WHAT YOU SHOULD KNOW

Using the Services of a

MORTGAGE BROKER

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(Revised by the DRE, December 2015)

This booklet was originally prepared by the Consumers Union of U.S., Inc. under a research contract with the Department of Real Estate (DRE). The information contained in the brochure is a brief overview of the basic steps and factors involved in a mortgage transaction using the services of a mortgage broker. Since this publication may not encompass all subsequent law changes, it should only be used as a general source of information. You may wish to research the subject matter further before proceeding with a mortgage transaction. Some of the views and opinions in the brochure are those of the authors and do not necessarily reflect the position of the Administration, the State of California, or its Department of Real Estate.

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INTRODUCTION

A home loan is a transaction in which you promise to repay money you have borrowed and also give the lender a mortgage on your home to secure repayment. In California, your promise to repay is ordinarily in the form of a promissory note and the mortgage is ordinarily in the form of a deed of trust. You need to make certain that you understand the terms of the loan before you sign off and become obligated. Whether you obtain a loan through a mortgage broker, a financial institution, or some other lender, you should ask questions about the loan process and paperwork so that you understand the form of the transaction and the terms of the loan before you agree to them.

The purpose of this booklet is to provide basic information about using the services of a mortgage broker, which may assist you in making an informed decision when seeking a home loan.

SOURCES OF HOME LOANS

Home loans are available through many different sources, including mortgage brokers, mortgage banking companies, commercial banks, community banks, credit unions, and other financial institutions. There are also many federal, state, county, and city government programs that offer home loans and/or down payment assistance. If you are using the services of a mortgage broker, he or she may be able to provide information about various programs available to you.

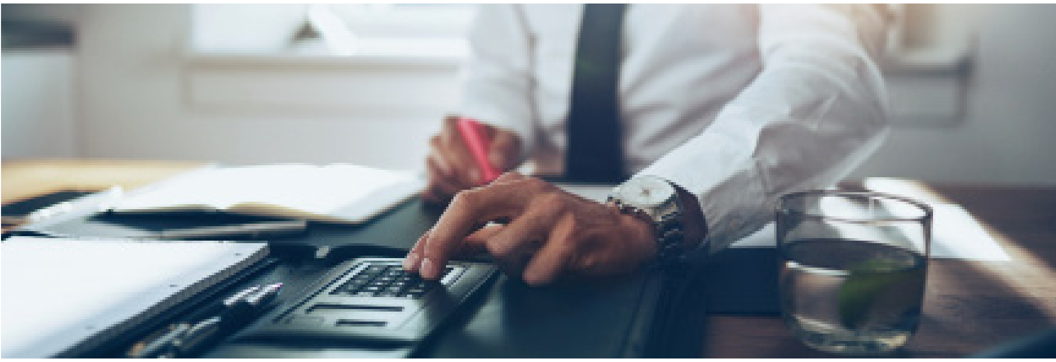
USING THE SERVICES OF A MORTGAGE BROKER

A mortgage broker helps you obtain a home loan. A mortgage broker may be licensed by either the California Department of Business Oversight or the California Department of Real Estate (DRE). Mortgage brokers make or arrange first mortgages and junior (second) mortgages. A junior mortgage secures a loan that is secondary or junior to one or more other loans on the property. Some home loans arranged through brokers are very similar to a home loan you might obtain independently from a bank, savings and loan association (S&L), credit union, finance company, or other type of lender. Some brokers offer shorter loan terms and/or different repayment plans.

Prior to using the services of a mortgage broker, ensure that he or she is properly licensed by checking with the California Department of Business Oversight at www.dbo.ca.gov or (866) 275-2677 and/or the DRE at www.dre.ca.gov or (877) 373-4542, in addition to the National Mortgage Licensing System and Registry (NMLS) at www.nmlsconsumeraccess.org. There is also a one-stop resource for California real estate and financial services license information, laws, and regulations at www.dre.ca.gov. It is important that you work with a properly licensed broker, as licensed brokers are generally covered by bonds or recovery accounts.

You may wish to check with the Better Business Bureau at www.bbb.org to find out if the company is a member and if any complaints have been filed against the company.

It may also be worthwhile to do an Internet search to determine if the community at large has had a positive experience with the company.



THE ROLE OF THE MORTGAGE BROKER

The mortgage broker is usually an agent for the purpose of arranging the home loan transaction and generally is the fiduciary of the borrower. This relationship imposes a legal duty on the broker to disclose to you the important facts you need to know about the loan and it means the broker must act in your best financial interest. The broker has a duty of fairness and honesty to both you and the lender. These legal duties can be important in resolving disputes that may arise after the loan is made, but the best way to avoid problems and disputes is to ask questions and be sure you understand the terms of the loan and each of the loan documents before you sign.

When acting as an agent, the broker speaks for you in submitting your loan application to a lender. Make sure that you give the broker full and accurate information and that any loan application or other document the broker prepares for your signature is accurate and complete before you sign it. Never sign blank applications or forms. Make sure you understand the terms of the loan before you agree to it.

