investors Service July 2007 marked the twelfth consecutive month of home price decline on a year-over-year basis. This is the longest period of declining home prices on a national basis since 1969, and declining home prices have reduced borrowers' equity in their homes and constrained their refinancing opportunities. The borrowers most affected by the housing downturn have been those who because of the timing of their purchase did not realize benefit from the price appreciation that had occurred in prior years. Compounding the problem of declining home prices is that many borrowers took out ARMs with low introductory rates in the hopes that housing prices would continue to rise and afford the borrower enough equity to refinance at a fixed APR. In other cases, loan originators downplayed or ignored the risk to borrowers with some ARM products.

Fourth, the introduction of exotic products in the market-place including option-ARMS, low teaser rate loans, no-documentation, stated-income and other non-traditional products originally meant for sophisticated borrowers were used as tools to circumvent traditional underwriting standards. In addition, the increase in zero down payments, 100% financed subprime loans increased home ownership opportunities, but at the same time increased the risk of those loans. People who were on a thin financial cushion were offered the opportunity to take out multi-hundred thousand dollar loans with no down payment, sometimes with no income documentation.

Finally, the stunning lack of financial literacy was a major contributing factor to the subprime crisis. A recent Wall Street Journal article noted that in a survey, approximately one-third of homeowners had no idea what type of home loan they had. The typical borrower is often overwhelmed by the complicated process of purchasing a home. In many cases, had a borrower known the right questions to ask they could have avoided long-term financial collapse. Unlike some other states,

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California does not require that financial literacy concepts be taught in its school curriculum.

During the past two years, serious delinquencies among subprime ARMs have increased dramatically. According to Federal Reserve Chairman Ben S. Bernanke The fraction of subprime ARMs past due ninety days or more or in foreclosure reached nearly 15 percent in July 2007, roughly triple the low seen in mid-2005. For so-called near-prime loans in alt-A securitized pools (those made to borrowers who typically have higher credit scores than subprime borrowers but still pose more risk than prime borrowers), the serious delinquency rate has also risen, to 3% from 1% only a year ago. These patterns contrast sharply with those in the prime-mortgage sector, in which less than 1% of loans are seriously delinquent.

Higher delinquencies have begun to show through to increased foreclosures. About 320,000 foreclosures were initiated in each of the first two quarters of this year (just more than half of them on subprime mortgages), up from an average of about 225,000 during the past six years. Foreclosure starts tend to be high in states with stressed economic conditions and rise where house prices have decelerated or fallen.

Adjustable-rate subprime mortgages originated in late 2005 and in 2006 have performed the worst, with some of them defaulting after only one or two payments (or even no payment at all). Relative to earlier vintages, more of these loans carried greater risks beyond weak borrower credit histories--including very high initial cumulative loan-to-value ratios and less documentation of borrower income. The originate-to-distribute model seems to have contributed to the loosening of underwriting standards in 2005 and 2006. When an originator sells a mortgage and its servicing rights, depending on the terms of the sale, much or all of the risks are passed on to the loan purchaser. Thus, originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans. Moreover, for some originators, fees tied to loan volume made loan sales a higher priority than loan quality. This misalignment of incentives, together with strong investor demand for securities with high yields, contributed to the weakening of underwriting standards.

The fragmented market structure of mortgage originators in the subprime-lending industry may also have contributed. Data collected under HMDA show that independent mortgage companies--those that are not depository institutions or their subsidiaries or holding company affiliates--made nearly half of higher-priced first-lien mortgages in 2006 but only one-fourth of loans that were not higher-priced.

In addition, the sharp deceleration in home prices since 2005, including outright declines in some markets, left many of these more-recent borrowers with little or no home equity. In this situation, some borrowers (particularly owner-investors) may have found that simply walking away from their properties was their best option. Moreover, low home equity has made refinancing--the typical way for many subprime borrowers to avoid large scheduled interest rate resets--difficult or impossible for many. Thus, with house prices still soft and many borrowers of recent-vintage subprime ARMs still facing their first interest rate resets, delinquencies and foreclosure initiations in this class of mortgages are likely to rise further. It is difficult to be precise about the number of foreclosure initiations expected in coming quarters, as it will depend on (among other factors) the evolution of house prices, which will vary widely across localities. Historically, about half of homeowners who get a foreclosure notice are ultimately displaced from their homes, but that ratio may turn out to be higher in coming quarters because the proportion of subprime borrowers, who have weaker financial conditions than prime borrowers, is higher.

