

Mortgage Loan Broker Compliance Checklist

This checklist is designed as a guide to be used in conjunction with the Mortgage Broker Compliance Evaluation Manual (RE 7), Broker Compliance Evaluation Manual (RE 5), and Broker Self-Evaluation Compliance Checklist (RE 540) and should not be relied upon to be all-inclusive of the broker's duties and responsibilities under the Real Estate Law and related Regulations. All references are to the Business and Professions Code or Regulations of the Real Estate Commissioner unless otherwise stated.

GENERAL BUSINESS PRACTICES:

- All salespersons and broker-associates are properly licensed and retained by the broker pursuant to a broker-salesperson agreement. (Sections 10015.3, 10016, 10130, 10131(d); Regulation 2726)
- The broker notifies the Department of Real Estate of the affiliation and termination of all salesperson and broker-associate licensees within five days. (Section 10161.8; Regulation 2752)
- All salespersons and broker-associates who perform residential mortgage loan origination activities have a mortgage loan originator license endorsement, and all real estate brokers who hire mortgage loan originators have also obtained and maintain mortgage loan originator license endorsements. (Section 10166.02)
- All documents executed or obtained by the broker in connection with the loan transaction are in file and will be maintained for three years. (Section 10148; Regulation 2729)
- The broker has a license for each business location. (Sections 10162, 10163)
- The broker's license bears the name of all fictitious business names (dba's). (Section 10159.5; Regulation 2731)
- If the broker employs unlicensed assistants pursuant to the licensing exemption under Section 10133.1(c), their employment and duties fully comply with Regulation 2841.
- All independent contractor loan processors and underwriters have a mortgage loan originator license endorsement and real estate broker license. (Section 10166.03)

TRUST FUND HANDLING (Section 10145):

* See also the Trust Funds publication (RE 13), available on the Department's Web site

- Appraisal/credit report fees received from an escrow are deposited to the trust account for payment to the vendors. (Section 10145)

BORROWER DISCLOSURES:

- A Mortgage Loan Disclosure Statement (MLDS) (RE 882, RE 883, or RE 885), or an alternative disclosure that fully complies with Section 10240(c), is provided to the borrowers within three days of receiving the completed, written loan application. (Section 10240(a), 10240.3; Regulations 2840, 2840.1, 2842 and 2842.5)
- A copy of the signed MLDS, or appropriate alternative, is in all files and retained for three years. (Section 10240)
- Disclosures contain the amount of all compensation including any anticipated rebates from the lender. (Section 10176(g))
- Disclosure of any material changes to the costs, expenses, or terms of the loan is made to the borrowers in a timely manner. (Sections 10176(a), 10176(c))
- Disclosures contain the broker license identification number, NMLS unique identifier number, and DRE licensing information telephone number. (Section 10236.4(b))
- A Fair Lending Notice (RE 867A) is posted in a conspicuous location for public inspection, and a copy is given to borrowers. (Health & Safety Code Section 35830)
- A Fair Lending Notice acknowledgement of receipt (RE867) signed by the borrowers is in each file and retained for three years.
- If the broker elects to make the loan from broker-controlled funds, disclosure is made to the borrowers. (Sections 10241(j), 10241.2)
- If the broker is conducting the escrow pursuant to Financial Code Section 17006(a)(4), the broker has disclosed in all written escrow instructions and all escrow instructions transmitted electronically, in not less than 10-point type, that the escrow is being conducted under his real estate broker license with a disclosure of the broker's license identification number.
- Translated Mortgage Loan Disclosure Statements for loans negotiated in Spanish, Tagalog, Vietnamese, or Korean are provided to the borrowers. (Civil Code Section 1632)
- Disclosure of roles when arranging financing is provided to all parties. (Section 10177.6)

ADVERTISING:

