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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 3108                      **Hearing Date:** July 2, 2024  
**Author:** Jones-Sawyer  
**Version:** June 24, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Business: mortgage fraud*

## HISTORY

**Source:** Consumer Federation of California

**Prior Legislation:** AB 239 (Pavley) Chapter 174, Stats. 2009  
AB 976 (Papan) Chapter 757, Stats. 1998

**Support:** California Advocates for Nursing Home Reform; California District Attorneys Association; California Elder Justice Coalition (CEJC); California Low-income Consumer Coalition; Elder Law & Advocacy; Housing and Economic Rights Advocates (HERA); Justice in Aging; National Association of Consumer Advocates (NACA); National Consumer Law Center; National Housing Law Project; Public Law Center; Rise Economy

**Opposition:** None known

**Assembly Floor Vote:** 71 - 0

*Analysis reflects amendments to be taken in Committee*

## PURPOSE

***The purpose of this bill is include in the definition of mortgage fraud when a mortgage broker or person who originates a loan causes a borrower to sign documents for a commercial loan when the property was intended to be a residence or to sign a bridge loan knowing it won't be used for the purposed of acquiring a new dwelling.***

*Existing law* states that a person commits mortgage fraud if, with the intent to defraud, the person does any of the following:

- a) Deliberately makes any misstatement, misrepresentation, or omission during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process.
- b) Deliberately uses or facilitates the use of any misstatement, misrepresentation, or omission, knowing the same to contain a misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that it be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process

- c) Receives any proceeds or any other funds in connection with a mortgage loan closing that the person knew resulted from a violation of paragraph (a) or (b)
- d) Files or causes to be filed with the recorder of any county in connection with a mortgage loan transaction any document the person knows to contain a deliberate material misstatement, misrepresentation, or omission (Penal Code, § 532f (a).)

*Existing law* provides that an offense involving mortgage fraud shall not be based solely on information lawfully disclosed pursuant to federal disclosure laws, regulations, or interpretations related to the mortgage lending process. (Penal Code § 532f (b).)

*Existing law* provides that notwithstanding any other provision of law, an order for the production of any or all relevant records possessed by a real estate record holder in whatever form and however stored may be issued by a judge upon a written ex parte application made under penalty of perjury by a peace officer stating that there are reasonable grounds to believe that the records sought are relevant and material to an ongoing investigation of a felony fraud violation. (Pen. Code, § 532f (c)(1).)

*Existing law* provides that the ex parte application shall specify with particularity the records to be produced, which shall relate to a party or parties in the criminal investigation. (Penal Code § 532f (c)(2).)

*Existing law* establishes the Covered Loan Law, which prohibits lenders who make “covered loans,” as defined, from engaging in prohibited acts (Financial Code Section 4970 et seq.).

*Existing law* includes in the list of “prohibited acts” when a person who originates a covered loan shall from avoiding, or attempting to avoid, the application of the Covered Loan Law by doing the following:

- a) Structuring a loan transaction as an open-end credit plan for the purpose of evading the provisions of this division when if the loan would have been a covered loan if the loan had been structured as a closed end loan.
- b) Dividing any loan transaction into separate parts for the purpose of evading the provisions of the Covered Loan Law. (Financial Code, § 4973 (m).)

*This bill* adds to the list of prohibited acts related to covered loans the committing of mortgage fraud, as defined by Section 532f of the Penal Code.

*This bill*, as proposed to be amended in Committee, specifies that mortgage fraud includes the following acts, done with the intent to defraud, by a mortgage broker or person who originates a loan:

- a) Instructs or otherwise deliberately causes a borrower to sign documents reflecting the terms of a business, commercial, or agricultural loan, with knowledge that the borrower intends to use the loan proceeds primarily for personal, family, or household use.
- b) Instructs or otherwise deliberately causes a borrower to sign documents reflecting the terms of a bridge loan, with knowledge that the loan proceeds will be not used to acquire or construct a new dwelling. For purposes of this division, a bridge loan is any temporary

loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

## COMMENTS

### 1. Need for This Bill

According to the author:

Predatory lending has evolved since the subprime mortgage crisis of 2008, but the statute has remained the same. Predatory brokers have developed new tactics to target vulnerable Californians and evade prosecution. Victims of predatory lending are almost always people of color, immigrants, the elderly, and low income households who lose everything when they are misled into a loan they can't afford. AB 3108 seeks to address current and future predatory mortgage lending by clarifying that a loan originator who knowingly causes a borrower to sign a loan or document containing misleading statements is committing mortgage fraud. In doing so, this bill helps attorneys better protect victims of predatory lending and prosecute predatory brokers.

### 2. Background: California's Covered Loan Law

In 2001, the California Legislature passed AB 489 (Migden), Chapter 732, Statutes of 2001 to curb predatory practices in real estate lending. AB 489 was a response to a number of disturbing practices affecting primarily low-income borrowers, including loan flipping (where an originator would refinance the loan repeatedly in a short period, charging prepayment penalties each time), excessive fees that were not properly communicated to the borrower, lending without the ability to repay, and outright fraud and abuse.

The Covered Loan Law applies to a consumer loan that meets a number of specific and narrow criteria. The consumer loan must be secured by a residential property used or intended to be used as consumer's principal dwelling unit, cannot exceed the most current conforming loan limit established by the Federal National Mortgage Association (roughly \$767,000 in 2024) and must meet one of the following two criteria:

- a) For a mortgage or deed of trust, the annual percentage rate (APR) at consummation of the transaction will exceed by more than eight percentage points the yield on Treasury securities having comparable periods of maturity; or
- b) The total points and fees payable by the consumer at or before closing for a mortgage or deed of trust will exceed 6 percent of the total loan amount.