The increased portion of homes lost to foreclosure reflects the slow real estate market, as well as the number of homes bought during the height of the market with multiple-loan financing. In selling a home, all loans must be paid off, which is not the case in the formal foreclosure process, where second mortgages and lines of credit are most often written off.

Exotic mortgages with low "teaser" interest rates that increase significantly after several years, interest-only mortgages, and mortgages made with little or no income verification have helped drive the homeownership rate in the United States to a record 70%. These subprime loans are made possible in part by mortgage securitization, where pools of principal and interest payments

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for mortgages are bundled into securities and sold to investors, a process that diversifies the risk of lending to borrowers with less than optimal credit. Nontraditional credit and securitization have been useful tools to make credit available to those who might not otherwise qualify.

Unfortunately, many of the borrowers who took advantage of subprime loans have been unable to afford the mortgages they received. As interest rates have risen and property values decreased, foreclosures have occurred at alarming rates and delinquencies continue to climb. Many borrowers were duped into mortgages they could not repay, or simply made poor financial decisions. The consequences are grim. Millions may lose their homes. Even borrowers with good credit are having more difficulty finding lenders willing to grant them mortgages. Many mortgage lenders are going bankrupt. Credit standards are tightening. Investors are losing money on subprime mortgage bonds. Economists predict that the effect of these lending practices on the economy will be felt for years to come.

#### Foreclosure-Subprime Crisis By-the-Numbers.

During February 2008, the most recent month for which foreclosure data are available, RealtyTrac reported that California, Nevada, and Florida continued to document the highest foreclosure rates in the country. California's foreclosure rate was second highest in the nation, with one in every 242 households receiving a foreclosure filing during the month. Foreclosure filings were reported on a total of 53,629 California properties in February, a 131% increase from February 2007. California and Florida metropolitan areas accounted for nine of the top ten metropolitan foreclosure rates in February. Stockton, California had the second highest foreclosure rate in the country (one out of every 87 households). Other California

Metropolitan areas in the top ten were Modesto (#3), Merced (#4), Riverside-San Bernardino (#5), Bakersfield (#7), Vallejo-Fairfield (#8), and Sacramento (#9).

Recently the California Research Bureau (CRB) released a report

titled "Foreclosures in California-The current housing crisis is more severe than previous corrections."

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The CRB foreclosure report highlights the following:

- 1) The estimate of housing foreclosures in California, spanning the three years 2006 - 09, varies from 170,000 to 434,000. Therefore, foreclosures will affect between 3.0 and 7.8 percent of all home owners with mortgages in the state by 2009.
- 2) Since this housing crisis is much more extreme than previous corrections, the recovery may not follow the same path as previous recoveries. In fact, some observers are comparing this cycle to the one experienced during the Great Depression, since this is the first cycle since then in which home prices have fallen throughout the nation.
- 3) The current evidence suggests the buyers who bought at the peak in 2006 - 07, paid the most inflated prices, were more likely to avail themselves of subprime adjustable rate mortgages (ARMs), and may now be at risk of being in negative equity positions (upside down on their mortgages). A 20% drop in prices from their peaks could leave as many as 14 million households with negative equity - 2.6 million households in California.
- 4) The percentage of foreclosures of all mortgages outstanding is higher for California than for the nation as a whole.
- 5) The Pew Center on the States study presents California's policy responses to the housing foreclosure crisis and the responses of other states and suggests that the states and the nation could be doing more to address the problem. Commendably, California has taken action to modify loans, but the study suggests that California could be doing more to help those at risk of losing their homes by, for example, helping them avoid falling victim to fraudulent rescue schemes and providing them with more counseling.
- 6) Moody's Economy forecast is for 411,000 defaults in California in 2008, compared with 212,000 defaults in 2007. Defaults do not always lead to foreclosure, but many do. California had 15% of the defaults last year and is expected to have 20% this year.

Related state legislation :

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AB 69 (Lieu) of 2007 requires loan servicers to report data regarding their loan modification efforts. This bill is pending before Senate Banking, Finance and Insurance committee.

