



**2 Hour CA-DFPI SAFE:  
California Mortgage Laws and Regulations**

**COURSE MANUAL**

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# California Mortgage Laws and Regulations

In this course on California law. We'll be primarily looking at:

- The California Financing Law
- The California Residential Mortgage Lending Act
- California Financing Law under California Code of Regulations

In an effort to strengthen consumer financial protections in California, the Governor's office sought to modernize and revamp the Department of Business Oversight (DBO), including an increase in staff and authority, to enhance its regulatory scope and become a national model for consumer protections. The Department of Financial Protection and Innovation (DFPI) was created to have regulatory powers to protect consumers from unfair, deceptive, or abusive practices committed by previously unlicensed financial services or products. These may include industries that currently exist unregulated in California or new products or services that may enter the market in the future.

The Department of Financial Protection and Innovation (DFPI) provides protection to consumers and services to businesses engaged in financial transactions. The Department regulates a variety of financial services, products and professionals. The Department oversees the operations of state-licensed financial institutions, including banks, credit unions, money transmitters, issuers of payment instruments and traveler's checks, and premium finance companies. Additionally, the Department licenses and regulates a variety of financial businesses, including securities brokers and dealers, investment advisers, deferred deposit (commonly known as payday loans) and certain fiduciaries and lenders. The Department also regulates the offer and sale of securities, franchises and off-exchange commodities.

Future references to the Commissioner or Department refer to the Commissioner of Financial Protection and Innovation or Department of Financial Protection and Innovation.

## CALIFORNIA FINANCING LAW

The text of the law begins with the **defined purpose** of the law, and it's an *overarching concept* that effectively creates an **unwritten law** if it becomes necessary to exercise the enforcement of the unwritten law to **serve the defined purpose** of the law.

### Chapter 1, Article 1, Section 22001

(a) This division shall be **liberally construed and applied** to promote its underlying purposes and policies, which are:

1. (1) To ensure an adequate supply of credit to borrowers in this state.
2. (2) To simplify, clarify, and modernize the law governing loans made by finance lenders.
3. (3) To foster competition among finance lenders.
4. (4) To protect borrowers against unfair practices by some lenders, having due regard for the interests of legitimate and scrupulous lenders.
5. (5) To permit and encourage the development of fair and economically sound lending practices.
6. (6) To encourage and foster a sound economic climate in this state.

**Numerous definitions are provided in the law, but we've listed a few of the more pertinent ones you need to know – or may see on a test:**

**BROKER** - includes any person who is engaged in the business of negotiating or performing any act as broker in connection with loans made by a finance lender. [Chapter 1, Article 1, section 22004]

**LICENSEE** - means any finance lender or broker who receives a license in accordance with this division. [Chapter 1, Article 1, section 22007]

**PERSON** - means an individual, a corporation, a partnership, a limited liability company, a joint venture, an association, a joint stock company, a trust, an unincorporated organization, a government, or a political subdivision of a government. [Chapter 1, Article 1, section 22008]

**FINANCE LENDER** - includes any person who is engaged in the business of making consumer loans or making commercial loans. The business of making consumer loans or commercial loans may include lending money and taking, in the name of the lender, or in any other name, in whole or in part, as security for a loan, any contract or obligation involving the forfeiture of rights in or to personal property, the use and possession of which property is retained by other than the mortgagee or lender, or any lien on, assignment of, or power of attorney relative to wages, salary, earnings, income, or commission.

It is the intent of the Legislature that the definition of finance lender shall be interpreted to include a personal property broker as referenced in Section 1 of Article XV of the California Constitution. [Chapter 1, Article 1, section 22009]

**FINANCE LENDER and BROKER** - do *not* include employees regularly employed at the location specified in the license of the finance lender or broker, except that an employee, when acting within the scope of his or her employment, shall be exempt from any other law from which his or her employer is exempt. [Chapter 1, Article 1, section 22010]

**MORTGAGE LOAN ORIGINATOR** - means an individual who, for compensation or gain, or in the expectation of compensation or gain, takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. [Chapter 1, Article 1, section 22013 (a)]

**LOAN PROCESSORS, UNDERWRITERS, INDEPENDENT CONTRACTORS.** [Chapter 1, Article 1, section 22014]

(a) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator shall not be required to be licensed as a mortgage loan originator.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(c) An independent contractor may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains a mortgage loan originator license under this division. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

**There's a notable number of exceptions to whom the law applies:**

**A MORTGAGE LOAN ORIGINATOR DOES NOT INCLUDE ANY OF THE FOLLOWING:** [Chapter 1, Article 1, section 22013 (b)]

- (1) An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as provided in subdivision (c) of Section 22014. The term "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
- (2) An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the SAFE Act requires such an employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.
- (3) An individual that is solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code.
- (4) An individual licensed as a mortgage loan originator pursuant to the provisions of Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code and the SAFE Act.
- (5) An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency or housing finance agency
- (6) (A) An employee of a bona fide nonprofit organization who exclusively originates residential mortgage loans for a bona fide nonprofit organization, and who acts as a mortgage loan originator only with respect to residential

mortgage loans with terms that are favorable to the borrower.

(B) To qualify for the exemption under this paragraph, the bona fide nonprofit organization under this paragraph must register with the department on a form prescribed by the commissioner.

The array of exemptions and the required documentation is extensive. Take a look at the actual law if this may be relevant or of interest to you.

### **Chapter 1, Article 2, section 22050**

(a) This division does not apply to any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations, insurance premium finance agencies, credit unions, small business investment companies, community advantage lenders, California business and industrial development corporations when acting under federal law or other state authority, or licensed pawnbrokers when acting under the authority of that license.

“Community advantage lender” means an entity authorized by the United States Small Business Administration to deliver community advantage loans.

(b) This division does not apply to a check casher who holds a valid permit issued pursuant to Section 1789.37 of the Civil Code when acting under the authority of that permit, and shall not apply to a person holding a valid license issued pursuant to Section 23005 of the Financial Code when acting under the authority of that license.