MORTGAGE BROKER COMMISSIONS AND LENDER FEES

Mortgage broker commissions and lender fees are not usually set by law. Mortgage brokers are paid either directly by you or by the lender who funds the loan. Generally, a mortgage broker cannot get paid by both the lender and you on your home loan. You may choose to pay the mortgage broker's commission with:

- Cash (out of pocket); or
- Proceeds from the loan (this will increase your loan balance); or
- A lender's rebate or service release premium. (See the definition of lender's rebate and service release premium in the "Definitions" section, starting on page 7.)

Compare fees charged by several lenders and mortgage brokers. You may be able to do this with a few phone calls. Ask about the amount of the fees and costs to be paid by you in cash before the loan is funded, the amount of the fees and costs to be paid from the loan proceeds or lender rebates, and the amount of fees and costs to be financed.

DEFINITIONS

Points

The term "points" customarily refers to the commission, or origination fee, charged by the mortgage broker or the loan fee charged by the lender when the loan is made. Each point is 1 percent of the loan amount. On a $100,000 loan, one point is $1,000 and 10 points is a charge of $10,000. The amount of points charged is not usually set by law. You may wish to shop for a mortgage broker or lender who charges fewer points. You may also be able to negotiate for lower points. Asking about points before you choose a mortgage broker or lender may save you money. You should be aware, however, that a loan portrayed as a "no point" or "zero point" loan may have a higher interest rate than a loan for which points must be paid; therefore, it is important to compare the points, costs, and interest rates in order to decide which loan is best for you. And remember, there is no such thing as a "no cost" loan. Points can also be paid by the borrower to obtain a lower interest rate. These are referred to as "discount points" and are different than the points charged by the broker or lender as origination fees.

Rate Sheet

A term used to describe how lenders communicate (electronically or by fax) the interest rates, terms, and costs of loan products available to mortgage brokers. Interest rates can change several times a day. Each lender provides its approved mortgage brokers with the current rate sheet for its loan products.

Par Loan

The interest rate at which the borrower pays no discount points and the lender pays no rebate to the broker for delivering the loan to the lender.

Yield Spread Premium (Also Known as a Lender Rebate)

The rate at which a mortgage broker is compensated for the difference between the interest rate on a par loan and the interest rate on an above-par loan that a broker can deliver to the lender. This is expressed in the number of points paid to a broker. A broker receives payment of the premium, the lender obtains a higher than par interest rate, and the borrower pays for the premium over the entire life of the loan through that higher interest rate and payments. For example, if the interest rate on a par loan is 7 percent and the mortgage broker can deliver a 7.5 percent loan to the lender, the lender may be offering to pay the mortgage broker a rebate of two points or 2 percent of the loan value. For a $100,000 loan, the broker would be paid a $2,000 yield spread premium by the lender and the borrower would have to pay a higher interest rate over the life of the loan. On the adjustable rate mortgage (ARM) loans, a higher "margin" can result in a rebate from the lender to the broker. The "margin" is a component of the interest rate calculation on ARM loans. A higher margin results in a higher interest rate to the lender and therefore can generate a rebate to the broker. Always ask your broker if rebate pricing is involved on your loan, as a broker must disclose any rebate he or she is to receive in connection with your loan to you. Note that for federally related mortgage loans, the yield spread premium must be credited back to the borrower and cannot be retained by the broker. Ask if any portion of the rebate will be used by the broker to offset your closing costs.

Service Release Premium

This is another form of compensation that a lender may pay to a broker for delivering a loan. Each loan comes with "servicing rights," which are the rights to collect the mortgage payments. Servicing rights can be sold independently of the actual mortgage. Some lenders pay mortgage brokers a "service release premium," expressed as points, when the mortgage broker delivers the lender a loan. Always ask your broker if a service release premium is involved on your loan; a broker must disclose any service release premium they are to receive in connection with your loan to you.

Loan Pre-Approval

Mortgage brokers will obtain pre-approval for a loan based on preliminary information supplied by the borrowers. THIS IS NOT A LOAN APPROVAL. Loan approval only takes place after all required information has been reviewed and approved by the lender's underwriter. Loan approvals may also contain conditions that the borrower must meet prior to the loan funding.

Loan Lock

The interest rate on your loan can either be locked or floating. If you choose to obtain a loan lock, the mortgage broker will "lock in" an interest rate at the time you request the lock. This lock is for a given period of time. Always ask your broker for the length of time the interest rate will be locked and if there is any lender charge for locking the interest rate. Always ask for a written lock-in agreement, signed by the mortgage broker, detailing the exact terms of the lock-in.

You may choose to float the interest rate on your loan. This means that the loan's interest rate will be set at the prevailing interest rate for your loan program on the day of closing.

Remember interest rates can change daily and sometimes more than once in a day. You need to talk with your broker to determine the best course of action for you.

Annual Percentage Rate (APR)

The annual percentage rate (APR) of interest includes both the simple interest rate and certain fees, commissions, costs, and expenses. By contrast, the simple interest rate, or note rate, does not include these costs and fees. If a broker or lender quotes an interest rate to you, be sure to ask if that rate is the simple rate or the APR. Use the APR to compare loans that have different simple interest rates, points, and other loan charges. The loan with the higher APR may cost you more over the term of the loan.

WHAT OTHER FEES SHOULD I ASK ABOUT?

