

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 13, 2016

AMENDED IN SENATE JUNE 23, 2015

AMENDED IN SENATE APRIL 21, 2015

SENATE BILL

No. 657

Introduced by Senators Berryhill and Pan
(Principal coauthor: Assembly Member Dababneh)
(Coauthor: Assembly Member Cooley)

February 27, 2015

An act to amend Sections 50003 and 50201 of the Financial Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 657, as amended, Berryhill. The California Residential Mortgage Lending Act: lenders: licensees.

Existing law defines specified terms for purposes of the California Residential Mortgage Lending Act, which generally prohibits a person from engaging in the business of making residential mortgage loans or servicing residential mortgage loans without first obtaining a license from the Commissioner of Business Oversight in accordance with the act. Existing law defines a lender as a person who is an approved lender for the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration, the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, who directly makes residential mortgage loans, and who makes the credit decision in the loan transactions. Existing law requires a licensee issued a license for

purposes of making or servicing residential mortgage loans to continuously maintain a minimum tangible net worth of \$250,000.

This bill would specify that the term “lender” includes a person, other than a natural person, and a natural person who is also an independent contractor, who engages in the activities of a loan processor or underwriter for residential mortgage ~~loans~~. *loans, but does not solicit loan applicants, originate mortgage loans, or fund mortgage loans, as specified.* The bill would authorize the commissioner to require a licensee who is engaged in the processing or underwriting of residential mortgage loans to continuously maintain a minimum tangible net worth in an amount that is greater than \$250,000, but that does not exceed the net worth required of an approved lender under the Federal Housing Administration.

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

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

1 SECTION 1. Section 50003 of the Financial Code is amended
2 to read:
3 50003. (a) “Annual audit” means a certified audit of the
4 licensee’s books, records, and systems of internal control performed
5 by an independent certified public accountant in accordance with
6 generally accepted accounting principles and generally accepted
7 auditing standards.
8 (b) “Borrower” means the loan applicant.
9 (c) “Buy” includes exchange, offer to buy, or solicitation to
10 buy.
11 (d) “Commissioner” means the Commissioner of Business
12 Oversight.
13 (e) “Control” means the possession, directly or indirectly, of
14 the power to direct, or cause the direction of, the management and
15 policies of a licensee under this division, whether through voting
16 or through the ownership of voting power of an entity that
17 possesses voting power of the licensee, or otherwise. Control is
18 presumed to exist if a person, directly or indirectly, owns, controls,
19 or holds 10 percent or more of the voting power of a licensee or
20 of an entity that owns, controls, or holds, with power to vote, 10
21 percent or more of the voting power of a licensee. No person shall

1 be deemed to control a licensee solely by reason of his or her status
2 as an officer or director of the licensee.

3 (f) “Depository institution” has the same meaning as in Section
4 3 of the Federal Deposit Insurance Act, and includes any credit
5 union.

6 (g) “Engage in the business” means the dissemination to the
7 public, or any part of the public, by means of written, printed, or
8 electronic communication or any communication by means of
9 recorded telephone messages or spoken on radio, television, or
10 similar communications media, of any information relating to the
11 making of residential mortgage loans, the servicing of residential
12 mortgage loans, or both. “Engage in the business” also means,
13 without limitation, making residential mortgage loans or servicing
14 residential mortgage loans, or both.

15 (h) “Federal banking agencies” means the Board of Governors
16 of the Federal Reserve System, the Comptroller of the Currency,
17 the National Credit Union Administration, and the Federal Deposit
18 Insurance Corporation.

19 (i) “In this state” includes any activity of a person relating to
20 making or servicing a residential mortgage loan that originates
21 from this state and is directed to persons outside this state, or that
22 originates from outside this state and is directed to persons inside
23 this state, or that originates inside this state and is directed to
24 persons inside this state, or that leads to the formation of a contract
25 and the offer or acceptance thereof is directed to a person in this
26 state (whether from inside or outside this state and whether the
27 offer was made inside or outside the state).

28 (j) “Institutional investor” means the following:

29 (1) The United States or any state, district, territory, or
30 commonwealth thereof, or any city, county, city and county, public
31 district, public authority, public corporation, public entity, or
32 political subdivision of a state, district, territory, or commonwealth
33 of the United States, or any agency or other instrumentality of any
34 one or more of the foregoing, including, by way of example, the
35 Federal National Mortgage Association and the Federal Home
36 Loan Mortgage Corporation.

37 (2) Any bank, trust company, savings bank or savings and loan
38 association, credit union, industrial bank or industrial loan
39 company, personal property broker, consumer finance lender,
40 commercial finance lender, or insurance company, or subsidiary

1 or affiliate of one of the preceding entities, doing business under
2 the authority of or in accordance with a license, certificate, or
3 charter issued by the United States or any state, district, territory,
4 or commonwealth of the United States.

5 (3) Trustees of pension, profit-sharing, or welfare funds, if the
6 pension, profit-sharing, or welfare fund has a net worth of not less
7 than fifteen million dollars (\$15,000,000), except pension,
8 profit-sharing, or welfare funds of a licensee or its affiliate,
9 self-employed individual retirement plans, or individual retirement
10 accounts.