AB 180 (Bass) of 2007 revises the law related to foreclosure consultants to ensure that those facing foreclosure do not become further victimized by scams or outrageous fees. Provides for a registration process for persons acting as foreclosure consultants. This bill is pending before Senate Judiciary committee.

AB 529 (Torrico) of 2007 requires lenders to notify borrowers of an impending interest rate reset of an adjustable rate mortgage. This bill is currently pending in Senate Banking, Finance and Insurance committee.

AB 1837 (Garcia) of 2008, bans payment of compensation for originating a subprime loan or nontraditional loan with an interest rate above the wholesale par rate for which the consumer qualifies. Currently in Assembly Banking and Finance committee.

AB 2161 (Swanson) of 2008, would enact a mortgage lender complaint processing system. Furthermore, it requires lenders to have a dedicated complaint processing system to handle borrower complaints and assist borrowers with workout opportunities. Also requires lenders to document complaints and submit complaint logs to their regulator. This bill is currently in Assembly Appropriations.

AB 2187 (Caballero) of 2008, requires each notice of default and foreclosure to include a homeowner bill of rights that provides

a list of their legal rights and responsibilities in the foreclosure process. This bill is currently pending in Assembly Appropriations.

AB 2880 (Wolk) of 2008, specifies, among other things, that that mortgage brokers have a fiduciary responsibility to their clients, and requires licensees to maintain a surety bond with their regulator. This bill is currently Assembly Appropriations Committee.

AB 2740 (Brownley) of 2008, provides that a loan servicer, or a bank, credit union, or finance lender that services loans

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secured by residential real property, owes a duty of good faith and fair dealing to a borrower. The bill would regulate the fees and charges that may be imposed to loan servicers and mortgage loan servicers. The bill would also establish various other prohibited acts and requirements applicable to the servicing of residential mortgage loans. Currently on Assembly third reading.

SB 1053 (Machado) of 2008, requires every real estate broker licensed by California Department of Real Estate (DRE) who makes, brokers, or services mortgages to notify DRE about those activities on an annual basis; requires supervising real estate brokers (those in charge of mortgage brokerage businesses) to submit detailed compliance reviews of their books and records to DRE annually, along with business activity reports detailing the loans their businesses brokered, made, and serviced during the prior year. Currently in Senate Appropriations.

SB 1054 (Machado) of 2008, in relevant part, gives DRE the ability to ban individuals who have been found guilty of violating the Real Estate Law from real estate-related employment for up to three years. Currently Held At Assembly Desk

SB 1604 (Machado) of 2008, under finance lenders law, requires that applicants show a minimum tangible net worth of \$25,000 for "brokers," \$50,000 for "a broker engaged in the business of negotiating or performing acts in connecting with residential mortgage loans," and \$250,000 for finance lenders (of residential mortgage loans), and requires that licensees maintain the applicable net worth at all times; maintains surety bond generally at \$25,000, but increases to \$50,000 for finance lenders (of residential mortgage loans); requires any person seeking employment with a finance lender or broker to complete a specified employment. Currently in Senate Appropriations.

REGISTERED SUPPORT / OPPOSITION :

Support

AARP  
Affordable Housing Services  
Asset Policy Initiative of California  
ByDesign Financial Solutions  
California Alliance for Retired Americans

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California Capital Financial Development Corp  
California Coalition for Rural Housing  
California Community Economic Development Association  
California Federation of Teachers  
California Labor Federation (AFL-CIO)  
California LULAC Housing Commission  
California Reinvestment Coalition  
California Resources and Training (CARAT)  
Center for California Homeowner Association Law  
Center for Human Rights, Law, and Advocacy  
Center for Responsible Lending  
CHARO  
Civic Center Barrio Housing Corporation  
Community Housing and Credit Counseling Center  
Community Legal Services in East Palo Alto  
Consortium for Elder Abuse Prevention  
Consumer Action  
Consumer Federation of California  
Consumers Union  
East LA Community Corporation  
East Oakland CDC  
Fair Housing Council of Orange County  
Fair Housing Council of the San Fernando Valley  
Fair Housing of Marin