(See the section on page 22 on the mortgage loan disclosure statement for a detailed discussion on how these costs and fees are disclosed to you in writing.)

The mortgage broker may charge you loan application processing fees. You may incur appraisal and credit inquiry expenses. However, if the mortgage broker asks for payment in advance for any service other than an appraisal or credit inquiry, call DRE to see if the broker has approval to do so. Closing costs may include charges for document preparation, escrow services, title insurance, notary services, and recording fees. You may also be charged for fire or homeowner's insurance coverage, optional credit life, or disability insurance, or beneficiary statements.

You do not have to buy credit life or disability insurance. Credit life and disability insurance benefits make your mortgage payments if you die or become disabled. Many credit life and disability policies have limitations, called exclusions, that excuse the insurer from paying under a variety of circumstances. Make certain you understand the terms of the policy and what it excludes. You can also secure financial protection from disability or death through standard term life insurance or disability insurance. Before you buy credit life or disability insurance, compare the cost with the cost of a term life or disability policy.

DO MY COSTS INCREASE IF I BORROW MORE MONEY?

Many loan costs and fees are based on the amount of the loan. Usually, the more you borrow, the higher the costs and fees. If arranged through a broker licensed by DRE, your costs and fees are also limited by law on first mortgages under $30,000 and junior mortgages under $20,000.

AN OVERVIEW OF THE LOAN PROCESS

Selecting a Mortgage Broker or Lender

Brokers usually act as your agent with the lender. You can also deal directly with some lenders without using a mortgage broker. Whichever you choose, ensure that you have checked out the company. Try to use companies that people you know have used and can tell you the level of service provided. Rates should be competitive with other companies. Remember that if the deal sounds too good to be true, it probably is.

Be aware of your credit status. Before you contact a broker or lender, obtain a copy of your credit report. This can be done free on the Internet at www.annualcreditreport.com or by calling (877) 322-8228. For a fee, you can also obtain your credit score, which lenders will use to determine if you qualify for a prime loan or sub-prime loan. Sub-prime loans have interest rates and fees that are generally higher than prime loans. Knowing your credit score before you apply will allow you to shop for the best loan for you.

The Loan Application

You will have to provide a completed loan application. Some brokers will come out to your home to take the application. You can fill one out yourself or use websites that will allow you to submit the application online. Remember, never sign blank applications or forms. You will probably be asked to pay for a credit report and appraisal fee up front. If a broker tells you the credit report and appraisal costs are not being charged to you, make sure to get it in writing. Also, verify that you will not pay for these items at the close of escrow out of your loan proceeds or that the broker will not demand payment for the fees if you do not close the loan. The broker will also request that you submit the documents that the lender requires for the loan program you are trying to obtain. Both the broker and lender will provide you with required disclosures regarding the terms of the loan. It is important that you review these disclosures and ensure that the terms meet with your approval.

Processing the Loan

The broker obtains the required information and submits it to the lender's underwriter for loan approval. This is a critical stage in obtaining your loan. Ensure that you respond to all requests for information from the broker in a timely manner. This will increase your chances of getting the loan or learning why you don't qualify. This is also the time you may want to lock in an interest rate. Remember to keep in contact with the broker and to monitor the loan process, ensuring that the broker is meeting the agreed upon time frames.

Closing the Loan

This is the final stage of the loan process. The closing can take place at a title company, escrow company, or the broker's office. The broker may use a signing service that will bring the documents to you for signing. No matter where the signing takes place, this is the time to ensure the loan terms and costs are the same as agreed. Read all documents. Do not let yourself be rushed. If you have questions, ask them at this point and make sure you understand the answers. If the terms and conditions are not what were agreed upon, do not sign the loan documents. Request that the documents be redrawn stating the correct terms.

DEBT CONSOLIDATION: BORROWING MONEY ON MY HOME TO PAY MY BILLS

Be careful about using a home loan to consolidate debts into a single monthly payment. A home loan is different from other consumer debts. If you cannot pay most consumer debts, you might receive a bad credit rating, be sued, or even be forced into bankruptcy. But if you cannot pay your home loan, you could lose your home.

Many consumer debts such as bills for credit cards or medical services are unsecured. Other consumer debts like car payments or furniture payments may be secured by an interest in the goods but not by an interest in your home. If you cannot repay consumer debts, the creditor may be able to take back the goods and sue you for the amount of the debt not repaid by the resale of the goods. But on a consumer debt, the creditor cannot simply foreclose on your home.

If you pay off consumer debts like car, medical, or credit card bills with a home loan, the new debt is secured by your home. This creates the risk that you could lose your home if you cannot make the payments.

Questions to Ask About Debt Consolidation

- Are your debts unsecured (such as medical bills and credit card bills) or secured only by an interest in personal property (such as a car or furniture payments)?
- Can you work out a payment schedule with your creditors to repay existing debts?
- How will you pay off a new home loan if you cannot pay your current bills?

There are many types of loans from which to choose: fixed rate, adjustable rate, balloon payment, and negative amortization. Loans may contain one or more of these features (e.g., an adjustable rate loan may or may not have potential negative amortization or a fixed rate loan may or may not contain a balloon payment provision). Discuss with your lender or broker which loan is right for you.