11 (4) A corporation or other entity with outstanding securities
12 registered under Section 12 of the federal Securities Exchange Act
13 of 1934 or a wholly owned subsidiary of that corporation or entity,
14 provided that the purchaser represents either of the following:

15 (A) That it is purchasing for its own account for investment and
16 not with a view to, or for sale in connection with, any distribution
17 of a promissory note.

18 (B) That it is purchasing for resale pursuant to an exemption
19 under Rule 144A (17 C.F.R. 230.144A) of the Securities and
20 Exchange Commission.

21 (5) An investment company registered under the Investment
22 Company Act of 1940; or a wholly owned and controlled subsidiary
23 of that company, provided that the purchaser makes either of the
24 representations provided in paragraph (4).

25 (6) A residential mortgage lender or servicer licensed to make
26 residential mortgage loans under this law or an affiliate or
27 subsidiary of that person.

28 (7) Any person who is licensed as a securities broker or
29 securities dealer under any law of this state, or of the United States,
30 or any employee, officer, or agent of that person, if that person is
31 acting within the scope of authority granted by that license or an
32 affiliate or subsidiary controlled by that broker or dealer, in
33 connection with a transaction involving the offer, sale, purchase,
34 or exchange of one or more promissory notes secured directly or
35 indirectly by liens on real property or a security representing an
36 ownership interest in a pool of promissory notes secured directly
37 or indirectly by liens on real property, and the offer and sale of
38 those securities is qualified under the California Corporate
39 Securities Law of 1968 or registered under federal securities laws,
40 or exempt from qualification or registration.

1 (8) A licensed real estate broker selling the loan to an
2 institutional investor specified in paragraphs (1) to (7), inclusive,
3 or paragraph (9) or (10).

4 (9) A business development company as defined in Section
5 2(a)(48) of the Investment Company Act of 1940 or a small
6 business investment company licensed by the United States Small
7 Business Administration under Section 301(c) or (d) of the Small
8 Business Investment Act of 1958.

9 (10) A syndication or other combination of any of the foregoing
10 entities that is organized to purchase a promissory note.

11 (11) A trust or other business entity established by an
12 institutional investor for the purpose of issuing or facilitating the
13 issuance of securities representing undivided interests in, or rights
14 to receive payments from or to receive payments primarily from,
15 a pool of financial assets held by the trust or business entity,
16 provided that all of the following apply:

17 (A) The business entity is not a sole proprietorship.

18 (B) The pool of assets consists of one or more of the following:

19 (i) Interest-bearing obligations.

20 (ii) Other contractual obligations representing the right to receive
21 payments from the assets.

22 (iii) Surety bonds, insurance policies, letters of credit, or other
23 instruments providing credit enhancement for the assets.

24 (C) The securities will be either one of the following:

25 (i) Rated as “investment grade” by Standard and Poor’s
26 Corporation or Moody’s Investors Service, Inc. “Investment grade”
27 means that the securities will be rated by Standard and Poor’s
28 Corporation as AAA, AA, A, or BBB or by Moody’s Investors
29 Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings
30 with “+” or “—” designation or other variations that occur within
31 those ratings.

32 (ii) Sold to an institutional investor.

33 (D) The offer and sale of the securities is qualified under the
34 California Corporate Securities Law of 1968 or registered under
35 federal securities laws, or exempt from qualification or registration.

36 (k) “Institutional lender” means the following:

37 (1) The United States or any state, district, territory, or
38 commonwealth thereof, or any city, county, city and county, public
39 district, public authority, public corporation, public entity, or
40 political subdivision of a state, district, territory, or commonwealth

1 of the United States, or any agency or other instrumentality of any
2 one or more of the foregoing, including, by way of example, the
3 Federal National Mortgage Association and the Federal Home
4 Loan Mortgage Corporation.

5 (2) Any bank, trust company, savings bank or savings and loan
6 association, credit union, industrial loan company, or insurance
7 company, or service or investment company that is wholly owned
8 and controlled by one of the preceding entities, doing business
9 under the authority of and in accordance with a license, certificate,
10 or charter issued by the United States or any state, district, territory,
11 or commonwealth of the United States.

12 (3) Any corporation with outstanding securities registered under
13 Section 12 of the Securities Exchange Act of 1934 or any wholly
14 owned subsidiary of that corporation.

15 (4) A residential mortgage lender or servicer licensed to make
16 residential mortgage loans under this law.

17 (l) “Law” means the California Residential Mortgage Lending
18 Act.

19 (m) “Lender” means a person that satisfies either of the
20 following:

21 (1) The person is or does all of the following:

22 (A) The person is an approved lender for the Federal Housing
23 Administration, Veterans Administration, Farmers Home
24 Administration, Government National Mortgage Association,
25 Federal National Mortgage Association, or Federal Home Loan
26 Mortgage Corporation.

27 (B) The person directly makes residential mortgage loans.

28 (C) The person makes the credit decision in the loan
29 transactions.