H.O.U.S.E. (Home Ownership Utilizing Supportive Education)  
Housing and Economic Rights Advocates  
Housing Rights Center  
Human Rights/Fair Housing Commission of Sacramento  
Jefferson Economic Development Institute  
Just Cause Oakland  
Love, Inc.  
Low Income Investment Fund  
Mission Community Financial Assistance  
Mission Economic Development Agency  
National Council of La Raza  
Nehemiah Community Reinvestment Fund  
Non Profit Housing of Northern California  
Northbay Family Homes  
Orange County Community Housing Corporation  
Pacific Asian Consortium in Employment (PACE)  
Project Sentinel  
Public Interest Law Firm of the Law Foundation of Silicon Valley  
Renaissance Entrepreneurship Center  
Rural Community Assistance Corporation  
Sacramento Mutual Housing Association

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Self-Help Enterprises  
SF EARN  
Sierra Planning and Housing Alliance, Inc.  
Suburban Alternatives Land Trust  
The Watsonville Law Center  
Unity Council  
Urban Strategies Council

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Opposition

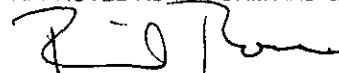
None on file.

Analysis Prepared by : Mark Farouk / B. & F. / (916) 319-3081

OFFICE OF THE CITY CLERK  
OAKLAND

2008 MAY 29 PM 7:51

APPROVED AS TO FORM AND LEGALITY:



DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C. M. S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

### RESOLUTION TO SUPPORT AB 69 (LIEU) TO EXPAND REPORTING REQUIREMENTS BY MORTGAGE LENDERS AND SERVICERS TO INCLUDE INFORMATION ABOUT DEFAULTS, FORECLOSURES AND LOAN MODIFICATIONS

**WHEREAS**, the City of Oakland has experienced a very high rate of home mortgage foreclosures, particularly for subprime and nontraditional loans; and

**WHEREAS**, in order to develop a response to this problem, better information is needed regarding loans in default and foreclosure and the extent to which lenders are assisting troubled borrowers; and

**WHEREAS**, Assemblyperson Ted Lieu has introduced Assembly Bill 69, which would expand reporting requirements for lenders and servicers to include information on defaults, foreclosures and modifications of subprime and nontraditional loans; now, therefore, be it

**RESOLVED**: That the City Council of the City of Oakland hereby supports AB 69 (Lieu) which will expand reporting requirements for lenders and servicers of subprime and nontraditional loans; and be it

**FURTHER RESOLVED**: That the City Council hereby authorizes and directs the City Administrator, and/or her designee, to work actively for the passage of AB 69.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2008

#### PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
Of the City of Oakland, California

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2008 MAY 29 PM 7:51

APPROVED AS TO FORM AND LEGALITY:

  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C. M. S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

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### RESOLUTION TO SUPPORT AB 1830 (LIEU) TO REFORM MORTGAGE LENDING PRACTICES FOR HIGH-COST, SUBPRIME AND NONTRADITIONAL LOANS

**WHEREAS**, the City of Oakland has experienced a very high rate of home mortgage foreclosures, particularly for subprime and non-traditional loans; and

**WHEREAS**, many of the foreclosures have involved high-cost, subprime and nontraditional loans; and

**WHEREAS**, in many instances these loans contained such provisions as prepayment penalties or negative amortization; and

**WHEREAS**, in many instances these loans were made on the basis of stated (undocumented) borrower income or were made to borrowers who could not afford the fully adjusted payments on those loans; and

**WHEREAS**, in many instances mortgage brokers received compensation, including yield spread premiums, that created incentives to place borrowers into loans that were more expensive than other loan types for which they would have qualified; and

**WHEREAS**, elimination or regulation of these practices would reduce the likelihood that borrowers of such loans will default on their payments; and

**WHEREAS**, Assemblyperson Ted Lieu has introduced Assembly Bill 1830, which would place limitations on the allowable terms for high-cost, subprime and nontraditional loans, and prohibit mortgage brokers from receiving compensation for placing borrowers in loans that are more expensive than other loan types for which they are qualified; now, therefore, be it



**RESOLVED:** That the City Council of the City of Oakland hereby supports AB 1830 (Lieu) which will provide greater regulation of loan terms and lending practices for high-cost, subprime and nontraditional mortgages; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the City Administrator, and/or her designee, to work actively for the passage of AB 1830.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2008