- Advertising contains the proper license disclosures. (Sections 10140.6 and 10235.5; Regulation 2847.3)
- Advertising contains the broker license identification number and NMLS ID numbers. (Section 10236.4(a)).
- Advertising complies with all of the provisions of Regulation 2848.
- Advertising does not contain any claims that are misleading or cannot be supported by the broker. (Section 10235)
- Advertising a payment or payments for a loan contains an equally prominent disclosure of the principal loan amount, interest rate, annual percentage rate, and loan term. (Regulation 2848(a)(5))
- Advertising a payment or payments for an adjustable rate loan, interest-only loan, or payment-option loan additionally contains an equally prominent disclosure of the initial interest rate, number or months the initial interest rate will be in effect, fully-indexed rate, maximum rate, an explanation of the difference between the payment rate, initial interest rate and fully-indexed rate if different, how often the interest rate and payments can change, maximum periodic change in the interest rate and payments (caps), number of months and percentage of the original loan amount after which minimum payments will not be accepted and the loan re-amortizes, the monthly payment based on the maximum interest rate and the loan balance after all negative amortization is included assuming minimum payments are made, if the loan contains a prepayment penalty, a statement to that effect, and if the loan contains a balloon payment, a statement to that effect. (Regulation 2848(a)(17))
- Advertising a “low doc/no doc”, “stated income”, or similar loan product contains a statement that those products may have a higher interest rate, more points, or more fees than other products requiring documentation. (Regulation 2848(a)(18))
- Advertising a payment or payments for a balloon payment loan additionally contains an equally prominent disclosure of the amount of the balloon payment. (Regulation 2848(a)(5)).
- Advertising a gift, premium, or rebate to prospective borrowers contains all conditions that must be met in order to receive the gift, premium, or rebate. (Section 10235)
- When advertising the sale of a note where a specific yield is indicated or implied, the actual note rate and discount from the principal balance being offered is also included. (Section 10235)

FEES AND COMPENSATION:

- No commissions, fees, or costs are charged to the borrowers that have not been incurred, paid, or reasonably earned by the broker. (Regulation 2843)
- Compensation that the broker anticipates being paid from all sources, including all lender rebates, is disclosed to the borrowers in writing on the appropriate disclosure form. (Sections 10176(g), 10240(a), 10240(c))
- If the broker, or licensees of the broker, represent either party in a sales transaction and receive compensation in connection with the loan, a disclosure was given to both parties prior to the transaction closing. (Regulation 2904)

ADVANCE FEES:

- The broker collects only appraisal report and/or credit report fees in advance unless an advance fee agreement has been submitted to and approved by the Department. (Sections 10026, 10085, 10085.5; Regulation 2972)
- The broker has submitted to the Department, and received Department approval of, all advance fee materials including contracts, advertising, and accounting formats for any fees collected in advance of providing licensed services (other than for appraisal reports and credit reports). (Sections 10026, 10085, 10085.5; Regulations 2970, 2972)
- The broker deposits all advance fees collected into a trust account to be disbursed after all services are completed. (Section 10146)
- The broker provides a quarterly and final verified accounting to the principal. (Section 10146; Regulation 2970)
- The broker does not collect an advance fee in connection with a residential loan modification or loan forbearance activities. (Section 10085.6; Civil Code Section 2945)

ARTICLE 7 – REGULATED LOANS:

- The commissions, fees, and costs charged on loans do not exceed the legal maximums. (Section 10242)
- The purchase of credit life insurance or credit disability insurance is not a condition of making a loan. (Section 10241.1)
- The balloon payments on loans secured by an owner-occupied dwelling have due dates of more than six years. (Section 10244.1)

- The balloon payments secured by a dwelling other than owner-occupied have due dates of three years or more. (Section 10244)
- If loans contain a prepayment penalty, the terms comply with Section 10242.6.

