

Highlights of 2009 State Chaptered Legislation

The legislation noted below is a compendium of many, but not all of the legislation that may have an impact on financial institutions. Copies of these enrolled bills may be found at <http://www.leginfo.ca.gov/bilinfo.html>

ABX2 7 (Lieu)/SBX2 7 (Corbett), Chapter 5, Statutes of 2009. Residential Mortgage Loans: Foreclosure

This statute, which became operative on June 15, 2009, prohibits a mortgagee, trustee, or other person authorized to take sale from giving notice of sale for an additional 90 days under specified conditions; allows for exemptions from the additional 90-day requirement if a servicer has implemented a comprehensive loan modification program with specified features; and requires that the Business, Transportation and Housing Agency maintain, on a publicly-available website, a list disclosing final orders of exemption. This statute will sunset on January 1, 2011.

AB 22 (Torres), Chapter 70, Statutes of 2009. Computer Hacking: Unauthorized Access: Punishment

This statute amends existing law which imposes a criminal penalty on any person who, among other things, knowingly accesses and without permission takes, copies or makes use of any data from a computer, computer system or computer network or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network, or knowingly uses an individual's or entity's domain name; and increases the fine for a felony conviction.

AB 260 (Lieu). Chapter 629, Statutes of 2009. Lending.

This statute incorporates the federal Real Estate Settlement Procedures Act, Truth in Lending Act and Home Ownership Equity Protection Act into the licensing law of residential mortgage lenders licensed by the Department of Corporations, the Department of Financial Institutions or the Department of Real Estate. This statute also establishes "higher-priced mortgage loans" (as defined) originated on or after July 1, 2010, as a new category of regulated loans, prohibits negative amortization, limits prepayment penalties, limits broker compensation for arranging higher-priced mortgage loans, imposes a fiduciary duty on mortgage brokers and prohibits false, deceptive or misleading statements in connection with higher-priced mortgage loans.

AB 329 (Feuer), Chapter 236, Statutes of 2009. Reverse Mortgages.

This statute enacts the Reverse Mortgage Elder Protection Act of 2009, which prohibits a lender or any other person who participates in the origination of the mortgage from participation in, being associated with, or employing any party that participates in or is associated with any other financial or insurance activity or

referring a prospective borrower to anyone for the purchase of other financial or insurance products; and imposes certain disclosure requirements on the lender.

AB 957 (Galgiani), Chapter 264, Statutes of 2009. Residential Real Estate Transfers: Title Insurance: Escrow Companies.

This statute creates the “Buyer’s Choice Act” which prohibits a mortgagee or beneficiary under a deed of trust who acquired title to residential real property improved by four or fewer dwelling units at a foreclosure sale from requiring, as a condition of selling the property, that the buyer purchase title insurance or escrow services from a particular title insurer or escrow agent; provides that the buyer may accept the insurer or agent recommended by the seller under certain conditions; and provides violation liability for the seller. This law will sunset on January 1, 2015.

AB 1160 (Fong), Chapter 274, Statutes of 2009. Contracts: Translation.

This statute requires a supervised financial institution, as defined, that negotiates primarily in any of a number of specified languages in the course of entering into a contract or agreement for a loan or extension of credit secured by residential real property, to deliver, prior to the execution of the contract or agreement, and no later than 3 business days after receiving the written application, a specified form in that language summarizing the terms of the contract or agreement; provides for administrative penalties for violations; and requires the Department of Corporations and the Department of Financial Institutions to create a form for providing translations and make it available in Spanish, Chinese, Tagalog, Vietnamese and Korean. The statute becomes operative on July 1, 2010, or 90 days after issuance of the form, whichever occurs later.

AB 1291 (Niello). Chapter 522, Statutes of 2009. Unclaimed Property.

This statute makes changes to the Unclaimed Property Law including (among other things): allowing electronic notification to customers who have consented to electronic notice; requiring that notices contain certain information and allow the holder to provide electronic means to enable the owner to contact the holder in lieu of returning the prescribed form to declare the owner’s intent; authorizing the holder to give additional notices; and requiring, beginning January 1, 2011, a banking or financial organization to provide a written notice regarding escheat at the time a new account or safe deposit box is opened.

AB 1566 (Assembly Banking and Finance Committee). Chapter 397, Statutes of 2009. Banking: Disclosures.