(c) This division does not apply to a college or university making a loan for the purpose of permitting a person to pursue a program or course of study leading to a degree or certificate.

(d) This division does not apply to a broker-dealer acting pursuant to a certificate then in effect and issued pursuant to Section 25211 of the Corporations Code.

(e) This division does not apply to any person who makes five or fewer loans in a 12-month period, these loans are commercial loans as defined in Section 22502, and the loans are incidental to the business of the person relying upon the exemption.

(f) This division does not apply to any public corporation as defined in Section 67510 of the Government Code, any public entity other than the state as defined in Section 811.2 of the Government Code, or any agency of any one or more of the foregoing, when making any loan so long as the public corporation, public entity, or agency of any one or more of the foregoing complies with all applicable federal and state laws and regulations.

It is important to note that according to California Financial Code §22050.5, a new exemption to the law was put into place starting January 2017. The exemption is for any person that makes one loan in a 12-month period if the loan is a commercial loan. The new *de minimus* exemption will remain in effect until January 1, 2022.

There are a couple specific exemptions worth mentioning here:

The division (which means Division 9 of the California Finance Code) does not apply to any loan that is made or arranged by any person licensed as a real estate broker by the state and secured by a lien on real property, or to any licensed real estate broker when making such a loan. A licensed real estate broker may make a loan secured by a lien on real property for sale to a finance lender or arrange for a loan secured by a lien on real property to be made by a finance lender without obtaining a license under this division. [Chapter 1, Article 2, Section 22057]

That’s really a long “legally sounding” way of saying that real estate brokers with the license to lend through the California Bureau of Real Estate are not subject to the California Financing Law. I don’t know why they couldn’t have just said that in simple terms!

Another section worthy of mentioning specifies restrictions on brokering loans, and it has the same lengthy wording.

This division (again, it refers to Division 9) does not apply to any loan that is made or arranged by any person licensed as a real estate broker by the state and secured by a lien on real property, or to any licensed real estate broker when making such a loan. A licensed real estate broker may make a loan secured by a lien on real property for sale to a finance lender or arrange for a loan secured by a lien on real property to be made by a finance lender without obtaining a license under this division. [Chapter 1, Article 2, Section 22059]

This division does *not* apply to a loan made or arranged by a licensed residential mortgage lender or servicer when acting under the authority of that license. [Chapter 1, Article 2, Section 22060]

### **Chapter 1, Article 3, Section 22100**

- (a) No person shall engage in the business of a finance lender or broker without obtaining a license from the commissioner.
- (b) Every licensee engaging in the business of making or brokering residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator license from the commissioner under this division or Division 20 (commencing with Section 50000), or has first obtained a license endorsement from the Commissioner of Real Estate pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.
- (c) A finance lender or broker shall not employ a mortgage loan originator whose license or license endorsement has lapsed.
- (d) A finance lender or broker may not make or broker a residential mortgage loan unless that loan is offered by, negotiated by, or applied for through a licensed mortgage loan originator.
- (e) Every licensee engaged in the business of making or brokering residential mortgage loans and every mortgage loan originator licensed under this division shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.
- (f) An individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license in accordance with the requirements of this division and any rules promulgated by the commissioner under this chapter.
- (g) A registered mortgage loan originator, as defined in subdivision (c) of Section 22013, is exempt from licensure under this section when he or she is employed by:
  - (1) A depository institution.
  - (2) A subsidiary of a depository institution that is owned and controlled by a depository institution and regulated by a federal banking agency.
  - (3) An institution regulated by the Farm Credit Administration.

### **Chapter 1, Article 3, Section 22101**

- (a) An application for a license as a finance lender or broker under this division shall be in the form and contain the information that the commissioner may by rule or order require and shall be filed upon payment of the fee specified in Section 22103.
- (b) Notwithstanding any other law, an applicant who does not currently hold a license as a finance lender or broker under this division shall furnish, with his or her application, a full set of fingerprints and related information for purposes of the commissioner conducting a criminal history record check. The commissioner shall obtain and receive criminal history information from the Department of Justice and the Federal Bureau of Investigation pursuant to Section 22101.5.
- (c) This section shall not be construed to prevent a licensee from engaging in the business of a finance lender through a subsidiary corporation if the subsidiary corporation is licensed pursuant to this division.
- (d) For purposes of this section, "subsidiary corporation" means a corporation that is wholly owned by a licensee.
- (e) A new application shall not be required for a change in the address of an existing location previously licensed under this division. However, the licensee shall comply with the requirements of Section 22153.

(f) Notwithstanding subdivisions (a) to (e), inclusive, the commissioner may by rule require an application to be made through the Nationwide Mortgage Licensing System and Registry, and may require fees, fingerprints, financial statements, supporting documents, changes of address, and any other information, and amendments or modifications thereto, to be submitted in the same manner.

(g) Notwithstanding any other law, the commissioner may by rule or order prescribe circumstances under which to accept electronic records or electronic signatures. This section does not require the commissioner to accept electronic records or electronic signatures.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Electronic record" means an initial license application, or material modification of that license application, and any other record created, generated, sent, communicated, received, or stored by electronic means. "Electronic records" also includes, but is not limited to, all of the following:

(A) An application, amendment, supplement, and exhibit, filed for any license, consent, or other authority.

(B) A financial statement, report, or advertising.

(C) An order, license, consent, or other authority.

(D) A notice of public hearing, accusation, and statement of issues in connection with any application, license, consent, or other authority.

(E) A proposed decision of a hearing officer and a decision of the commissioner.

(F) The transcripts of a hearing and correspondence between a party and the commissioner directly relating to the record.

(G) A release, newsletter, interpretive opinion, determination, or specific ruling.

(H) Correspondence between a party and the commissioner directly relating to any document listed in subparagraphs (A) to (G), inclusive.