- **RTICLE 5 – PRIVATE MONEY TRANSACTIONS:**
- Funds received from the lender/purchaser are for a specific loan transaction. (Section 10231)
- Funds received on behalf of the lender/purchaser in repayment of a loan serviced by the broker are not held more than 25 days except pursuant to a written agreement. (Section 10231.1)
- If the broker receives direct or indirect benefit from borrowed funds (self-dealing), a copy of the Lender/Purchaser Disclosure Statement (LPDS) and the required notice is forwarded to the Department before making any solicitation for the funds. (Section 10231.2(a))
- If the broker receives direct or indirect benefit from borrowed funds (self-dealing), the LPDS is provided to the lender/purchaser at least 24 hours before the lender/purchaser gives the broker the funds. (Section 10231(b))
- If the broker receives direct or indirect benefit from borrowed funds (self-dealing), the LPDS is retained for four years. (Section 10231.2(b))
- The broker provides an approved LPDS to each prospective lender/purchaser before the person solicited becomes obligated to make or purchase a loan. (Sections 10232.4, 10232.5; Regulation 2846)
- The broker provides the lender/purchaser with an independent appraisal of the property. (Section 10232.5(a)(b))
- If the lender/purchaser waives the right to an independent appraisal in writing (case-by-case basis only), the broker provides a written estimate of fair market value which includes the objective data on which the estimate is based. (Section 10232.5(a)(b))
- The broker has, and retains for four years, the required investor qualification statements. (Section 10238(f))
- The broker appropriately determines investor suitability and maintains records of that information for at least four years. (Section 10232.45)
- All loans comply with the loan to value limitations of Section 10232.3(a).
- For construction or rehabilitation loans, when the value of the completed project is used as the “current fair market value”, all of the requirements of Section 10232.3(a) are met.
- When more than one parcel of real property secures a loan, the loan to value limitations for each property are met. (Section 10232.3(a)(6))
- The broker has a servicing agreement for each loan serviced that complies with Section 10233.
- The broker causes each deed of trust, or assignment of deed of trust to be recorded in the name of the lender/purchaser in the appropriate county within 10 days after close of escrow. (Section 10234)
- The broker delivers, or causes to be delivered, a conformed copy of each deed of trust to the investor or lender and the borrower within a reasonable time after recording. (Section 10234.5)
- If the broker has met the criteria for filing quarterly and annual “threshold” reports with the Department, a Threshold Notification (RE 853) has been submitted. (Section 10232)
- If the broker has met the reporting criteria, quarterly and annual reports are being submitted to the Department. (Sections 10232.2, 10232.25; Regulations 2846.5, 2846.6, 2846.7, 2849.01, 2849.1)
- If the broker has been filing reports with the Department pursuant to Section 10232 and no longer meets the reporting criteria, a Threshold Notification (RE 853) to end the broker’s reporting status and any reports that are, or will be due, is submitted. (Section 10236.5)

- **RTICLE 6 – PRIVATE MONEY TRANSACTIONS WITH MULTIPLE BENEFICIARIES:**
- The broker has filed the Multi-lender Transaction Notice (RE 860) with the Department within 30 days after the first multi-lender loan transaction and within 30 days of any material change to the information in the Notice. (Section 10238(a); Regulation 2846.1)
- The broker has filed the Multi-lender Transaction Notice (RE 860) with the Department within 30 days of becoming the servicing agent on multi-lender loans, where payments due or the number of persons entitled to payments exceed the levels stated in Section 10238(b).
- The broker’s advertising for multi-lender loan transactions complies with Section 10235, Regulation 2848, and Section 260.302 of Title 10 of the California Code of Regulations Section.
- Each loan is secured directly by real property located in California and is not subject to subordination. (Section 10238(d))
- The broker, or affiliate of the broker, does not have any interest, or any contractual right to acquire an interest, in property securing the loans (self-dealing). (Section 10238(e))

- The broker has, and retains for four years, the required investor qualification statements. (Section 10238(f))
- The broker appropriately determines investor suitability and maintains records of that information for at least four years. (Section 10232.45)
- The interests of all investors are identical except for different selling prices that allow for changes in market value when interests are sold. (Section 10238(g))
- All loans comply with the loan to value limitations of Section 10238(h).
- For construction or rehabilitation loans, when the value of the completed project is used as the “current fair market value”, all of the requirements of Section 10238(h) are met.
- When more than one parcel of real property secures a loan, the loan to value limitations for each property are met. (Section 10238(h)(5))
- Transaction documentation complies with Section 10238(i).
- Funds received from the lender/purchaser are for a specific transaction. (Section 10238(j))
- If the broker is the servicing agent and has met the reporting criteria, quarterly CPA-prepared reports are submitted to the Department. (Sections 10238(j)(4)(5)(6), 10238(k)(3))
- The broker, or an exempt entity, services the loans subject to servicing agreements. (Section 10238(k))
- If the broker is the servicing agent, payments received are transmitted to the note-owners pro-rata according to their interests within 25 days of receipt. (Section 10238(k)(2))
- If the broker is the servicing agent, a Request for Notice of Default upon any prior encumbrances is filed for each loan and the note-owners are promptly notified of any default. (Section 10238(k)(4)(5))
- The broker provides each prospective investor with a LPDS (RE 851A or RE 851B). (Section 10238(l))
- When more than one parcel of real property secures a loan, the broker provides the LPDS Multi-Property Addendum (RE 851D). (Section 10238(l)(5))
- The broker provides any investor, upon request, the names and addresses of the owners of the other interests. (Section 10238(m))
- The broker has no option or election to acquire the interests of any of the investors or the securing properties. (Section 10238(n))
- The broker clearly indicates in the transaction file the provision of the Corporate Securities Law of 1968, or exemption, under which transactions are conducted, and submits a copy of this information to each investor. (Section 10236.7)