PAYING OFF A BALLOON PAYMENT LOAN

A balloon payment loan is not fully paid off through monthly payments. A loan without a balloon payment is repaid a little bit each month; each month's payment applies to both interest and principal. They are called fully amortized loans because you pay off (amortize) the loan with your monthly payments. By contrast, an interest-only loan or a partially amortizing loan will include one or more balloon payments; i.e., payments that are twice or more the size of the regular payment.

Partially amortizing and interest-only loans have lower monthly payments than fully amortizing loans for the same amount. In an interest-only loan, the monthly payments do not pay any of the loan principal. The payments cover only interest. The unpaid principal must be paid by one or more balloon payments.

For example, if you obtain a $15,000 interest-only loan at 10 percent interest for five years, you must make monthly interest payments of $125. At the end of the five-year term, however, you would still owe the entire $15,000 principal and it would be due in one balloon payment. (If you had made payments of $318.71 instead, the loan would have been amortized/paid off by the end of the five-year loan term. If your loan was for 10 years, monthly payments of $198.23 per month would fully amortize it.) A balloon payment results when your monthly payments pay only interest (a non-amortizing loan) or when they pay only part of your loan principal (a partially amortizing loan).

An example of each could look like this:

$15,000 Loan 10 % - 5 years	Monthly Payment	Balloon (Due after five years)
Fully Amortized	$318.71	—0—
Partially Amortized	$222.65	$7,500
Interest Only	$125	$15,000

With interest-only and partially amortizing loans, if you do not have the financial means to repay the balance of the loan principal as a balloon payment at the end of the loan term, your choices could include:

- Selling your home to completely or partially make the balloon payment;
- Taking out another loan—typically incurring more fees and costs—to pay off the balloon payment; or
- Losing your home to foreclosure if you fail to make the balloon payment.

CONSUMER CHECKLIST

Interest-Only, Partially Amortizing, and Negative Amortization Loans

- q How much can the loan balance increase if you make the lowest payment?
- q How soon will you be required to make fully amortizing payments and how can the payments go up?
- q How much will you owe (balloon payment) after you make all the monthly payments?
- q How much would the monthly payments be to fully amortize the loan and avoid any balloon payment?
- q Could you afford the monthly payments on a fully amortizing loan if you borrowed less money or obtained a longer term loan?
- q Where will you obtain the money to make the balloon payment?
- q Do you fully understand that you risk losing your home if you cannot pay the balloon payment?

If you refinance the loan to pay the balloon payment, you typically must pay new loan fees and closing costs. This could increase your debt. If the debt becomes too large in comparison with the amount of equity in your home, you may not be able to further refinance. Then, if you are not able to satisfy the debt, you could lose your home in foreclosure or be forced to sell it to pay off the loan.

REFINANCING MY EXISTING FIXED RATE OR FULLY AMORTIZING MORTGAGE

Sometimes borrowers replace an existing mortgage with a new, larger first mortgage. Some things to consider in deciding whether to refinance an existing mortgage are:

- Refinancing may replace a fixed rate loan with an adjustable rate loan.
- Refinancing may replace a fully amortizing loan with a loan requiring a balloon payment or containing negative amortization.
- Refinancing may shorten the amount of time you have to repay by replacing a long-term loan with a short-term loan.
- A new junior mortgage in a smaller amount may cost less, in points and fees, than refinancing the existing first mortgage.

With an ARM, the interest rate—and your monthly payment—may increase with an increase in the index used in your mortgage. In an ARM, the current interest rate is calculated by adding a fixed margin (such as 2 percent) to an index such as the Cost of Funds Index published by the Federal Home Loan Bank Board: Index Rate + Margin = Mortgage Rate or Note Rate.

For adjustable rate loans, ask the lender or broker:

- How long is the initial interest rate in effect?
- How often can the interest rate change?
- What is the largest monthly payment you could face?
- How often can the payments change?
- Can the amount you owe increase through negative amortization? This can happen if your monthly payment is less than monthly interest costs.
- What is the formula that will be used to set the rate?
- What would the rate be today if it were set by that formula?
- What are the caps on how high or low the interest rate can go?
- Is there a cap on how high or low a payment can be adjusted when the interest rate adjusts?

LOANS WITH NEGATIVE AMORTIZATION

Although negative amortization loans are only available in limited circumstances, and in some cases are illegal, there could be an instance where such a product is appropriate. But great care should be exercised before agreeing to a negative amortization loan.

"Negative amortization" or "deferred interest" is a term used when the principal balance of your loan (the amount you owe) goes up instead of down. A fully amortizing loan has payments that include interest and principal each month until the loan is paid off (fully amortizing). A negative amortizing loan contains payment options that may not pay the full amount of interest due each month and pay nothing toward lowering the principal balance. If a mortgage payment does not satisfy the total amount of the interest due, the difference between the payment made and the interest due is added to the loan balance, hence the term "negative amortization" or "deferred interest." The interest will eventually have to be paid, usually by much higher payments depending on the terms of your loan contract.