(2) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(i) The Legislature finds and declares that the Department has continuously implemented methods to accept records filed electronically, and is encouraged to continue to expand its use of electronic filings to the extent feasible, as budget, resources, and equipment are made available to accomplish that goal.

**Chapter 1, Article 3, Section 22104 specifies net worth requirements for *finance lenders and brokers*.** Note that a Mortgage Loan Originator licensed under the Department is not considered a finance lender or a broker, though the MLO may work for a person or organization with such a license. Here's the law:

(a) The applicant shall file with the application for a finance lender or broker license financial statements prepared in accordance with generally accepted accounting principles and acceptable to the commissioner that indicate a net worth of at least twenty-five thousand dollars (\$25,000). Except as provided in subdivisions (b) and (c), a licensee shall maintain a net worth of at least twenty-five thousand dollars (\$25,000) at all times.

(b) A licensed finance lender or broker, that employs one or more mortgage loan originators and that makes residential mortgage loans, shall continuously maintain a minimum net worth of at least two hundred fifty thousand dollars (\$250,000).

(c) A licensed finance broker, that employs one or more mortgage loan originators and that arranges, but does not make, residential mortgage loans, shall continuously maintain a minimum net worth of at least fifty thousand dollars (\$50,000).

(d) The commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth, as are necessary to accomplish the purposes of this division and comply with the SAFE Act.

### **Chapter 1, Article 3, Section 22109**

(a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for a finance lender or broker license for any of the following reasons:

(1) A false statement of a material fact has been made in the application.

(2) The applicant or an officer, director, general partner, person responsible for the applicant's lending activities in this state, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last 10 years, been convicted of or pleaded nolo contendere to a crime, or committed an act involving dishonesty, fraud, or deceit, if the crime or act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.

(3) The applicant or an officer, director, general partner, person responsible for the applicant's lending activities in this state, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

(4) The applicant employs a mortgage loan originator who is not licensed, or has not initiated an application to become licensed, pursuant to this division.

(b) The application shall be considered withdrawn within the meaning of this section if the applicant fails to respond to a written notification of a deficiency in the application within 90 days of the date of the notification.

(c) The commissioner shall, within 60 days from the filing of a full and complete application for a license with the fees, either issue a license or file a statement of issues prepared in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

### **Chapter 1, Article 3, Section 22109.1**

(a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes, at a minimum, the following findings:

1. (1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation.
2. (2) (A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

(B) For purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).

3. (3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.
4. (4) The applicant has completed the pre-licensing education requirement described in Section 22109.2.
5. (5) The applicant has passed a written test that meets the test requirement described in Section 22109.3.
6. (6) The applicant is employed by, and subject to the supervision of, a finance lender or broker that has obtained a license from the commissioner pursuant to this division.

(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall have all the powers granted under that chapter.

### **Chapter 1, Article 3, Section 22109.2**

(a) An applicant for a mortgage loan originator license shall complete at least 20 hours of education approved in accordance with subdivision (b). The education shall include at least the following:

1. (1) Three hours of instruction on federal law and regulations.
2. (2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
3. (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.
4. (4) Two hours of training related to relevant California law and regulations.

(b) For purposes of subdivision (a), pre-licensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any pre-licensing education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Pre-licensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be accepted as credit toward completion of pre-licensing education requirements in California.

(f) An individual previously licensed under this division as a mortgage loan originator, applying to be licensed again, shall prove that he or she has completed all of the continuing education requirements for the year in which the license was last held.

### **Chapter 1, Article 3, Section 22109.3**

(a) An applicant for a mortgage loan originator license shall pass a qualified written test developed or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry.

(b) A written test shall not be treated as a qualified written test for purposes of subdivision (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including all of the following:

- (1) Ethics.
- (2) Federal law and regulation relating to mortgage origination.
- (3) State law and regulation relating to mortgage origination.
- (4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d) An individual shall not be considered to have passed a qualified written test administered pursuant to this section unless the individual achieves a test score of not less than 75 percent of correct answers to questions.



(e) An individual who fails the qualified written test may retake the test up to three consecutive times, although at least 30 days shall pass between each retesting.

(f) An applicant who fails three consecutive retests shall wait at least six months before retesting.

(g) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

**Chapter 1, Article 3, Sections 22109.4 through 22109.6 specify a variety of requirements an MLO must meet once a license is obtained.** Since you don't need to know all those requirements right now (to **GET** your license) I won't subject you to another extensive listing of requirements. However, I will point out a few of the more relevant items contained within these sections since you should have some idea of the requirements you'll need to meet once licensed, and also because it's the kind of information federal and state agencies love to put on tests.

- You have until midnight on December 31 of each year to ensure your annual requirements have been met.
- You must complete at least eight hours of continuing education (or CE) and that CE must include the following:
  - Three hours of instruction on federal law and regulations.
  - Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
  - Two hours of training related to lending standards for the nontraditional mortgage product marketplace. (Incidentally, "nontraditional mortgage product" means anything other than a 30 year fixed rate mortgage.)
  - One hour of training related to relevant California law and regulations.
- Continuing education may be offered in a classroom, online, and by any other means approved by the Nationwide Mortgage Licensing System and Registry.

**Chapter 1, Article 3, Section 22112 specifies the surety bond amounts that may be required once you are licensed.**

(a) A licensee shall maintain a surety bond in accordance with this subdivision in a minimum amount of twenty-five thousand dollars (\$25,000). The bond shall be payable to the commissioner and issued by an insurer authorized to do business in this state. An original surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of execution. For licensees with multiple licensed locations, only one surety bond is required. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division or for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with the requirements of this division.

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

(c) The commissioner may by rule require a higher bond amount for a licensee who employs one or more mortgage loan originators and who makes or arranges residential mortgage loans, based on the dollar amount of residential mortgage loans originated by that licensee and any mortgage loan originators employed by that licensee. Every mortgage loan originator employed by the licensee shall be covered by the surety bond.

