

Senate Bill No. 1201

CHAPTER 356

An act to amend Section 1632.5 of the Civil Code, and to amend Section 50200 of the Financial Code, relating to contracts.

[Approved by Governor September 11, 2018. Filed with
Secretary of State September 11, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1201, Jackson. Contracts: consumer protection: residential mortgage lending.

Existing law requires a supervised financial organization that negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, whether orally or in writing, in the course of entering into a contract or agreement for a loan or extension of credit secured by residential real property, to deliver to the other party to that contract or agreement before execution of the contract or agreement, a specific form, created by the Department of Business Oversight, in each of these languages for use by a supervised financial organization to summarize the terms of a mortgage loan. Existing law authorizes the department, in creating the form, to use a specific federal disclosure form from the United States Department of Housing and Urban Development as guidance.

This bill would also require a supervised financial organization that negotiates the modification of any of the terms of a loan or extension of credit secured by residential real property primarily in one of the above languages and that offers a borrower a final loan modification in writing, to deliver to that borrower, at the time the final loan modification offer is made, a specified form summarizing the modified loan terms in the same language as the negotiation.

The bill would additionally require delivery of an applicable form or forms for transactions subject to certain federal regulations, and in this regard would authorize the Department of Business Oversight, in making available each of its forms in each of the languages set forth above, to use as guidance 2 additional forms from the Consumer Financial Protection Bureau and 3 additional forms from the Federal National Mortgage Association. The bill would specify that these provisions become operative 90 days following the issuance of the forms by the Department of Business Oversight, but in no instance before January 1, 2019.

Under existing law, the California Residential Mortgage Lending Act, if a licensee that is required to make an audit fails to do so, the Commissioner of Business Oversight is authorized to have the audit made by an independent certified public accountant at the licensee's expense. Existing law authorizes the commissioner to summarily revoke the license of a licensee who fails

to file a certified financial statement prepared by an independent certified public accountant, as specified.

This bill would specify that, if, after a revocation order is made, a request for hearing is filed in writing and a hearing is not held within a specified period of time, the order would be deemed rescinded as of its effective date. The bill would prohibit a licensee, during the revocation period, from conducting business, except as specified. The bill would provide that the revocation of a license does not affect the powers of the commissioner pursuant to the act.

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

SECTION 1. Section 1632.5 of the Civil Code is amended to read:

1632.5. (a) (1) A supervised financial organization that negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, whether orally or in writing, in the course of entering into a contract or agreement for a loan or extension of credit secured by residential real property, shall deliver to the other party to that contract or agreement prior to the execution of the contract or agreement the applicable form or forms described in subdivision (i) for that language.

(2) A supervised financial organization that negotiates the modification of any of the terms of a loan or extension of credit secured by residential real property primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, and that offers a borrower a final loan modification in writing, shall deliver to that borrower, at the time the final loan modification offer is made, one of the forms described in paragraph (4) of subdivision (i) summarizing the modified terms of the loan in the same language as the negotiation.

(b) For purposes of this section:

(1) “Contract” or “agreement” has the same meaning as defined in subdivision (g) of Section 1632.

(2) “Supervised financial organization” means a bank, savings association, as defined in Section 5102 of the Financial Code, credit union, or holding company, affiliate, or subsidiary thereof, or any person subject to Division 7 (commencing with Section 18000), Division 9 (commencing with Section 22000), or Division 20 (commencing with Section 50000) of the Financial Code.

(c) (1) With respect to a contract or agreement for a loan or extension of credit secured by residential real property as described in subdivision (a), a supervised financial organization that complies with this section shall be deemed in compliance with Section 1632.

(2) Except with respect to a loan or extension of credit described in paragraph (2) of subdivision (a), a supervised financial organization that complies with Section 1632, with respect to a contract or agreement for a loan or extension of credit secured by residential real property as described in subdivision (a), shall be deemed in compliance with this section.

(d) (1) Except as provided in paragraphs (2) and (3), the supervised financial organization shall provide the Good Faith Estimate disclosure form described in paragraph (1) of subdivision (i) to the borrower no later than three business days after receipt of the written application, and if any of the loan terms summarized materially change after provision of the translated form but prior to consummation of the loan, the supervised financial organization shall provide an updated version of the translated form prior to consummation of the loan.

(2) For a transaction subject to subsection (e) of Section 1026.19 of Title 12 of the Code of Federal Regulations, the supervised financial organization shall provide the Loan Estimate form described in paragraph (2) of subdivision (i) translated in the applicable language no later than three business days after receipt of the written application. If any of the summarized loan terms materially change after provision of the Loan Estimate form but prior to consummation of the loan, the supervised financial organization shall provide an updated version of the translated form prior to consummation of the loan.

(3) For a transaction subject to subsection (f) of Section 1026.19 of Title 12 of the Code of Federal Regulations, the supervised financial organization shall provide the Closing Disclosure form described in paragraph (3) of subdivision (i) translated in the applicable language at least three business days prior to consummation of the loan.

(e) (1) This section does not apply to a supervised financial organization that negotiates primarily in a language other than English, as described by subdivision (a), if the party with whom the supervised financial organization is negotiating, negotiates the terms of the contract through his or her own interpreter.

(2) For purposes of this subdivision, “his or her own interpreter” means a person, not a minor, who is able to speak fluently and read with full understanding both the English language and one of the languages specified in subdivision (a) that is the language in which the contract was negotiated, who is not employed by, and whose services are not made available through, the person engaged in the trade or business.