These loans, usually adjustable rate loans, may contain several options for payments. For example, a loan may provide options for a payment that is lower than the interest due, a payment to pay only the actual interest due, a payment based on a 15-year fully amortizing loan, or a payment based on a 30-year fully amortized loan. By paying the lowest payment, you will increase your loan balance for each month that you choose that option. Negative amortization loans may also be based on a very low "payment rate"—the rate at which the lowest payment option is calculated. This may be different than the actual interest rate charged on the loan and contribute to the negative amortization. After a certain number of years, as set forth in the loan contract, these low payments are no longer available as an option and the payments will increase to fully amortize the loan over the remaining time left at an interest rate that may change each month. This can result in much higher payments than those with which you started. If you cannot make the higher payments, you may not be able to refinance if the loan balance is higher than what your home is worth and you may have to sell the home for less than the balance owed. This can result in your having to pay the difference to the lender from other assets. If you are unable to sell the home or refinance, you could lose the home in foreclosure.

If a broker offers you a loan with an extremely low interest rate and/or payments, ask if the loan contains negative amortization. These loans should be discussed in detail with a broker or lender before you make a decision to enter into a transaction. Again, a broker owes you a full and honest description of the loan terms and the advantages and disadvantages of this type of loan for your situation.

HOW DO I DECIDE ABOUT THE LENGTH OF LOAN TERM?

The term of the loan is the number of years you have to repay it. First mortgages usually have terms of 15, 30, or even 40 years. Junior mortgages typically have terms of one, three, five, or perhaps 10 or more years. With a fully amortized loan, the longer the loan term, the lower your monthly payments. With an interest-only or partially amortizing loan, a longer loan term means you have more time before you have to pay the balloon payment. In any event, the longer the loan term the more total interest you will pay, assuming you do not prepay the principal of the loan.

HOW DO I CHOOSE A LENDER OR MORTGAGE BROKER AND A LOAN?

Call lenders and mortgage brokers and ask about interest rates and fees for the size loan you need. Be sure to ask:

- What types of loans are available?
- What is the approximate amount you will have to borrow to receive the amount of cash you want? (That is, what amount of fees will be financed and deducted from your loan proceeds?)
- Does the lender or mortgage broker offer loans in the dollar amount you need?
- How much is the lender's fee or broker's commission on this size loan?
- What other fees or costs will you be charged and what is the estimated amount of each?
- Will you have to pay any fees if the loan is denied?
- Will you have to pay any fees if you apply, but then change your mind?
- What is the amount of the monthly payments and the amount of any balloon payment?
- Will the loan be fully amortized/paid off by the regular monthly payments?
- What is the length of the repayment period/term of the loan? (The more time you have to repay, the lower your payments will be on a fully amortizing loan.)
- What is the simple interest rate?
- Is the interest rate fixed or does it vary over the term of the loan (adjustable rate)?
- What is the annual percentage rate?
- Is there a penalty for paying the loan off early (prepayment penalty)? If so, how much?

A good way to determine how much the fees and costs will be on a loan is to ask each lender or broker two questions: 1) Approximately how much do I have to pay in cash before the loan is funded? and 2) What is the approximate amount of money I will have to borrow to end up with a certain amount of cash? By comparing the answers, you can find out how much you would have to borrow from each source to end up with the same amount of cash paid to you.

WHAT DO I NEED TO KNOW ABOUT THE LOAN APPLICATION?

You will usually be asked to fill out a loan application describing your income, assets, debts, and expenses, and the real property to secure the loan. Before you sign the application, make sure that it truthfully states your income, assets, debts, and expenses. Never sign a blank application. Do not stretch the truth on your loan application. Do not exaggerate your income or understate your debts. Some loans may not require the lender to fully verify the information. Generally, loans with limited verification on documentation require large down payments or require higher amounts of equity in the property. Be wary of any loan representative who tells you it is OK to stretch the truth in order to qualify. It is against the law to provide false information on a loan application to a financial institution. The lender is entitled to know your true financial condition. Never sign a blank loan application or one where information is left out. You may be asked to provide documents to the broker to verify your employment and bank accounts, etc. The sooner you comply with these requests, the sooner your loan application can be processed.

CONSUMER CHECKLIST

The Loan Application

- ☐ Accurately report your income, assets, and debts.
- ☐ Never sign a blank application.
- ☐ Ask for a copy of your signed application.
- ☐ To avoid delays, promptly provide the information requested by the mortgage broker.
- ☐ Ask approximately how long it will take to process the application and obtain the loan you are requesting.

USING THE MORTGAGE LOAN DISCLOSURE STATEMENT

In most cases, a mortgage broker must deliver to you a Mortgage Loan Disclosure Statement (MLDS) within three business days after you complete and present to the mortgage broker a written loan application or before you become obligated to take the loan, whichever is earlier. Ask to receive the statement as soon as possible and read it carefully. It will provide you with the following information about the loan:

- The amount you are borrowing (the loan amount or principal);
- The estimated amount of any costs that are to be financed as part of the principal;
- The estimated amount you will pay in fees to get the loan, including commissions to the mortgage broker; and
- The estimated amount of money that you will receive from the loan after costs, fees, and commissions have been deducted.