**Chapter 1, Article 4, Section 22150**

The commissioner may make general rules and regulations and specific rulings, demands, and findings for the enforcement of this division, in addition to, and within the general purposes of, this division.

### **Chapter 1, Article 4, Section 22151**

(a) A finance lender license, broker license, and the license of every mortgage loan originator employed by a lender or finance broker, along with any currently effective order of the commissioner approving a different name pursuant to Section 22155, shall be conspicuously posted in the place of business authorized by the license.

(b) A license is not transferable or assignable. A license issued to a partnership or a limited partnership is not transferred or assigned within the meaning of this section by the death, withdrawal, or admission of a partner, general partner, or limited partner, unless the death, withdrawal, or admission dissolves the partnership to which the license was issued.

### **Chapter 1, Article 4, Section 22152**

A finance lender or broker licensee shall maintain only one place of business under a duplicate or original license issued pursuant to Section 22101 or 22102. The commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this division governing an original issuance of a license.

### **Chapter 1, Article 4, Section 22153**

(a) If a finance lender or broker licensee seeks to change its place of business to a street address other than that designated in its license, the licensee shall provide notice to the commissioner at least 10 days prior to the change. The commissioner shall notify the licensee within 10 days if the commissioner disapproves the change, and if the commissioner does not notify the licensee of disapproval within 10 days, the change in address shall be deemed approved. The commissioner may require an applicant to submit its application to change its place of business through the Nationwide Mortgage Licensing System and Registry.

(b) If notice is not given at least 10 days prior to the change of a street address of a place of business, as required by subdivision (a), or notice is not given at least 10 days prior to engaging in business at a new location, as required by

Section 22102, the commissioner may assess a civil or administrative penalty on the licensee not to exceed five hundred dollars (\$500).

### **Chapter 1, Article 4, Section 22154 and 22155 specify *where* you can conduct business.**

(a) No licensee shall conduct the business of making loans under this division within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as is authorized in writing by the commissioner upon the commissioner's finding that the character of the other business is such that the granting of the authority would not facilitate evasions of this division or of the rules and regulations made pursuant to this division. An authorization once granted remains in effect until revoked by the commissioner. The commissioner may authorize the other business through the Nationwide Mortgage Licensing System and Registry. (22154)

No finance lender, broker, or mortgage loan originator licensee shall transact the business licensed or make any loan provided for by this division under any other name or at any other place of business than that named in the license except pursuant to a currently effective written order of the commissioner authorizing the other name or other place of business. The commissioner's order, while effective, shall be deemed to amend the original license issued pursuant to Section 22105 or 22109.1. Notwithstanding any provision of this section, a licensee may make any loan and engage in any other business provided for by this division, other than the business described in subdivision (b) of Section 22154, at a place other than the licensed location under either of the following conditions: (22155)

(a) The borrower requests, either orally or in writing, that a loan be initiated or made at a location other than the licensee's licensed location. The use by the licensee of a preprinted solicitation form returned to the licensee by the borrower shall not constitute a request by the borrower that a loan be initiated or made at a location other than the licensee's licensed location.

(b) The licensee makes a solicitation or advertises for, or makes an offer of, a loan displayed on "home pages" or similar methods by the licensee on the Internet, the World Wide Web, or similar proprietary or common carrier electronic systems, and the prospective borrower may transmit information over these electronic systems to the licensee in connection with the licensee's offer to make a loan. (22155)

There are a few more sections of the California Financing Law I want to specifically highlight.

**No person subject to this division shall do any of the following: [Chapter 1, Article 4, Section 22161]**

- (a) Make a materially false or misleading statement or representation to a borrower about the terms or conditions of that borrower's loan, when making or brokering the loan.
- (b) Advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating loans, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading, or deceptive, or in the case of a licensee, that refers to the supervision of the business by the state or any department or official of the state.
- (c) Commit an act in violation of Section 1695.13 of the Civil Code.
- (d) Engage in any act in violation of Section 17200 of the Business and Professions Code.
- (e) Knowingly misrepresent, circumvent, or conceal, through subterfuge or device, any material aspect or information regarding a transaction to which the person is a party.
- (f) Commit an act that constitutes fraud or dishonest dealings.

**You are also restricted in the manner and content of your advertising.**

**Chapter 1, Article 4, Section 22162**

No licensee shall place an advertisement disseminated primarily in this state for a loan unless the licensee discloses in the printed text of the advertisement, or in the oral text in the case of a radio or television advertisement, the license under which the loan would be made or arranged.

**Chapter 1, Article 4, Section 22163**

The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in the manner that the commissioner deems necessary to prevent misunderstanding by prospective borrowers.

**Chapter 1, Article 4, Section 22164**

If any person engaged in the business regulated by this division refers in any advertising to rates of interest, charges, or cost of loans, the commissioner shall require that the rates, charges, or costs are stated fully and clearly in the manner that he or she deems necessary to give adequate information to prospective borrowers. If the rates or costs advertised do not apply to loans of all classes made or negotiated by the person, this fact shall be clearly indicated in the advertisement.

**Chapter 1, Article 4, Section 22165**

No advertising copy shall be used after its use has been disapproved by the commissioner and the licensee is notified in writing of the disapproval. The commissioner may by order direct any licensee to submit advertising copy to the commissioner for review prior to use.

**Chapter 1, Article 4, Section 22166**

The commissioner may require licensees to maintain a file of all advertising copy for a period of two years from the date of its use. The file shall be available to the commissioner upon request.

**Before we leave the California Financing law, let's take a look at the exceptionally wide authority of the Commissioner. [Chapter 1, Article 4, Section 22172]**

- (a) The commissioner may do one or more of the following:

(1) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.

(2) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 22109.1 or 22109.4, or withholds information or makes a material misstatement in an application for a license or license renewal.

(3) Order restitution against a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator for a violation of this division.

(4) Impose fines on a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(5) Issue orders or directives to mortgage loan originators under this division as follows:

(A) Order or direct a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.