(f) Notwithstanding subdivision (a), a translated form may retain any of the following elements of the executed English language contract or agreement without translation:

- (1) Names and titles of individuals and other persons.
- (2) Addresses, brand names, trade names, trademarks, or registered service marks.
- (3) Full or abbreviated designations of the make and model of goods or services.
- (4) Alphanumeric codes.
- (5) Individual words or expressions having no generally accepted non-English translation.

(g) The terms of the contract or agreement that is executed in the English language shall determine the rights and obligations of the parties. However, the translation of the forms described in subdivision (i) and required by

subdivision (a) shall be admissible in evidence only to show that no contract or agreement was entered into because of a substantial difference in the material terms and conditions of the contract or agreement and the prior translated forms provided to the borrower.

(h) (1) A licensing agency may, by order, after appropriate notice and opportunity for hearing, levy administrative penalties against a supervised financial organization that violates any provision of this section, and the supervised financial organization may be liable for administrative penalties, up to the amounts of two thousand five hundred dollars (\$2,500) for the first violation, five thousand dollars (\$5,000) for the second violation, and ten thousand dollars (\$10,000) for each subsequent violation. Except for licensing agencies exempt from the provisions of the Administrative Procedure Act, any hearing shall be held in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the licensing agency shall have all the powers granted under that act.

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

(3) Any supervised financial organization that violates any provision of this section shall be deemed to have violated its licensing law.

(4) Nothing in this section shall be construed to impair or impede the Attorney General from bringing an action to enforce this division.

(i) The Department of Business Oversight shall make available each of the following forms based on existing forms in each of the languages set forth in subdivision (a) for use by a supervised financial organization to summarize the terms of a mortgage loan pursuant to subdivision (a). In making available the forms, the Department of Business Oversight may use as guidance the following existing forms:

(1) The Good Faith Estimate disclosure form from the United States Department of Housing and Urban Development.

(2) The Loan Estimate form from the Consumer Finance Protection Bureau.

(3) The Closing Disclosure form from the Consumer Finance Protection Bureau.

(4) The Agreement for Modification, Re-Amortization, or Extension of a Mortgage (Form 181), the Loan Modification Agreement (Providing for Fixed Interest Rate) (Form 3179), and the Loan Modification Agreement (Providing for Adjustable Interest Rate) (Form 3161) from the Federal National Mortgage Association.

(j) This section shall not apply to federally chartered banks, credit unions, savings banks, or thrifts.

(k) Except as otherwise provided in subdivision (h), this section shall not be construed to create or enhance any claim, right of action, or civil liability that did not previously exist under state law, or limit any claim, right of action, or civil liability that otherwise exists under state law.

(l) An action against a supervised financial organization for a violation of this section may only be brought by a licensing agency or by the Attorney General.

SEC. 2. Section 50200 of the Financial Code is amended to read:

50200. (a) At the end of the licensee's fiscal year, but in no case more than 12 months after the last audit conducted pursuant to this section, each licensed residential mortgage lender or servicer shall cause its books and accounts to be audited by an independent certified public accountant. Beginning with all audits of business conducted after December 31, 1995, the audit shall be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements prepared in accordance with generally accepted accounting principles and shall be performed in accordance with generally accepted auditing standards. The audit shall include a reconciliation of the licensee's trust accounts as of the audit date.

(b) "Expression of an opinion" includes (1) an unqualified opinion, (2) a qualified opinion, (3) a disclaimer of opinion, or (4) an adverse opinion. If a financial statement, report, certificate, or opinion of the independent certified public accountant is in any way qualified, the commissioner may require the licensee to take any action that the commissioner deems appropriate to address the qualification. The commissioner may reject any financial statement, report, certificate, or opinion by notifying the licensee or other person required to make the filing of the rejection and the reason therefor. Within 30 days after the receipt of the notice, the licensee or other person shall correct the deficiencies. Failure to correct the deficiencies is a violation of this division. The commissioner shall retain a copy of all financial statements, reports, certificates, or opinions so rejected.

(c) If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons therefor must be fully explained.

(d) The audit report shall be filed with the commissioner within 105 days of the end of the licensee's fiscal year. The report filed with the commissioner shall be certified by the certified public accountant conducting the audit. The commissioner may promulgate rules regarding late audit reports.

(e) If a licensee required to make an audit fails to cause an audit to be made, the commissioner may cause the audit to be made by an independent certified public accountant at the licensee's expense. The commissioner shall select the independent certified public accountant by advertising for bids or by other fair and impartial means that the commissioner establishes by rule. The commissioner may summarily revoke the license of a licensee who fails to file a certified financial statement prepared by an independent certified public accountant as required by this division or at the request of

the commissioner. If, after a revocation order is made, the request for hearing is filed in writing within 30 days from the date of service of the order and a hearing is not held within 90 days of the filing, the order is deemed rescinded as of its effective date. During a period when its license is revoked, a licensee shall not conduct business pursuant to this division except as may be permitted by further order of the commissioner. However, the revocation, suspension, or surrender of a license shall not affect the powers of the commissioner as provided in this division.

(f) Audits conducted in accordance with the uniform single audit procedures of the United States Department of Housing and Urban Development may be submitted in fulfillment of the requirements of this section.

SEC. 3. The amendments made by Section 1 of this act to Section 1632.5 of the Civil Code shall become operative 90 days following the issuance of forms by the Department of Business Oversight pursuant to subdivision (i) of that section, but in no instance before January 1, 2019.