The statement must also include estimates of the maximum costs of arranging the loan. It must list the estimated amount of each of these fees, if they apply:

- Appraisal fee
- Lender fees
- Escrow fee
- Title insurance charge
- Notary fee
- Recording fee
- Credit investigation fee
- Fire or other hazard insurance premiums
- Credit life or disability insurance premium
- Beneficiary statement fees
- Reconveyance fee (when you are refinancing an existing loan)
- Broker origination fees or commissions, including any rebates paid by the lender to the broker

The disclosure statement should also list any existing loans or liens against the property. If you expect the new loan to pay off a debt, check to be sure that debt is listed. The disclosure must also state if a prepayment penalty will apply if you pay off the loan early.

Be sure to ask for this disclosure statement before you sign the loan papers. You do not become obligated to accept the loan until you sign the loan agreement or promissory note. If the disclosure statement does not describe the terms that you expect or want, do not sign the loan papers. Any changes from the original terms, cost, or expenses must be disclosed to you in a timely manner.

If the loan transaction is federally related, you should also receive a Loan Estimate or a Good Faith Estimate and certain Truth In Lending disclosures. These are federal disclosures that together generally provide similar information to the MLDS. (See discussions on pages 23 and 24 regarding RESPA and the Truth in Lending Act.) Regardless of how you receive the disclosures, the broker must advise you of any compensation received or expected from the lender and whether the loan includes a balloon payment.

GET IT IN WRITING

Do not be afraid to ask the mortgage broker or lender to show you where the loan papers describe any particular features of the loan that have been promised to you. If the terms you have been promised are not there, ask the mortgage broker or lender to put them in writing. Promises made only orally may not be enforceable.

REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)

The RESPA is a federal law administered by the Consumer Financial Protection Bureau (CFPB). RESPA only applies to federally related loans and requires, among other things, that mortgage brokers provide detailed information on settlement costs so that buyers and borrowers can shop around for settlement services. Mortgage brokers and lenders must provide an estimate of costs the borrower is likely to incur at close of escrow. The broker must present this estimate not later than three business days after receipt of a written loan application. The estimate will contain information similar to the MLDS required by California law.

YOUR RIGHTS UNDER THE FEDERAL TRUTH IN LENDING ACT

The Federal Truth in Lending Act (TILA) applies if the broker makes the loan with its own funds or arranges the loan for a lender who makes five or more home loans per year. If the TILA applies, the lender must provide you a disclosure before you become obligated that tells you the identity of the creditor; the amount financed; that you have a right to an itemization of the amount financed; the dollar amount of the finance charge; the finance charge expressed as an APR; the number, amount, and periods of payments; the total of all payments; any late payment charge; and whether there is a charge upon prepayment of the loan principal.

The disclosure statement must also identify the property that will be used to secure the loan and should tell you whether the terms of the loan permit assumption of the loan by someone buying the property from you.

If the TILA applies, you may have a right to rescind (cancel) the loan within three days after certain events, including the consummation of the loan transaction. When you do not receive proper disclosures about the loan, the right to rescind can last as long as three years from the time you obtain the loan. Any request to rescind the loan should be made in writing.

The TILA right of rescission does not apply to all loans arranged by mortgage brokers, so do not rely on the possibility of later rescission as a substitute for careful study of the loan before you agree to it.

The TILA was amended in 1994 with respect to certain loans, other than purchase money loans, construction loans, reverse mortgages or home equity lines of credit, secured by the borrower's principal dwelling. In these "high-rate/high-fee" loan transactions, also known as Section 32 loans, the TILA places some additional restrictions on creditors, requires more disclosures, and gives borrowers cancellation rights. The amendment defines a creditor as someone who, in any 12-month period, originates more than one high-rate/high-fee loan. Also, any such loan arranged by a mortgage broker is subject to the requirements. A high-rate loan is one in which the APR exceeds by eight points or more on a first-lien loan or 10 points or more on a second-lien loan, the yield on Treasury Securities having a similar term. A high-fee loan is one in which the total points and fees exceed the greater of 8 percent of the loan amount or, as of January 1, 2006, $528 (adjusted annually on January 1 based on the change in the Consumer Price Index). The TILA is enforced by the CFPB, and CFPB can answer questions concerning the TILA and high-rate/high-fee loans.

PROTECT YOURSELF IN THE LOAN PROCESS—DO NOT FALL PREY TO PREDATORY LENDING!

The term "predatory lending" encompasses a variety of home mortgage lending practices. Predatory lenders often try to pressure consumers into signing agreements for loans they cannot afford or simply are not in the consumer's best interest. Often, through the use of false promises and deceptive sales tactics, borrowers are convinced to sign a loan contract before they have had a chance to review the paperwork and do the math to determine whether they can truly afford the loan.

Predatory loans carry high up-front fees that are added to the balance, decreasing the homeowner's equity. Loan amounts are usually based in the borrower's home equity without consideration of the borrower's ability to make the scheduled payments. When borrowers have trouble repaying the debt, they are often encouraged to refinance the loan to another unaffordable, high-fee loan that rarely provides economic benefit to the consumer. This cycle of high-cost loan refinancing can ultimately deplete the homeowner's equity and result in foreclosure.

