

MEMORANDUM OF UNDERSTANDING
Regarding electronic recording through
California Electronic Recording Transaction Network Authority

THIS MEMORANDUM OF UNDERSTANDING (hereinafter "MOU") is made and executed as of this ____ day of _____, 201_, by and between member and client counties participating in California Electronic Recording Transaction Network Authority, a California Joint Powers Authority, (hereinafter referred to, each, as "COUNTY") and _____ (hereinafter referred to as "SUBMITTER") and _____ (hereinafter referred to as "AGENT", if any). If no AGENT is designated, SUBMITTER will be hereinafter referred to as the "SUBMITTER" or as the "ERDS SUBMITTER". If AGENT is designated, AGENT will be hereinafter referred to as the "AGENT" or as the "ERDS SUBMITTER".

RECITALS

The purpose of this MOU is to confirm and establish the SUBMITTER's agreement and understanding of the procedures required to record documents electronically in COUNTY. The responsibilities established by this MOU are intended to assure that the Electronic Recording Delivery System ("ERDS"), as implemented and maintained by the California Electronic Recording Transaction Network Authority, a California Joint Powers Authority ("CERTNA") and of which COUNTY is a member or client, is secure and that ERDS operating procedures are sufficient to assure the continuing security and lawful operation of the ERDS in accordance with the Electronic Recording Delivery Act of 2004, set forth at California Government Code section 27390 et seq., and the regulations promulgated thereunder, set forth at California Code of Regulations ("CCR"), Title 11, Division 1, Chapter 18, Articles 1 through 9 (referred to herein, collectively, as the "Act").

AGREEMENT

NOW, THEREFORE, COUNTY AND ERDS SUBMITTER hereby agree as follows:

ARTICLE I -- DEFINITIONS

Capitalized terms used herein shall have the meaning assigned to such terms in the Act, as may be amended from time to time. Whenever there is a reference to a "Section" contained herein it shall refer to the California Government Code unless otherwise specified. Whenever there is a reference to the "CCR" contained herein it shall refer to the California Code of Regulations, Title 11, Division 1, Chapter 18 unless otherwise specified.

ARTICLE II – GENERAL DUTIES AND RESPONSIBILITIES

A. **ERDS Participant.** SUBMITTER and/or its designated and authorized AGENT each acknowledge that it is a voluntary participant in ERDS.

B. **SUBMITTER (Section 27391 (b)).** If SUBMITTER is one of the types of entities described in Section 27391(b), or an authorized AGENT of such an entity, then SUBMITTER is authorized under this MOU to deliver to COUNTY for recording, and return to the party requesting recording, a digitized electronic record that is an instrument affecting a right, title, or interest in real property.

C. **SUBMITTER (Section 27397.5 (b)).** If SUBMITTER attests that it is one of the types of entities described in Section 27397.5(b), or an authorized AGENT of such an entity, then SUBMITTER is authorized under this MOU to deliver to COUNTY for recording, and return to the party requesting recording, a digital or digitized electronic record that is an instrument of reconveyance, substitution of trustee, or assignment of deed of trust.

D. **ERDS Procedures.** ERDS SUBMITTER is wholly responsible for the scanning, transmission, and submission of documents. ERDS SUBMITTER agrees to abide by the procedures for ERDS as set forth by CERTNA and COUNTY, and by those regulations set forth at 11 CCR Division 1, Chapter 18 and of County specific Operating

Procedures. A copy of the COUNTIES' current Operating Procedures related to the ERDS SUBMITTER workstation will be available on www.certna.com or may be obtained from COUNTY. CERTNA and COUNTY each reserve the right to modify its own procedures at any time without prior notice.

E. Mailing of Recorded Documents. SUBMITTER shall ensure that a copy of the first page of each electronically recorded document is securely affixed to the corresponding original document as a cover page thereto, and shall return said document to applicable parties at the address specified in the instructions for mailing in the document pursuant to Government Code 27361.6 and 27391 (d).

F. Approval of Hardware and Software. All hardware and software used by ERDS SUBMITTER in the ERDS scanning and submitting process and any additional uses for the scan/submit stations must be approved by COUNTY prior to installation.

G. SUBMITTER to Provide Hardware and Software. ERDS SUBMITTER shall provide to COUNTY and CERTNA guidelines for any specific software/hardware configuration required to install ERDS on ERDS SUBMITTER's network. The ERDS SUBMITTER shall provide, at no cost to COUNTY and CERTNA, any and all specific software/hardware identified as required by ERDS SUBMITTER.

H. Access to ERDS. Access to the ERDS software, scan, and transmission process shall be governed by an authentication system approved by CERTNA and COUNTY. All administrative access to the authentication system shall be restricted to COUNTY employees and CERTNA employees only. ERDS SUBMITTER shall not perform any authentication administration. ERDS SUBMITTER acknowledge that its access to the ERDS is governed by an agreement by and between ERDS SUBMITTER and CERTNA.