(B) Order or direct a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator to cease any harmful activities or violations of this division, including immediate temporary orders to desist and refrain.

(C) Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under Section 22100 if the commissioner determines that the license was erroneously granted or the mortgage loan originator is currently in violation of this division.

(D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any finance lender or broker licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

**Whether it seems fair or not, the law gives the commissioner huge latitude to affect your life, and you don't get the same "due process" as you get in trial court, so beware...and be careful.**

## CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT

The California Residential Mortgage Lending Act was enacted in 1994 and become enforced in two years later. This act was passed as an alternative to the existing laws revolving around the subject of licensing lenders under the Real Estate Law and the California Financing Law (CFL). What sets the California Residential Mortgage Lending Act apart from other laws within the industry is the fact that it is meant to authorize and regulate mortgage lending activities. Under this act, an applicant can obtain their license as a lender [CA FIN 50120], a servicer [CA FIN 50130], or both. The California Residential Mortgage Lending Act enables licensees to make federally related mortgage loans, loans to finance the construction of a home, to sell the loans to institutional investors and to service those loans. Additionally, under the law, any form of organization can obtain a license. For example, natural persons, sole proprietorships, corporations, partnerships, limited liability companies, associations, trusts, joint ventures, etc....

### **Section 50002 of Chapter 1 of Division 20 (the California Residential Lending Act) states that:**

(a) No person shall engage in the business of making residential mortgage loans or servicing residential mortgage loans, in this state, without first obtaining a license from the commissioner in accordance with the requirements of Chapter 2 (commencing with Section 50120) or Chapter 3 (commencing with Section 50130), and any rules promulgated by the commissioner under this law, unless a person or transaction is excepted from a definition or exempt from licensure by a provision of this law or a rule of the commissioner.

### **Section 50002.5 of Chapter 1 of Division 20 (the California Residential Lending Act) states that:**

a) Every licensee engaging in the business of making, servicing, or making and servicing residential mortgage loans shall require that every mortgage loan originator employed or compensated by that licensee obtains and maintains a mortgage loan originator license from the commissioner under this division or Division 9 (commencing with Section 22000), or has first obtained a license endorsement from the commissioner of Real Estate pursuant to Article 2.1 (commencing with Section 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code.

(b) A residential mortgage lender or servicer shall not employ a mortgage loan originator whose license or license endorsement has lapsed.

(c) A residential mortgage lender or servicer may not make or broker a residential mortgage loan unless that loan is negotiated by or applied for through a licensed mortgage loan originator.

(d) Every licensee engaged in the business of making, servicing, or making and servicing residential mortgage loans and every mortgage loan originator licensed under this division shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(e) No mortgage loan originator licensed under this division and employed by a licensed residential mortgage lender or residential mortgage servicer shall engage in any activity that is not an authorized activity for a licensed residential mortgage lender or residential mortgage servicer pursuant to this division.

### **Section 50003.6 of Chapter 1 of Division 20 (the California Residential Lending Act) states that:**

(a) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a loan originator shall not be required to be licensed as a mortgage loan originator.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(c) An independent contractor may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains a residential mortgage lender or residential mortgage servicer license and a mortgage loan originator license under this division.

Chapter 3.5 of Division 20 (the California Residential Mortgage Lending Act – or CRMLA) enumerates its own requirements for Mortgage Loan Originators. Some of the text is almost the same as the California Financing Law - CFL. We will briefly review these, but then move on to information that appears here that was only partially included in the CFL.

The following material is not very similar to what is written and included in the CFL, so this is “new” material from the California Residential Mortgage Lending Act, beginning at section 50140 in chapter 3.5.

- (a) An applicant for a license as a mortgage loan originator shall apply by submitting the uniform form prescribed for that purpose by the Nationwide Mortgage Licensing System and Registry. The commissioner may require the submission of additional information or supporting documentation to the department.
- (b) Section 461 of the Business and Professions Code shall not be applicable to the Department of Corporations when using a national uniform application adopted or approved for use by the Nationwide Mortgage Licensing System and Registry in connection with the SAFE Act.
- (c) The commissioner shall, by rule, establish the timelines, fees, and assessments applicable to applicants for original mortgage loan originator licenses, license renewals, and license changes under this division.
- (d) The commissioner may, by rule, require mortgage loan originator licensees to pay assessments through the Nationwide Mortgage Licensing System and Registry.
- (e) In connection with an application for a license as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:
  - (1) Fingerprint images and related information, for purposes of performing a federal, or both a state and federal, criminal history background check.
  - (2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain both of the following:
    - (A) An independent credit report obtained from a consumer reporting agency.
    - (B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.
- (f) The commissioner may ask the Nationwide Mortgage Licensing System and Registry to obtain state criminal history background check information on applicants described in subdivision (a) using the procedures set forth in subdivisions (g) and (h).
- (g) If the Nationwide Mortgage Licensing System and Registry electronically submits fingerprint images and related information, as required by the Department of Justice, for an applicant for a mortgage loan originator license, for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests and to the existence and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal, the Department of Justice shall provide an electronic response to the Nationwide Mortgage Licensing System and Registry pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, and shall provide the same electronic response to the commissioner.
- (h) The Nationwide Mortgage Licensing System and Registry may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a). The Department of Justice shall provide the same electronic response to the commissioner.
- (i) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

**Section 50141 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

(a) The commissioner shall deny an application for a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

(1) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation or set aside of such revocation shall not be deemed a revocation.

(2)(A) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing and registration, or at any time preceding the date of application, if such felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

(2)(B) For the purposes of this paragraph, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this paragraph or paragraph (3).

(3) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this division.

(4) The applicant has completed the prelicensing education requirement described in Section 50142.

(5) The applicant has passed a written test that meets the test requirements described in Section 50143.

(6) The applicant is employed by, and subject to the supervision of, a residential mortgage lender or servicer that has obtained a license from the commissioner pursuant to this division.