Predatory loan practices specifically prohibited by law include:

- Unsuitability: Giving a borrower a loan he or she cannot afford to repay
- Flipping: Frequent making of new loans to refinance existing loans
- Steering: Giving a borrower a loan with higher rates and fees when the borrower qualifies for a loan with lower rates and fees
- Packing: Selling of additional products without the borrower's consent
- Charging excessive fees.

Homeowners in certain communities, particularly the elderly or minorities, are especially likely to be targets of predatory lending, but almost anyone can fall prey to abusive lending practices. You can protect yourself by knowing what you can afford; choosing a reputable, licensed broker/lender; understanding the loan application and contract; and being aware of commonly used predatory lending practices. Informed decision-making is your best defense.

Beware of these predatory lending tactics:

- Exceedingly high interest rates and inflated fees in comparison with other lenders.
- Bait and switch tactics where a mortgage broker or lender knowingly offers one set of terms that are more appealing but are not readily available and then pressures the borrower into signing the contract with more expensive terms and hidden fees.
- Door-to-door high-pressure salespersons and pitches for home equity loans related to home improvement contracts or contracts for installation for items such as drapes and carpets.
- Salespersons with backgrounds similar to yours who attempt to gain your trust. This tactic is oftentimes used to lull a homeowner into a false sense of security, causing the homeowner to make a decision based on trust instead of knowledge and understanding.
- Mail, radio, and television ads that claim "No job! No credit! No problem! You can still qualify for a loan based on your home equity." These ads encourage you to place your home at risk. If you cannot make the payments, you will lose your home. Offers that sound too good to be true usually are.

- High-pressure sales tactics requiring you to sign a loan contract right away. If the offer is good today, it should probably be good tomorrow after you have reviewed the contract and consulted a knowledgeable, uninvolved advisor.

Be wary of brokers who attempt to steer you into a home-equity line of credit (HELOC) when you are applying for a "high-rate/high-fee" real estate loan. (See "Your Rights Under the Federal Truth in Lending Act" section on page 24.) These loans do not offer the same protections as a "covered loan." If a broker is steering you into a HELOC that you did not ask for, he or she may be attempting to evade the covered loan law. A broker has a responsibility to you as your agent to discuss all possible loan options and inform you of the advantages and disadvantages of each. You should not be pressured or steered into applying for a loan that is not suitable for your needs or ability to pay.

KNOW WHAT YOU CAN AFFORD

- Manage your money wisely, as your credit history is your responsibility.
- Carefully review your income and expenses and always borrow within your budget.
- If purchasing a home, you normally need to have enough savings to cover a down payment of 5 percent to 20 percent of the purchase price plus an additional 3 percent to 7 percent of this price for closing costs. If you do not have the down payment, you may be able to qualify for a loan under various government programs that are available.
- Do not inflate your earnings or provide false information to qualify for a loan as the lender's borrower qualifications are based on what an individual or family must earn to afford the mortgage payment.
- Do not bet on future income increases as there are no certainties in the future, but it is a certainty that you could face the loss of your home and all of the money you paid on the loan if you cannot make the payments due to unforeseen events.
- The law requires mortgage brokers and lenders to notify you of your right to review your credit score and the key factors affecting your credit score. Obtain a copy of your credit report to verify that it accurately reflects your credit history.

As of July 1, 2002, California also has a law covering high-rate/high-fee loans. The law contains special rules regarding balloon payments, prepayment penalties, the borrower's ability to repay the loan, and many others. It also requires that the loan have a tangible benefit to the consumer. With certain specified exceptions, a "covered loan" is a consumer credit transaction that is secured by a one- to four-unit dwelling that is the borrower's principal residence and where the APR exceeds by 8 points or more the yield on Treasury Securities having a similar term, or, the total points and fees, as defined, payable by the consumer at or before closing will exceed 6 percent of the total loan amount. The maximum amount covered is the most current Fannie Mae single-family first mortgage conforming loan limit.

As of October 11, 2009, California also has a law covering higher-priced mortgage loans. The law contains special rules regarding prepayment penalty and the borrower's ability to repay the loan. A higher-priced mortgage is a first lien on a principal dwelling in which the APR exceeds the average rate by 1.5 percent or more or is a junior lien on a principal dwelling in which the APR exceeds the average rate by 3.5 percent or more.

As of April 1, 2011, the Federal Reserve Board enacted rules to limit a mortgage broker's compensation to a single source. This means a broker cannot receive compensation for originating a federally related loan from both the borrower and the lender.

CALIFORNIA LAW PROHIBITS DISCRIMINATORY LENDING PRACTICES

Brokers and lenders are required to give you a Fair Lending Notice that advises you of your right to file a complaint if you feel that you are, or have been, treated in a discriminatory manner in the lending process based on your race, color, religion, sex, marital status, domestic partnership, age, physical or mental disability, medical condition, sexual orientation, familial status, source of income, national origin, or ancestry. It is also illegal to use these factors to discriminate based on the neighborhood surrounding the housing accommodation unless it is required to avoid an unsafe and unsound practice. Brokers or lenders are also required to post a notice in their offices in a conspicuous location.