**PASSED BY THE FOLLOWING VOTE:**

AYES - BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
Of the City of Oakland, California

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2008 MAY 29 PM 7:51

  
 DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C. M. S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

**RESOLUTION TO SUPPORT AB 2359 (JONES) TO PROHIBIT MORTGAGE LENDING TERMS THAT REQUIRE BORROWERS OF HIGH-COST, SUBPRIME AND NONTRADITIONAL LOANS TO WAIVE THEIR LEGAL RIGHTS, REMEDIES, OBLIGATIONS OR PROCEDURES, AND TO PROVIDE FOR ASSIGNEE LIABILITY FOR AFFIRMATIVE CLAIMS OR DEFENCES THAT A BORROWER COULD HAVE ASSERTED AGAINST THE ORIGINAL LENDER OF A HIGH-COST LOAN**

**WHEREAS**, the City of Oakland has experienced a very high rate of home mortgage foreclosures, particularly for subprime and non-traditional loans; and

**WHEREAS**, many of the foreclosures have involved high-cost, subprime and nontraditional loans; and

**WHEREAS**, some of these loans contained provisions that required borrowers to waive certain rights and remedies they might have asserted against lenders; and

**WHEREAS**, these provisions limit the ability of borrowers at risk of foreclosure from bringing actions against lenders who may have engaged in deceptive or abusive practices; and

**WHEREAS**, in the absence of assignee liability, subsequent purchasers of high-cost loans have less incentive to ensure that the original loans were not based on deceptive or abusive practices or loan provisions; and

**WHEREAS**, Assemblyperson Dave Jones has introduced Assembly Bill 2359, which would prohibit lenders of high-cost, subprime and nontraditional loans from requiring borrower waivers of rights and remedies, and would extend assignee liability to subsequent purchasers of high-cost loans; now, therefore, be it

**RESOLVED:** That the City Council of the City of Oakland hereby supports AB 2359 (Jones) to provide greater protection for the rights of borrowers of high-cost, subprime and nontraditional mortgages and extend assignee liability to subsequent purchasers of high-cost loans; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the City Administrator, and/or her designee, to work actively for the passage of AB 2359.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2008

**PASSED BY THE FOLLOWING VOTE:**

AYES - BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California

OFFICE OF THE CITY CLERK  
OAKLAND

2008 MAY 29 PM 7:51

APPROVED AS TO FORM AND LEGALITY:

  
DEPUTY CITY ATTORNEY

# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C. M. S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

## RESOLUTION TO SUPPORT AB 2740 (BROWNLEY) TO REGULATE THE CHARGING OF FEES BY SERVICERS OF HOME LOANS AND REQUIRE PROMPT RESPONSE TO BORROWER REQUESTS FOR INFORMATION AND DISPUTE RESOLUTION

**WHEREAS**, the City of Oakland has experienced a very high rate of home mortgage foreclosures, particularly for subprime and non-traditional loans; and

**WHEREAS**, many of the foreclosures have involved loans where servicing responsibilities were transferred to another entity after the loan was originated; and

**WHEREAS**, there have been numerous complaints about abusive and deceptive practices of loan servicers, including failure to post payments in a timely manner, charging illegal fees, and failing to respond to borrower requests for information or dispute resolution; and

**WHEREAS**, Assemblyperson Julia Brownley has introduced Assembly Bill 2740, which would regulate how and when mortgage servicers may assess fees against borrowers, require that payments be credited in a timely manner, require that servicers provide complete and timely responses to borrower requests for information or dispute resolution, and authorize the recovery of damages for a servicer's failure to comply with these provisions; now, therefore, be it

**RESOLVED:** That the City Council of the City of Oakland hereby supports AB 2740 (Brownley) to better regulate the business practices of loan servicers; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the City Administrator, and/or her designee, to work actively for the passage of AB 2740.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2008

**PASSED BY THE FOLLOWING VOTE:**

AYES - BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

NOES -

ABSENT -


ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
Of the City of Oakland, California

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2008 MAY 29 PM 7:51

APPROVED AS TO FORM AND LEGALITY:

  
DEPUTY CITY ATTORNEY

# OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C. M. S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

**RESOLUTION TO SUPPORT AB 2880 (WOLK) TO CLARIFY THAT MORTGAGE BROKERS OPERATE AS FIDUCIARIES FOR BORROWERS, REQUIRE CERTAIN STANDARDS FOR AND PROHIBIT CERTAIN PRACTICES BY MORTGAGE BROKERS, AND PROHIBIT COMPENSATION OF MORTGAGE BROKERS FOR STEERING BORROWERS INTO OVERLY COSTLY LOANS**

**WHEREAS**, the City of Oakland has experienced a very high rate of home mortgage foreclosures, particularly for subprime and non-traditional loans; and

**WHEREAS**, many of the foreclosures have involved high-cost, subprime and nontraditional loans; and

**WHEREAS**, in many instances it has been charged that mortgage brokers were not acting in the best interests of borrowers; and

**WHEREAS**, mortgage brokers may have been compensated or received financial incentives for steering borrowers into overly costly loans; and

**WHEREAS**, Assemblyperson Lois Wolk has introduced Assembly Bill 2880, which would clarify that mortgage brokers operate as fiduciaries for borrowers, establish certain duties that mortgage brokers must satisfy when making, arranging or servicing loans, and prohibit mortgage brokers from receiving compensation for placing borrowers in overly expensive loans; now, therefore, be it

**RESOLVED:** That the City Council of the City of Oakland hereby supports AB 2880 (Wolk) to provide clearer standards for the practices of mortgage brokers; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the City Administrator, and/or her designee, to work actively for the passage of AB 2880.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2008

**PASSED BY THE FOLLOWING VOTE:**

AYES - BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
Of the City of Oakland, California

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2008 MAY 29 PM 7:51

APPROVED AS TO FORM AND LEGALITY:

  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C. M. S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

### RESOLUTION TO SUPPORT SB 1137 (PERATA) TO MODIFY AND ESTABLISH NEW PROCESSES FOR HOME LOAN FORECLOSURE PROCEDURES

**WHEREAS**, the City of Oakland has experienced a very high rate of home mortgage foreclosures, particularly for subprime and non-traditional loans; and

**WHEREAS**, delinquent borrowers are often not contacted by lenders or their agents prior to the filing of a notice of default; and

**WHEREAS**, lenders, trustees, beneficiaries and other entities often do not contact borrowers in an effort to resolve defaults and avoid foreclosure; and

**WHEREAS**, many borrowers are unaware of the availability of housing counseling assistance;

**WHEREAS**, it is often difficult for borrowers to reach a live representative of the lender or to obtain information regarding options to avoid foreclosure and specific instructions on steps to take to explore these options; and

**WHEREAS**, adequate notice of a pending sale, in appropriate languages, is often not provided to either owner-occupants or renters of foreclosed homes; and

**WHEREAS**, foreclosed homes are often neglected and poorly maintained, which can then become nuisances, attract criminal activity, and lead to deterioration of the surrounding neighborhood;

**WHEREAS**, Senator Don Perata has introduced Senate Bill 1137, which would modify and establish new processes for home loan foreclosure procedures through provisions that would: require greater communication with and notice to borrowers in delinquency or default; provide borrowers with information about the availability of assistance from certified counseling agencies; require lenders to provide a way for borrowers to contact the lender via a toll-free telephone number with access to a live representative during business hours; require lenders to post specific information on their web sites to advise borrowers of options and procedures to avoid foreclosure; require that notices of pending foreclosure sales be provided, in appropriate languages, to owner-occupants and renters occupying foreclosed properties and require that



tenants of such properties be provided with at least 60 days written notice of eviction; make owners of vacant residential property that had been subject to foreclosure liable for failure to adequately maintain the property; and declare that servicers of loans are acting in the best interest of all parties to a mortgage loan pool if they agree to or implement loan modifications or workouts; and declare the intent of the Legislature that lenders will offer borrowers loan modifications or workouts plans; now, therefore, be it

**RESOLVED:** That the City Council of the City of Oakland hereby supports SB 1137 (Perata) to provide for changes to the procedures and requirements for mortgage foreclosures; and be it

**FURTHER RESOLVED:** That the City Council hereby authorizes and directs the City Administrator, and/or her designee, to work actively for the passage of SB 1137.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2008

**PASSED BY THE FOLLOWING VOTE:**

AYES - BRUNNER, BROOKS, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California