

DEPARTMENT OF CORPORATIONS*Business Services and Consumer and Investor Protection*

December 8, 2010

Information for Manufactured Housing Dealers and Salespersons
Licensure as Mortgage Loan Originators under the California Finance
Lenders Law

SB 36 (Ch. 160, Stats. 2009)

Q1. Section 22054 of the California Finance Lenders Law provides that the law does not apply to a bona fide conditional sales contract involving the disposition of personal property, so long as the agreement is not used to evade the law.

Financial Code Section 22054.

This division does not apply to bona fide conditional contracts of sale involving the disposition of personal property when these forms of sales agreements are not used for the purpose of evading this division.

How has this provision changed with the enactment of changes to conform to the federal SAFE Act (the federal Secure and Fair Enforcement of Mortgage Licensing Act of 2008 (Public Law 110-289))?

A1. Section 22054 of the California Finance Lenders Law has not been amended, and therefore the California Finance Lenders Law continues to be inapplicable to conditional sales contracts involving the disposition of personal property. For activities falling within this exclusion from the California Finance Lenders Law, but that may fall within the federal SAFE Act, questions regarding the effect of the SAFE Act should be directed to the primary regulator that oversees the sales transactions.

Q2. Section 18034 of the Health and Safety Code provides that certain manufactured housing dealers and salespersons are not required to be licensed under state laws implementing the SAFE Act if the dealer or salesperson performs only administrative or clerical tasks on behalf of a mortgage loan originator or lender, and the dealers and salespersons do not accept compensation from the mortgage loan originator or lender (or their agents).

Health and Safety Code Section 18034.

(a) A dealer, as defined in Section 18002.6, or a salesperson, as defined in Section 18013, is not required to be licensed as a mortgage loan originator under the provisions of state law that implement the federal Secure and Fair Enforcement for

Mortgage Licensing Act of 2008 (Public Law 110-289), if the dealer or salesperson performs only administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, and if the dealer or salesperson does not accept compensation from a lender, mortgage loan originator, or from any agent of any lender or mortgage loan originator.

(b) For purposes of this section, the term "administrative and clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

Does the receipt of a sales commission in the sale of a manufactured home constitute “compensation”, under the following circumstances:

- **The sales commission is paid by the manufacturer or dealer and is not compensation from a lender, mortgage loan originator, or any agent of a lender or mortgage loan originator;**
- **The sales commission is not compensation for a loan origination or any other activity related to the financing of the purchase;**
- **The sales commission is the dealer’s or salesperson’s customary commission for the sale of a manufactured home, and is the same for a purchase made with cash or through other financing; and**
- **Any administrative or clerical tasks related to the financing of the purchase are limited to those outlined in Section 18034(b) and are not compensated by the lender, mortgage loan originator, or their agents?**

A2. For purposes of the California Finance Lenders Law, under the circumstances described, the customary commission for the sale of a manufactured home that is not related to the financing of the transaction and that is paid by the housing manufacturer, dealer, or someone other than the lender, mortgage loan originator, or their agents, would not constitute “compensation” paid by a lender, mortgage loan originator, or their agents. Therefore, the Department would not require licensure under the California Finance Lenders Law as a mortgage loan originator, in accordance with Health and Safety Code Section 18034.

Q3. For purposes of the licensing exclusion in Health and Safety Code Section 18034, would a manufactured housing dealer or salesperson be performing administrative or clerical tasks “on behalf of” a lender, mortgage loan originator, or their agents, if the dealer or salesperson is not an employee of the lender, mortgage loan originator, or their agents?

A3. Health and Safety Code Section 18034(b) defines “administrative or clerical tasks” as follows:

[...] "administrative and clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

For purposes of the California Finance Lenders Law, a manufactured housing dealer or salesperson need not be employed by a lender or mortgage loan originator to perform administrative or clerical tasks “on behalf of” the lender or mortgage loan originator and to avail itself of the exclusion from licensure as set forth in Health and Safety Code Section 18034. This answer assumes that the dealer or salesperson has met all of the other conditions of the exclusion, including that no compensation is received for the performance of administrative or clerical tasks, and that the manufactured housing dealer or salesperson is not otherwise engaged in business as a mortgage loan originator, such as acting as an independent contractor as contemplated under the SAFE Act.