

**ASSEMBLY BILL**

**No. 407**

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**Introduced by Assembly Member Davis**

February 14, 2011

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An act to amend Section 10242.6 of the Business and Professions Code, and to amend Section 2954.9 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 407, as introduced, Davis. Mortgages: prepayment penalties.

Existing law limits the circumstances under which a prepayment charge can be imposed with respect to loans secured by a mortgage or deed of trust on real property improved with one to 4 dwelling units.

This bill would, instead, prohibit the imposition of prepayment charges for these loans.

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

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

- 1 SECTION 1. Section 10242.6 of the Business and Professions
- 2 Code is amended to read:
- 3 10242.6. (a) The principal and accrued interest on any loan
- 4 secured by a mortgage or deed of trust on real property containing
- 5 only a single-family, owner-occupied dwelling may be prepaid in
- 6 whole or in part at any time ~~but only a prepayment made within~~
- 7 ~~seven years of the date of execution of such mortgage or deed of~~
- 8 ~~trust may be subject to a prepayment charge and then solely as~~
- 9 ~~herein set forth. An amount not exceeding 20 percent of the unpaid~~

1 balance may be prepaid in any 12-month period. A prepayment  
2 charge may be imposed on any amount prepaid in any 12-month  
3 period in excess of 20 percent of the unpaid balance which charge  
4 shall not exceed an amount equal to the payment of six months'  
5 advance interest on the amount prepaid in excess of 20 percent of  
6 the unpaid balance *without a prepayment charge*.

7 (b) ~~Notwithstanding subdivision (a), there shall be no~~  
8 ~~prepayment penalty charged to a borrower under a loan subject to~~  
9 ~~this section if the dwelling securing the loan has been damaged to~~  
10 ~~such an extent by a natural disaster for which a state of emergency~~  
11 ~~is declared by the Governor, pursuant to Chapter 7 (commencing~~  
12 ~~with Section 8550) of Division 1 of Title 2 of the Government~~  
13 ~~Code, that the dwelling cannot be occupied and the prepayment~~  
14 ~~is causally related thereto.~~

15 (e)

16 (b) As used in this section, “owner-occupied dwelling” means  
17 a dwelling which will be owned and occupied by a signatory to  
18 the mortgage or deed of trust secured by the dwelling within 90  
19 days of the execution of the mortgage or deed of trust.

20 SEC. 2. Section 2954.9 of the Civil Code is amended to read:  
21 2954.9. (a) (1) ~~Except as otherwise provided by statute, where~~  
22 ~~Where~~ the original principal obligation is a loan for residential  
23 property of four units or less, the borrower under any note or  
24 evidence of indebtedness secured by a deed of trust or mortgage  
25 or any other lien on real property shall be entitled to prepay the  
26 whole or any part of the balance due, together with accrued interest,  
27 at any time *without a prepayment charge*.

28 (2) ~~Nothing in this subdivision shall prevent a borrower from~~  
29 ~~obligating himself, by an agreement in writing, to pay a prepayment~~  
30 ~~charge.~~

31 (3) ~~This subdivision does not apply during any calendar year~~  
32 ~~to a bona fide loan secured by a deed of trust or mortgage given~~  
33 ~~back during such calendar year to the seller by the purchaser on~~  
34 ~~account of the purchase price if the seller does not take back four~~  
35 ~~or more such deeds of trust or mortgages during such calendar~~  
36 ~~year. Nothing in this subdivision shall be construed to prohibit a~~  
37 ~~borrower from making a prepayment by an agreement in writing~~  
38 ~~with the lender.~~

39 (b) ~~Except as otherwise provided in Section 10242.6 of the~~  
40 ~~Business and Professions Code, the principal and accrued interest~~

1 on any loan secured by a mortgage or deed of trust on  
2 owner-occupied residential real property containing only four units  
3 or less may be prepaid in whole or in part at any time but only a  
4 prepayment made within five years of the date of execution of  
5 such mortgage or deed of trust may be subject to a prepayment  
6 charge and then solely as herein set forth. An amount not exceeding  
7 20 percent of the original principal amount may be prepaid in any  
8 12-month period without penalty. A prepayment charge may be  
9 imposed on any amount prepaid in any 12-month period in excess  
10 of 20 percent of the original principal amount of the loan which  
11 charge shall not exceed an amount equal to the payment of six  
12 months' advance interest on the amount prepaid in excess of 20  
13 percent of the original principal amount.

14 (e) Notwithstanding subdivisions (a) and (b), there shall be no  
15 prepayment penalty charged to a borrower under a loan subject to  
16 this section if the residential structure securing the loan has been  
17 damaged to such an extent by a natural disaster for which a state  
18 of emergency is declared by the Governor, pursuant to Chapter 7  
19 (commencing with Section 8550) of Division 1 of Title 2 of the  
20 Government Code, that the residential structure cannot be occupied  
21 and the prepayment is causally related thereto.

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