(7) The surety bond of the residential mortgage lender or servicer employing the applicant covers the activities of the applicant and meets the requirements of Section 50205

(b) Before denying a license under this section, the commissioner shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and shall have the powers granted under that chapter.

With regards the California Residential Mortgage Lending Act's requirements to obtain a license, section 50142 denotes the education requirements, section 50143 denotes the testing requirements and section 50144 provides the requirements for mortgage loan originators to keep their license after obtaining one.

**Section 50142 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

(a) An applicant for a mortgage loan originator license shall complete at least 20 hours of education approved in accordance with subdivision (b). The education shall include at least the following:

(1) Three hours of instruction on federal law and regulations.

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For the purposes of subdivision (a), prelicensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of the prelicensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any prelicensing education courses approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) The prelicensing education requirements approved by the Nationwide Licensing System and Registry for any state other than California shall be accepted as credit toward completion of prelicensing education requirements in California.

(f) An individual previously licensed under this chapter applying to be licensed again must prove that he or she has completed all of the continuing education requirements for the year in which that individual last held the license.

**Section 50143 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

(a) An applicant for a mortgage loan originator license shall pass a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test approved by the Nationwide Mortgage Licensing System and Registry.

(b) A written test shall not be treated as a qualified written test for purposes of subdivision (a) unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including the following:

(1) Ethics

(2) Federal law and regulation relating to mortgage origination

(3) State law and regulation relating to mortgage origination

(4) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from provided a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(d)(1) An individual shall not be considered to have passed the qualified written test unless the individual achieves a test score of not less than 75 percent of correct answers to questions.

(2) An individual who fails the qualified written test may retake the test up to three consecutive times, although at least 30 days shall pass between each retesting.

(3) An applicant who fails three consecutive retests shall wait at least six months before retesting.

(4) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

**Section 50144 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

(a) A mortgage loan originator shall comply with the requirements of this section on or before December 31 of every year.

(b) The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance under Section 50141.

(2) The mortgage loan originator has satisfied the annual continuing education requirements described in Section 50145.

(3) The mortgage loan originator, or the residential mortgage lender or servicer employing the mortgage loan originator, has paid all required fees for renewal of the license.

(4) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire at midnight on December 31, except as provided in Section 50145. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.



As you have probably noticed, these requirements that deal with obtaining a license and keeping one are very similar to those we reviewed under the California Financing Law.

**Section 50145 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

(a) A licensed mortgage loan originator shall complete at least eight hours of continuing education approved in accordance with subdivision (b). The continuing education shall include at least the following:

- (1) Three hours of instruction on federal law and regulations.
- (2) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace. (4) One hour of training related to relevant California law and regulations.

(b) For purposes of subdivision (a), continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall preclude any education course approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(e) Except as provided in subdivision (i), a licensed mortgage loan originator:

- (1) May only receive credit for a continuing education course in the year in which the course is taken.
- (2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

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

(g) A person who has successfully completed continuing education requirements approved by the Nationwide Mortgage Licensing System and Registry for any state other than California shall be granted credit toward completion of continuing education requirements in California.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) A person meeting the requirements of paragraphs (1) and (3) of subdivision (b) of Section 50144 may correct any deficiency in continuing education as established by rule or regulation of the commissioner.

**Section 50146 of Chapter 3.5 of Division 20 (the California Residential Lending Act) states that:**

In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the commissioner may establish by rule, regulation, or order, requirements as necessary, including, but not limited to, the following:

(a) Background checks for:

- (1) Criminal history through fingerprint or other databases.
- (2) Civil or administrative records.

(3) Credit history.

(4) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry or the commissioner.

(b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry.

(c) The setting or resetting as necessary of renewal or reporting dates.

(d) Requirements for amending or surrendering a license or any other activities as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

**Section 50150 of Chapter 3.6 of Division 20 (the California Residential Lending Act) states that:**

(a) The commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this division.

(b) For the purpose of participating in the Nationwide Mortgage Licensing System and Registry, the commissioner is authorized to waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this division and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(c) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from, and distributing information to, the Department of Justice or any governmental agency.

(d) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(e) The commissioner shall establish a process where applicants and licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

**Section 50500 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any person who willfully violates any provision of this division, or any rule or order under this division, shall, upon conviction, be subject to a fine of not more than ten thousand dollars (\$10,000) or imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for not more than one year, or to both that fine and imprisonment. No person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order. Conviction under this section shall not preclude the commissioner from exercising the authority provided in Section 50320.

**Section 50501 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) Any person who violates a provision of this division, or any rule or order under this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation. This penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(b) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

**Section 50501.5 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a licensee or person is violating or has violated any provision of this division or any rule or order thereunder, the commissioner or his or her designee may issue a citation to that licensee or person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and provide a reasonable time period or

periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500) that shall be deposited in the State Corporations Fund. In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors including the gravity of the violation, the good faith of the person or licensees cited, and the history of previous violations. A citation issued and a fine assessed pursuant to this section, while constituting punishment for a violation of law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation and fine payment thereof by a licensee shall not be reported as disciplinary action taken by the commissioner.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business or activity or activities, or an order to suspend all business operations to a person or licensee who is engaged in or who has engaged in continued or repeated violations of this division. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If, within 30 days from the receipt of the citation, the person cited fails to notify the department that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative fine and an order compelling the cited person to comply with the order of the commissioner. The application, which shall include a certified copy of the final order of the commissioner, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

**Section 50502 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

It is a violation of this division for any person to make any untrue statement of a material fact in any document filed with the commissioner under this division or rules adopted thereunder, or to omit any material fact which is required to be stated in any document.

**Section 50503 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) It is a violation for any person subject to this law or any director, partner, shareholder controlling an ownership interest of 10 percent or more, trustee, officer, agent, or employee of any such person to do any of the following:

(1) Knowingly or recklessly disburse or cause the disbursement of trust funds, except as permitted by Section 50202, or knowingly or recklessly to direct, participate in, or aid or abet in a material way, any activity that constitutes theft or fraud in connection with any trust fund transaction.