CONSUMER CHECKLIST

Understanding the Loan Documents

- q Study the loan documents and ask questions to help you understand their meaning BEFORE you sign.
- q Ask the mortgage broker or lender to put into writing the terms agreed to.
- q Read all the loan documents carefully before you sign.
- q Before you sign, make certain all the loan terms agreed on are included.
- q Obtain and keep a copy of everything you sign.

THE LOAN DOCUMENTS: WHAT DO THESE PAPERS MEAN?

The mortgage broker should explain the loan to you, but you can also help avoid misunderstanding by reading the documents and asking questions. Do not guess at the meaning of the loan papers, and ask the mortgage broker to explain them.

SIGNING THE PAPERS: WHAT TO EXPECT

When the time comes to sign the papers, several documents will be presented to you. Take your time and read each document carefully.

They will likely include:

Promissory Note – In the promissory note, you promise to repay the money borrowed. The note should state the amount you are borrowing, the interest rate, whether and how that interest rate may change, the term or length of the loan, and the amount of any balloon payment. It will also state if a prepayment penalty applies to your loan.

Deed of Trust – The deed of trust gives the lender a lien on your home. It also gives the lender the right to foreclose on your home if you do not repay the loan.

Escrow Instructions – The escrow instructions tell the escrow holder how to pay the loan funds. If existing mortgages or other debts are to be paid off by the loan, be sure that the escrow instructions tell the escrow agent to pay off these debts.

Broker Agreement – Sometimes you will be asked to sign this agreement. Read the broker agreement carefully. Does the agreement require you to pay the broker's fee even if you do not receive the loan you requested? Make sure the agreement is consistent with what the broker has already told you about your rights and obligations.

Declaration of Oral Disclosures – This is a statement that the broker has orally explained certain terms of the loan to you. Before you sign a paper saying that you have received explanations, make sure that you have received the explanations and that you understand what you have been told.

Mortgage Loan Disclosure Statement – The mortgage broker must give you this statement, which sets forth the loan terms and estimated costs, within three business days of receiving your completed written loan application or before you become obligated to complete the loan transaction, whichever is earlier. If liens or debts are to be paid off by the loan, be sure they are listed on the disclosure statement. (In a federally related loan transaction you may also receive a Loan Estimate or Truth in Lending disclosures and Good Faith Estimate.)

CONSUMER CHECKLIST

Signing the Loan Papers

- q Do not be rushed or intimidated.
- q Read each document before you sign any part of it.
- q Do not sign any documents if there are spaces or boxes concerning the terms of the loan that are left blank.
- q Check that the promissory note lists the interest rate, length or "term" of the loan, and other terms that were promised or represented to you.

MORTGAGE INSURANCE: NOTICE TO BORROWER

Civil Code Section 2954.6 requires that if private mortgage insurance (PMI) is a condition of a loan, the lender must notify the borrower whether the borrower has the right to cancel the PMI and, if so, what conditions must be met in order to cancel.

CAN I FIND OUT WHY CREDIT WAS DENIED?

The Federal Equal Credit Opportunity Act forbids discriminatory lending practices. Lenders may not base a decision to deny you credit on your race, color, religion, national origin, ancestry, sex, marital status, or the fact that some of your income comes from a public assistance program. The lender is required to inform you in writing of an adverse action (denial) taken on your application. If you make a timely written request, the lender must also tell you in writing why credit was denied.

Effective January 1, 2002, any person who makes, or arranges, loans secured by one- to four-unit residential property, and who uses a consumer's credit score in connection with the application must give you a Notice to the Home Loan Applicant disclosing your rights to receive information regarding your credit score.

INFORMATION AND COMPLAINTS

Department of Real Estate – Find out whether a mortgage broker has a current license, how long the broker has been licensed, and whether DRE has ever taken any formal disciplinary action against the broker. www.dre.ca.gov

Department of Business Oversight – Find out whether a mortgage lender or banker has a current license and whether DBO has taken formal disciplinary action against the lender/banker. www.dbo.ca.gov

Consumer Financial Protection Bureau – Get information about loan estimate disclosures and settlement cost disclosures, RESPA and TILA requirements, and high-rate/high-fee loans. www.consumerfinance.gov

Private attorneys – The State Bar Association has a referral service to provide a referral to lawyers who have asked to be listed with them. www.calbar.ca.gov/Public/LawyerReferralServicesLRS.aspx

Legal Aid – If you are on a fixed income or have a low income, you may qualify for a lawyer through your county's Legal Aid Office.

Principal Office

651 Bannon Street, STE 500
Sacramento, CA 95811
(877) 373-4542
www.dre.ca.gov

District Offices

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2550 Mariposa Mall, Suite 3070
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Los Angeles
320 West 4th Street, Suite 350
Los Angeles, CA 90013
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Oakland
1515 Clay Street, Suite 702
Oakland, CA 94612
(877) 373-4542

San Diego
8620 Spectrum Center Blvd.,
Suite 301
San Diego, CA 92123
(877) 373-4542

Department of Business Oversight

1515 K Street, Suite 200
Sacramento, CA 95814-4052
(866) 275-2677
www.dbo.ca.gov

Consumer Financial Protection Bureau

Consumer Help
P.O. Box 4503
Iowa City, Iowa 52244
(855) 411-2372
www.consumerfinance.gov

Department of Real Estate

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