This statute extends to January 1, 2015, the sunset provision of current law which requires that an account statement sent by a bank to a customer provide sufficient information, including the item number, the amount and the date of payment.

SB 94 (Calderon). Chapter 630, Statutes of 2009. Mortgage Loans.

This law prohibits, with certain exceptions, any person who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform residential mortgage loan modifications or other forms of mortgage loan forbearance for a fee or other compensation paid by a borrower, from demanding or receiving any preperformance compensation or requiring any security as collateral for compensation, or from taking a power of attorney from a borrower; and requires a specified statement to the borrower regarding loan modification fees. These provisions will sunset on January 1, 2013.

SB 95 (Corbett). Chapter 556, Statutes of 2009. California Car Buyers' Protection Act of 2009.

This act makes it unlawful for a dealer who purchases a vehicle for purposes of resale with an outstanding lien or balance due to a secured party to fail to tender in good faith full payment no later than the second business day; increases the amount of a dealer's bond; and provides for a right of action related to any fraud or statutory violation.

SB 226 (Alquist). Chapter 40, Statutes of 2009. Identity Theft: Jurisdiction.

This statute provides that when multiple identity theft offenses occur in multiple jurisdictions and all of the offenses involve the same defendant or defendants and either the same personal identifying information of one person or the same scheme or substantially similar activity, then jurisdiction for all offenses, including offenses connected together to an underlying identity theft offense, is proper in any one of the counties where the offenses occurred.

SB 237 (Calderon). Chapter 173, Statutes of 2009. Real Estate Appraisers.

This law requires appraisal management companies to register with the Office of Real Estate Appraisers, and subjects those entities to the Real Estate Appraisers' Licensing and Certification Law; requires background checks for applicants for registration; establishes fees; and provides for certain prohibited acts by licensed appraisers.

SB 239 (Pavley). Chapter 174, Statutes of 2009. Mortgage Fraud.

This law provides for the offense of mortgage fraud, as defined, a violation of which would be a public offense punishable by imprisonment in the state prison or in a county jail for not more than one year; and provides that mortgage fraud may only be prosecuted when the value of the alleged fraud meets the threshold for grand theft, as specified.

SB 306 (Calderon). Chapter 43, Statutes of 2009. Real Property Transactions.

This statute makes specified changes to clarify existing law related to filing a notice of default on residential real property, including (among other things): clarifying that the provisions apply to mortgages and deeds of trust recorded from January 1, 2003 through December 31, 2007, secured by owner-occupied

residential real property containing no more than 4 dwelling units; revising the declaration to be filed with the notice of default; specifying how the duty loan servicers have to maximize net present value under their pooling and servicing agreements applies to certain investors; specifying how and when the notice to residents of property subject to foreclosure is to be mailed; and extending the time during which the notice of sale must be recorded from 14 to 20 days. The bill also makes certain changes related to short-pay agreements and short-pay demand statements.

SB 407 (Padilla), Chapter 587, Statutes of 2009. Property Transfers: Plumbing Fixtures Replacement.

This law establishes requirements for residential and commercial real property built and available for use before January 1, 1994, for replacing plumbing fixtures that are not water conserving. For single-family residential real property, on or after January 1, 2014, as a condition for issuance of a certificate of final completion and occupancy, all building alterations or improvements require that noncompliant plumbing fixtures be replaced with water-conserving plumbing fixtures; and on or before January 1, 2017, the property owners must replace all noncompliant plumbing fixtures with water-conserving plumbing fixtures. For multi-family residential real property and commercial real property the effective dates are on or after January 1, 2014, relative to alterations and improvements and on or before January 1, 2019, for replacement by the owner. This law also requires specified notices by the seller of real property related to noncompliant plumbing fixtures.

SB 633 (Wright), Chapter 57, Statutes of 2009. Mortgages: Impound Accounts.

This statute provides exceptions to existing law requiring an impound, trust or other type of account for payment of property taxes, insurance premiums, etc., as a condition of a real property sale contract or a loan secured by a deed of trust or mortgage on single-family, owner-occupied real property, to include sales where a loan is made in compliance with the requirements for higher priced mortgage loans established in Regulation Z, whether or not the loan is a higher priced mortgage loan, and where a loan is refinanced or modified in connection with a lender's homeownership preservation program or a lender's participation in such government-sponsored program.