(2) Knowingly or recklessly make or cause to be made any misstatement or omission of a material fact, pertaining to a loan or loan servicing.

(b) Any director, officer, partner, shareholder controlling an ownership interest of 10 percent or more, trustee, or employee of a residential mortgage loan servicer who abstracts or misappropriates money, funds, trust obligations, or property deposited with a licensee, commits a violation of this section. If a violation results in a criminal conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

**Section 50504 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

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

(b) If interest on the principal amount of a loan in excess of the amount authorized by this division is willfully charged, contracted for, or received, in addition to any other penalties or remedies, the commissioner may order the licensee to

refund the excess interest amount to all borrowers charged the excess amount, with interest at the rate of 10 percent per annum, calculated from the date the improper charge was imposed.

**Section 50505 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any person who violates any provision of any of the following federal acts or regulations violates this division:

- (a) The federal Real Estate Settlement Procedures Act, as amended (12 U.S.C. Sec. 2601 et seq.)
- (b) The federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.)
- (c) The federal Home Ownership Equity Protection Act (15 U.S.C. Sec. 1639.)
- (d) Any regulation promulgated under any of the federal acts in subdivision (a), (b), or (c).

**Section 50506 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who knowingly receives or appropriates any of the licensee's property, other than in payment of a just demand or with intent to defraud, or who omits to make or causes an omission to be made in the full and true entry thereof in its books and accounts or concurs in omitting to make any material entry thereof, violates this division.

**Section 50507 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who knowingly makes or concurs in making or publishing any false entry in its books or records, any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or having the custody of its books, willfully refuses or neglects to make any proper entry in the books as required by law or to allow the books to be inspected by the commissioner or his or her deputies or investigators, violates this division.

**Section 50508 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any director, officer, partner, trustee, or employee of a licensee, its holding company, or its affiliates who makes a false entry in any book or record of the business, or in connection with any transaction of the business, with intent to deceive any officer, director, or employee thereof, or any agent or examiner, employed or lawfully appointed to examine into its condition or any of its affairs or transactions, or to any public officer who has authority to examine into its affairs or transactions, or who, with like intent, omits to make a new entry of any matter particularly pertaining to the business property condition, or transactions of the entity in any document of the licensee, or who, with like intent, makes unavailable any document of the licensee made, written, or kept, or required to be made, written, or kept by him or her under his or her direction, violates this division.

**Section 50509 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Any officer, director, partner, trustee, or employee of any entity who abstracts or misapplies any of the money, funds, or property of a licensee, or misapplies its credit, or abstracts or misapplies money, funds, trust obligations, or property deposited with a licensee, violates this division. If a violation results in a criminal conviction, the court shall, in addition to any other punishment imposed, order the person to make full restitution to the licensee. Nothing in this section shall be deemed or construed to repeal, amend, or impair any existing provision of law prescribing a punishment for such an offense.

**Section 50510 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

Nothing in this chapter shall be construed to authorize a criminal prosecution for a violation of a civil statute incorporated by reference into this division. Civil monetary penalties and fines shall not be imposed under this law for a violation of subdivision (e) or (j) of Section 50204 or Section 50505 if a licensee demonstrates that it has paid a civil monetary penalty or fine for the same act or transaction, as a violation of Section 17200 or 17500 of the Business and Professions Code, Section 2941 of the Civil Code, or provisions of the Real Estate Settlement Procedures Act (12 U.S.C.A. Sec. 2601 et seq.).

**Section 50511 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

The commissioner may, subject to the requirements of subdivisions (b), (c), and (d) of Section 50318, suspend for a period not to exceed 12 months or bar a person from any position of employment with a licensee if the commissioner finds that the person has willfully used or claimed without authority a designation or certification of special education, practice, or skill that the person has not attained, or willfully held out to the public a confusingly similar designation or certification for the purpose of misleading the public regarding his or her qualifications or experience.

**Section 50512 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

(b) It is unlawful for any person to knowingly make an untrue statement to the commissioner during the course of licensing, investigation, or examination, with the intent to impede, obstruct, or influence the administration or enforcement of any provision of this division.

**Section 50513 of Chapter 7 of Division 20 (the California Residential Lending Act) states that:**

(a) The commissioner may do one or more of the following:

(1) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license for a violation of this division, or any rules or regulations adopted thereunder.

(2) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license if an applicant or licensee fails at any time to meet the requirements of Section 50141 or 50144, or withholds information or makes a material misstatement in an application for a license or license renewal.

(3) Order restitution against a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator for a violation of this division.

(4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).

(5) Issue orders or directives to mortgage loan originators under this division as follows:

(A) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.

(B) Order or direct a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator to cease any harmful activities or violations of this division, including immediate temporary orders to desist and refrain.

(C) Enter immediate temporary orders to cease business under a license issued pursuant to the authority granted under Section 50002 if the commissioner determines that the license was erroneously granted or the mortgage loan originator is currently in violation of this division.

(D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.

(c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).

(d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

Finally, we will take a quick look at the look at California Financing Law under California Code of Regulations as they relate to mortgage loan originators.