The "consumer loan" also excludes a number of other products, including reverse mortgages and so-called "bridge loans," which are short-term loans designed for those who are purchasing a new primary residence and need temporary funding to help finance that purchase while they sell their existing home.

Because of the narrow definition of "consumer loan," it is unclear how meaningful the law's protections are for California borrowers. Even at the time of AB 489's passage, it was understood as applying to only a small subset of overall real estate lending and exclusively to the

most predatory practices embraced by the subprime lenders. To the Legislature's credit, it identified major issues in the subprime lending market quite early and attempted to address them through AB 489, even though many of those problems would continue to fester until the 2007-08 financial crises. Today, to the extent there are still lending products out in the market that are covered by this area of law, these products are likely very high cost and far out of step with mainstream lending options.

Despite its limited scope, the Covered Loan Law contains robust enforcement mechanisms. It specifies that any licensee under the CFL, REL, the CRMLA, or under the Financial Institutions Law that violates the Covered Loan Law's provisions shall be deemed to have violated their respective licensing law. There is also a cause of action for "actual damages" suffered, and it makes a provision in a contract unenforceable if it violates specified provisions.

AB 3108 is inspired by instances when a lender tricks or otherwise deceives a homeowner into taking out a high-cost, short-term supported by improper or misleading documentation. Supporters argue that in such cases, a lack of clarity in statute makes it difficult for victims to find recourse.

In one example, an elderly homeowner contacted a nonprofit advertising mortgage payment relief for help with his mortgage, which he was struggling to make payments on. This nonprofit promised the victim he could save his home through a reverse mortgage. However, the organization connected the senior to a short-term loan that he did not understand and had no ability to pay, resulting \$65,000 in up-front originated fees with a \$300,000 balloon payment after the end of the loan's one-year term.

According to legal aid attorneys, one strategy being deployed by unscrupulous actors is having the loan described as a "bridge loan" in accompanying documentation, thus ensuring the loan is not covered by existing consumer protection laws. A bridge loan a short-term loan used to construct or purchase a new home while the existing home is being sold, and in this case the broker convinces the homeowner to sign a document saying the homeowner does not live at the property. The broker will also list the borrower's primary residence as a different address to give the impression that the loan will be used to secure a new primary residence.

AB 3108 expands the scenarios in which a person could be charged with mortgage fraud to include situations like the above.

### **3. Amendments**

Amendments to be taken in Committee:

In order to clarify the intent of this bill, the bill we be amended as follows:

Delete Page 8 lines 30-40

Delete Page 9 lines 1-3

Insert on page 9 line 11

(b) In addition to those offenses listed in (a), a mortgage broker or person who originates a loan, commits mortgage fraud if, with the intent to defraud, the person does either of the following:

(1) Instructs or otherwise deliberately causes a borrower to sign documents reflecting the terms of a business, commercial, or agricultural loan, with knowledge that the borrower intends to use the loan proceeds primarily for personal, family, or household use.

(2) Instructs or otherwise deliberately causes a borrower to sign documents reflecting the terms of a bridge loan, with knowledge that the loan proceeds will be not used to acquire or construct a new dwelling. For purposes of this division, a bridge loan is any temporary loan, having a maturity of one year or less, for the purpose of acquisition or construction of a dwelling intended to become the consumer's principal dwelling.

#### 4. Argument in Support

Consumer Federation of California, the sponsor, supports this bill stating:

A recent report revealed that California ranks fourth of all states in mortgage fraud risk. The greatest risk identified involves loans and, far too often, their predatory nature. Predatory lending is the use of fraudulent, deceptive, and unfair tactics to sell a consumer a mortgage they cannot afford or mislead consumers about what they are signing. These lenders target financially vulnerable homeowners with low credit scores, those who do not speak English, or otherwise lack a clear understanding of loan terms. Often these are people of color, immigrants, the elderly, and low-income households that have put all of their life savings into purchasing a home.

Mortgage fraud schemes vary widely, with some disguised as non-profit groups or "homeowner advocates" offering "free help". These shell nonprofits pledge loan modification services to distressed consumers, particularly consumers who have been identified via a notice of default on their mortgage as those most at risk of losing their home. In many of these scams the notice of default winds up being a sort of perverse advertisement to scam artists and fraudsters that a consumer is under financial duress. In such a situation too many at risk consumers fall prey to so-called "help" that is anything but. Instead, far too often the consumer is unknowingly steered towards commercial loans rather than residential ones, largely due to the lack of consumer protections in the commercial loan space. Lenders market these loans as reducing monthly payments or preventing foreclosure, but ultimately burden borrowers with staggering debt. Many consumers have been outright lied to about the documents they were pressured to sign.

For example, after inheriting his late mother's home a 59-year-old adult on the autism spectrum with cognitive impairments was exploited in 2015 by a deceitful nonprofit into signing a predatory loan agreement he could not afford. The consumer lacked financial literacy and stability and the home entered pre-foreclosure in 2020 due to missed payments. The shell nonprofit offered to help him, providing a "free loan modification," but it was a scheme to obtain approximately \$100,000 in loan origination fees and prepaid interest from the victim. The impoverished and vulnerable victim was left with a horrible illegal predatory loan he could not afford and a looming \$645,866.67 balloon payment due at the end of the loan's one-year term.