COVERED LOANS (FINANCIAL CODE SECTIONS 4970 et seq.):

- If the loan contains a prepayment penalty, the borrower was offered another product without a prepayment penalty and was given a written disclosure at least three days before consummation of the loan of the prepayment penalty amount and the rate, points and fees available for a loan without a prepayment penalty. (Section 4973(a)(2)(A)(B))
- If the loan contains a prepayment penalty, the borrower may pay up to 20% of the original loan amount in any 12-month period without penalty. (Section 4973(a)(2)(C))
- If the loan contains a prepayment penalty, the amount of the penalty does not exceed six months ’ advance interest at the rate of interest then in effect. (Section 4973(a)(2)(C))
- If the loan contains a prepayment penalty, it does not exceed 36 months from the date of consummation of the loan. (Section 4973(a)(1))
- The loan does not provide for a prepayment penalty if the loan is accelerated due to a default. (Section 4973(a)(2)(D))
- No prepayment penalty was financed through a new loan originated by the same broker. (Section 4973(a)(2)(E))
- If the loan is not fully amortized, the maturity date is for more than five years. (Section 4973(b)(1))
- If the loan provides for negative amortization, it is a first mortgage and disclosure was made to the borrower that the negative amortization may add principal to the balance. (Section 4973(c))
- No advance payments have been collected from the borrower. (Section 4973(d))
- There is no provision for an interest rate increase due to default. (Section 4973(e))
- The loan was not made solely on the equity in the securing property, and the broker has a reasonable belief that the borrower can repay the loan from current or expected income or other financial resources. (Section 4973(f))
- If the loan was for a home-improvement contract, proceeds were paid directly to the consumer, jointly payable to the consumer and contractor, or, at the election of the consumer, to a third party escrow agent. The consumer has also provided a signed and dated completion certificate that the work was completed to the consumer’s satisfaction. (Section 4973(g))

- No recommendation or encouragement was given to the consumer to default on an existing loan or debt. (Section 4973(h))
- The loan does not contain a call provision to accelerate repayment of the loan at the lender’s sole discretion. (Section 4973(I))
- If for a refinance, the loan results in an identifiable benefit to the consumer. (Section 4973(j))
- Borrowers were given the “Consumer Caution and Home Ownership Counseling Notice” no later than three business days prior to signing the loan documents and acknowledged receipt of the notice. (Section 4973(k))
- The consumer was not steered, counseled, or directed to accept a loan product less favorable than that for which the consumer qualifies. (Section 4973(l))
- The loan was not structured as an open-end credit plan or divided in separate parts for the purpose of evading the covered loan law. (Section 4973(m))
- No points or fees were financed in excess of \$1,000 or 6% of the original principal balance (exclusive of points and fees), whichever is greater. (Section 4979.6)
- No credit life, credit disability, credit property, credit unemployment, or credit debt cancellation premiums were financed into the loan or financed to the borrower within 30 days of the loan. (Section 4979.7)

RESIDENTIAL MORTGAGE LOAN REPORT (RE 857):

- The Residential Mortgage Loan Report (RE 857) is submitted to the Department no later than March 31 of each year if the broker acts in the capacity of a direct lender, meets the reporting criteria and does not file reports at the federal level pursuant to the Home Mortgage Disclosure Act (HMDA). (Health and Safety Code Sections 35815, 35816)

LICENSEES ACTING AS LENDERS:

- The broker complies with all of the lending practices for nontraditional and subprime mortgage products in regard to risk management practices, underwriting standards, control systems and consumer protection. (Section 10131.1(b)(1)(C); Regulation 2844)

NONTRADITIONAL MORTGAGE LOAN PRODUCTS

- A fully completed Mortgage Loan Disclosure Statement- Nontraditional Mortgage Loan Product (One to Four Residential Units), RE885, is provided within three days of receiving a completed, written loan application. (Section 10240(a); Regulation 2842)
- A copy of the disclosure statement, signed by the borrowers and the broker or broker’s representative, is retained by the broker for three years. (Section 10240(a))
- The broker has adopted all of the policies and procedures of the Interagency Guidance on Nontraditional Mortgage Product Risks and the Statement on Subprime Mortgage Lending. (Section 10240.3; Regulation 2842)
- The broker’s advertising of nontraditional mortgage loan products complies with Section 10235 and Regulation 2848, specifically subsections (a)(17) and (a)(18).