30 (2) The person is either of the following:

31 (A) Is not a natural person and engages in the activities of a
32 loan processor or underwriter for a residential mortgage ~~loan~~ *loan*
33 *but does not solicit loan applicants, originate mortgage loans, or*
34 *fund mortgage loans unless the person is also a lender under*
35 *paragraph (1).*

36 (B) Is a natural person and an independent contractor who
37 engages in the activities of a loan processor or underwriter for a
38 residential mortgage loan as described in subdivision (c) of Section
39 ~~50003.6~~ *50003.6 but does not solicit loan applicants, originate*

1 *mortgage loans, or fund mortgage loans unless the person is also*
2 *a lender under paragraph (1).*

3 (n) “Licensee” means, depending on the context, a person
4 licensed under Chapter 2 (commencing with Section 50120),
5 Chapter 3 (commencing with Section 50130), or Chapter 3.5
6 (commencing with Section 50140).

7 (o) “Makes or making residential mortgage loans” or “mortgage
8 lending” means processing, underwriting, or as a lender using or
9 advancing one’s own funds, or making a commitment to advance
10 one’s own funds, to a loan applicant for a residential mortgage
11 loan.

12 (p) “Mortgage loan,” “residential mortgage loan,” or “home
13 mortgage loan” means a federally related mortgage loan as defined
14 in Section 1024.2 of Title 12 of the Code of Federal Regulations,
15 or a loan made to finance construction of a one-to-four family
16 dwelling.

17 (q) “Mortgage servicer” or “residential mortgage loan servicer”
18 means a person that (1) is an approved servicer for the Federal
19 Housing Administration, Veterans Administration, Farmers Home
20 Administration, Government National Mortgage Association,
21 Federal National Mortgage Association, or Federal Home Loan
22 Mortgage Corporation, and (2) directly services or offers to service
23 mortgage loans.

24 (r) “Nationwide Mortgage Licensing System and Registry”
25 means a mortgage licensing system developed and maintained by
26 the Conference of State Bank Supervisors and the American
27 Association of Residential Mortgage Regulators for the licensing
28 and registration of licensed mortgage loan originators.

29 (s) “Net worth” has the meaning set forth in Section 50201.

30 (t) “Own funds” means (1) cash, corporate capital, or warehouse
31 credit lines at commercial banks, savings banks, savings and loan
32 associations, industrial loan companies, or other sources that are
33 liability items on a lender’s financial statements, whether secured
34 or unsecured, or (2) a lender’s affiliate’s cash, corporate capital,
35 or warehouse credit lines at commercial banks or other sources
36 that are liability items on the affiliate’s financial statements,
37 whether secured or unsecured. “Own funds” does not include funds
38 provided by a third party to fund a loan on condition that the third
39 party will subsequently purchase or accept an assignment of that
40 loan.

1 (u) “Person” means a natural person, a sole proprietorship, a
2 corporation, a partnership, a limited liability company, an
3 association, a trust, a joint venture, an unincorporated organization,
4 a joint stock company, a government or a political subdivision of
5 a government, and any other entity.

6 (v) “Residential real property” or “residential real estate” means
7 real property located in this state that is improved by a one-to-four
8 family dwelling.

9 (w) “SAFE Act” means the federal Secure and Fair Enforcement
10 for Mortgage Licensing Act of 2008 (Public Law 110-289).

11 (x) “Service” or “servicing” means receiving more than three
12 installment payments of principal, interest, or other amounts placed
13 in escrow, pursuant to the terms of a mortgage loan and performing
14 services by a licensee relating to that receipt or the enforcement
15 of its receipt, on behalf of the holder of the note evidencing that
16 loan.

17 (y) “Sell” includes exchange, offer to sell, or solicitation to sell.

18 (z) “Unique identifier” means a number or other identifier
19 assigned by protocols established by the Nationwide Mortgage
20 Licensing System and Registry.

21 (aa) For purposes of Sections 50142, 50143, and 50145,
22 “nontraditional mortgage product” means any mortgage product
23 other than a 30-year fixed rate mortgage.

24 (ab) For purposes of Section 50141, “expungement” means the
25 subsequent order under the provisions of Section 1203.4 of the
26 Penal Code allowing such individual to withdraw his or her plea
27 of guilty and to enter a plea of not guilty, or setting aside the verdict
28 of guilty or dismissing the accusation, information, or indictment.
29 With respect to criminal convictions in another state, that state’s
30 definition of expungement will apply.

31 SEC. 2. Section 50201 of the Financial Code is amended to
32 read:

33 50201. (a) A licensee issued a license for purposes of making
34 or servicing residential mortgage loans, including a licensee
35 employing one or more mortgage loan originators, shall
36 continuously maintain a minimum tangible net worth at all times
37 of two hundred fifty thousand dollars (\$250,000). The
38 commissioner, in his or her discretion, may require a lender who
39 engages in the activities described in paragraph (2) of subdivision
40 (m) of Section 50003 to continuously maintain a minimum tangible

1 net worth of an amount that is greater than two hundred fifty
2 thousand dollars (\$250,000), but that does not exceed the net worth
3 required of an approved lender under the Federal Housing
4 Administration.

5 (b) Tangible net worth shall be computed in accordance with
6 generally accepted accounting principles.

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

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