#### **§ 1409.1. Notice of Changes by Mortgage Lender, Mortgage Broker, Mortgage Lender and Broker, and Mortgage Loan Originator.**

**Each** licensed mortgage lender, mortgage broker, mortgage lender and broker, and mortgage loan originator shall, upon any change in the information contained in its license application (other than financial information contained therein) promptly file an amendment to such application setting forth the changed information. [10 CCR § 1409.1(a)]

A licensed mortgage lender, mortgage broker, and mortgage lender and broker shall notify the Commissioner of the employment of any new mortgage loan originator in California and of the termination of employment of any mortgage loan originator in California in accordance with Section 1422.6 of Subchapter 6 of these rules [10 CCR § 1409.1(d)]

#### **§ 1414. Supervision of Mortgage Loan Originators**

**Every mortgage loan originator employed by** a mortgage lender, mortgage broker, or mortgage lender and broker shall be subject to the supervision of a branch manager designated by such mortgage lender, mortgage broker, or mortgage lender and broker. Every branch manager shall be identified on Form MU3 and shall submit a Form MU2 to NMLS. [10 CCR § 1414 (b)]

#### **§ 1422.4. Electronic Filings**

**DESIGNATION:** The Commissioner designates the Nationwide Mortgage Licensing System (NMLS) owned and operated by the State Regulatory Registry LLC (SRR), a wholly-owned subsidiary of the Conference of State Bank Supervisors (in cooperation with the American Association of Residential Mortgage Regulators) to receive and store filings, obtain fingerprints, obtain credit reports, and collect related fees from applicants and state-licensed mortgage lenders, mortgage brokers, mortgage lenders and brokers, and mortgage loan originators on behalf of the Commissioner. [10 CCR § 1422.4(a)]

**USE OF NMLS:** All mortgage lender, mortgage broker, mortgage lender and broker, and mortgage loan originator applications, amendments, reports, notices, related filings, renewals, authorizations, and fees required to be filed with the Commissioner shall be filed electronically with and transmitted to NMLS, except as otherwise indicated in Subchapter 6 of these rules. [10 CCR § 1422.4(b)]

#### **§ 1422.4.5. Request for Confidential Treatment.**

A mortgage lender, broker, mortgage lender and broker, and mortgage loan originator applicant may request that certain documents, or parts thereof, be treated confidentially. A request for confidentiality shall be in writing and made pursuant to Section 250.10 of Article 1 of Subchapter 1 of these rules. If a request for confidential treatment is granted or denied, the person making such request will be notified in writing. . [10 CCR § 1422.4.5]

#### **§ 1422.6. Mortgage Loan Originator Application Procedures**

(d) A mortgage loan originator applicant must complete all license requirements, including, but not limited to the payment of all required fees prior to transmitting the application to the Commissioner. The fee for an application as a mortgage loan originator is three hundred dollars (\$300), which shall be paid through NMLS for transmission to the Commissioner, plus twenty dollars (\$20) for the processing of a criminal history background check. The application fee shall constitute the mortgage loan originator's license fee for the remainder of the year in which a license is issued. [10 CCR § 1422.6(d)]

(h) A mortgage loan originator may not engage in business under any name other than a name approved by the Commissioner for the use by the sponsor of the mortgage loan originator. [10 CCR § 1422.6(h)]

#### **§ 1422.6.1. Qualifications of Mortgage Loan Originator Applicants**

Every applicant for a mortgage loan originator license shall meet the requirements of this section. [10 CCR § 1422.6.1]

(a) **QUALIFIED WRITTEN TEST:** Every applicant for a mortgage loan originator license shall pass a qualified written test developed or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry. The qualified written test shall consist of:

(1) the national component and the California state component; or

- (2) the national component and the uniform state test; or
- (3) the national component with uniform state content.

An applicant shall abide by the rules, policies and procedures of the Nationwide Mortgage Licensing System and Registry in the administration of the test.

(b) EDUCATION: Every applicant for a residential mortgage loan originator license shall complete at least 20 hours of NMLS approved education including:

- (1) Three hours of instruction on federal law and regulations,
- (2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues,
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace, and
- (4) Two hours of training related to relevant California law and regulations.

#### **§ 1422.6.3. Continuing Education and Renewal Procedures for Mortgage Loan Originators**

A mortgage loan originator license shall be renewed on an annual basis between November 1 and December 31. A license not renewed during the specified time period shall be deemed a lapsed or expired license. A mortgage loan originator with a lapsed or expired license may not engage in business as a mortgage loan originator until the mortgage loan originator's license is reinstated pursuant to Section 1422.11 of Subchapter 6 of these rules.

(b) To renew a license under subsection (a) of this rule, a licensed mortgage loan originator shall pay a renewal fee (\$300), comply with all submission requests by the Commissioner, and complete at least eight hours of NMLS approved continuing education on or before December 31st of every year, which shall include the following:

- (1) Three hours of instruction on federal law and regulations,
- (2) Two hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues,
- (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace, and
- (4) One hour of training related to relevant California law and regulations

#### **§ 1422.11. Reinstatement of License as a Mortgage Loan Originator.**

(a) A mortgage loan originator license that has not been renewed between November 1 and December 31 is a lapsed or expired license. A mortgage loan originator with an expired license may not continue doing business as a mortgage loan originator unless his or her license is reinstated.

(b) A mortgage loan originator may reinstate an expired license if all of the following conditions are met:

- (1) The mortgage loan originator must submit a request for reinstatement through NMLS before March 1 of the year immediately following the year the license expired.
- (2) All continuing education courses and any other minimum requirements for the license renewal for the year in which the license expired must be completed before March 1 of the year immediately following the year the license expired.
- (3) The mortgage loan originator must pay the applicable licensing fee (\$300), reinstatement fee (\$100), and any late fees or penalties. As of January 1, 2011, the mortgage loan originator must pay the applicable licensing fee (\$300), reinstatement fee (\$100), and any later fees or penalties.
- (4) The mortgage loan originator must continue to meet minimum standards for renewal in Section 22109.4 of the Code.

(c) If a mortgage loan originator whose license has expired cannot meet the requirements for reinstatement specified in this section or submits a reinstatement filing on or after March 1, the mortgage loan originator must apply for a new license and meet the requirements for licensure in effect at that time.

In summary, negligence and irresponsibility can have serious consequences for loan originators. Know the law, maintain diligence, and treat your clients with great respect. A good reputation can go a long way in minimizing the consequences of a mistake should you ever find yourself in an undesirable discussion with the commissioner. Be smart. Be vigilant. And be successful!