

loan to finance the transaction, must disclose to the parties to the transaction, prior to closing, the form, amount and source of compensation received or expected.

Reference: Sections 10176(g), 10240; Regulations 2843, 2904

SECTION 6 – Advance Fees

Does the broker collect any fees from prospective borrowers, other than for appraisals or credit reports, for any services that will be provided by the broker or others?

Correct Procedure:

1. An advance fee is defined as “a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a real estate license, or for a listing, as that term is defined in Section 10027, before fully completing the service the licensee contracted to perform or represented would be performed”. In a mortgage loan transaction, it is unlawful for a broker to collect a fee in advance for services to be rendered to a principal (client) without first submitting and obtaining approval of an advance fee agreement and related materials from the Department. This includes loan modification activities. As stated in Section 2 - Trust Fund Handling, a broker may collect a fee for an appraisal report and/or credit report in advance without having an advance fee agreement.
2. When a broker collects an advance fee pursuant to an approved agreement, the fee must be held in a trust account and the funds remain the property of the principal (client) until the service or services are completed. An accounting must be provided to the principal at the end of each calendar quarter and when the contract has been completed.
3. Real estate licensees are prohibited from claiming, demanding, charging, receiving, or contracting for an advance fee for residential loan modification or loan forbearance activities. Services or fees may not be separated for the purpose of avoiding the advance fee laws and prohibitions.

Reference: Sections 10026, 10085, 10085.5, 10085.6, 10131.2, 10146; Civil Code Section 2945; Regulations 2970, 2972

SECTION 7 – Article 7 - Regulated Loans

With the exception of the disclosure statement requirement and rules regarding late charges and prepayment penalties, Article 7 only applies to bona fide senior liens under \$30,000 and bona fide junior liens under \$20,000, so called “regulated loans”. NOTE: These rules may also apply to a “covered loan” discussed in Section 11.

Does the broker make or arrange loans secured directly or collaterally by liens on real property where the principal amount on a senior lien is less than \$30,000 or on a junior lien is less than \$20,000?

Correct Procedure:

1. With the exception of the disclosure statement requirement (see Section 3 – Borrower Disclosures), Article 7 applies only to loans secured by a dwelling which is defined as a single dwelling in a condominium or cooperative or any parcel containing four or fewer residential buildings.
2. The broker must provide the Mortgage Loan Disclosure Statement (RE 882, RE 883, or RE 885 as applicable) or alternative disclosure statements to the borrowers. (See Section 3 – Borrower Disclosures.)
3. The maximum amount of all costs and expenses for obtaining the loan, not counting actual charges for title insurance and recording fees, cannot exceed 5% of the principal amount of the loan or \$390 if the 5% amount is less than \$390. In no event can the fees exceed \$700. Only costs and expenses that have actually been paid, incurred, or reasonably earned by the broker can be charged to the borrower.
4. The maximum commissions that can be charged are determined by the lien priority and loan term as follows:
 - For a senior lien, 5% of the principal amount of the loan if the term is less than three years, and 10% if the term is for three years or more.
 - For a junior lien, 5% of the principal amount of the loan if the term is less than two years, 10% if the term is two years but less than three years, and 15% if the term is three years or more.