I. Duty to Notify. ERDS SUBMITTER agrees to notify COUNTY and CERTNA in writing, within three (3) business days, of system users who leave employment, who change office locations, who has been determined not capable or no

longer necessary to have access, or who are no longer qualified pursuant to the Act. COUNTY shall delete or modify security access for such system user within a commercially reasonable period of time.

J. ERDS Remote Access. ERDS SUBMITTER shall provide to CERTNA and COUNTY controlled remote access to the ERDS system for system administration and maintenance purposes.

K. Access to SUBMITTER's Hardware and Software. ERDS SUBMITTER's shall provide CERTNA and COUNTY with physical access during normal business hours to all of ERDS SUBMITTER'S hardware and software interacting with the ERDS system.

L. Technical Support. ERDS SUBMITTER shall provide "first-level technical support," as defined in the County specific Operating Procedures, to its users of the ERDS hardware and software. ERDS SUBMITTER agrees to perform basic maintenance of its hardware on a regular basis consistent with best practices in the information technology industry.

M. Ownership of ERDS. CERTNA retains ownership of the ERDS software and is responsible for any modifications, upgrades, or enhancements. COUNTY shall provide ERDS SUBMITTER access to ERDS on an "As-Is" basis. SUBMITTER and AGENT may remit suggestions for enhancements to CERTNA or COUNTY for consideration. CERTNA, in its sole discretion, has final authority on the functionality, enhancements, or upgrades of the ERDS software.

N. Modifications to ERDS. ERDS SUBMITTER is expressly prohibited from making any software/hardware modification to the ERDS system without prior written consent of CERTNA, which consent may be granted or withheld in the sole discretion of CERTNA.

O. Access to ERDS. Notwithstanding any other provision hereof, COUNTY or CERTNA may terminate access to ERDS, or any part thereof, or may terminate access of any SUBMITTER and/or AGENT, or any authorized staff, at any

time COUNTY or CERTNA, in its sole discretion, deems it necessary to protect ERDS, to protect the public interest, to protect the integrity of public records, or to protect homeowners or real property owners from financial harm, or for any of the other reasons specified in Section 27391(c), including, but not limited to a substantive breach of this MOU or a violation of requirements imposed by ERDA or the regulations promulgated thereunder. It is understood and acknowledged by the parties hereto that no cause of action or liability against the COUNTY or CERTNA or any government agency shall arise from any decision of the COUNTY or CERTNA to terminate or deny access of any person or entity to ERDS.

P. SUBMITTER's Privileges. ERDS SUBMITTER shall be limited to those privileges granted in writing by COUNTY as specified in CCR § 999.142. The ERDS SUBMITTER is strictly prohibited from submitting ERDS payloads on behalf of another ERDS SUBMITTER except as provided for in this MOU. In no event shall shared user accounts be issued, and the sharing of ERDS authentication credentials is strictly prohibited. In the event that COUNTY or CERTNA determines that any provisions or procedures have been or are imminently in danger of being violated, COUNTY or CERTNA may revoke immediately and without prior notice all electronic submission privileges of ERDS SUBMITTER.

Q. Proprietary or Confidential Information of COUNTY. ERDS SUBMITTER understands and agrees that, in the performance of the work or services under this MOU or in contemplation thereof, ERDS SUBMITTER may have access to private or confidential information which may be owned or controlled by COUNTY and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to COUNTY. ERDS SUBMITTER agrees that all information disclosed by COUNTY to ERDS SUBMITTER shall be held in confidence and used only in performance of this MOU. ERDS SUBMITTER shall exercise the

same standard of care to protect such information as a reasonably prudent SUBMITTER would use to protect its own proprietary data.

R. Each SUBMITTER shall execute a copy of the Declaration set forth as Attachment A hereto.

ARTICLE III – TECHNICAL REQUIREMENTS

A. ERDS SUBMITTER hereby certify that all equipment owned, and software interacting with the ERDS shall meet all requirements as set forth in the ERDA and associated regulations, including but not limited to the following:

1. Scanner Requirements
 - i. See requirements set forth in County specific Operating Procedures.
2. Payloads
 - i. Type 1 and Type 2 Instruments.
 - ii. For the purposes of ERDS, these instruments are categorized as “Type 1” and “Type 2.” As defined in CCR § 999.108(26). Multiple digital electronic records or digitized electronic records within the same payload are allowed; only Secure Access users are authorized to include both Type 1 and Type 2 instruments in the same ERDS payload.
 - iii. The content of Type 1 and Type 2 instruments shall be as follows:
 1. Type 1 Instruments: those affecting a right, title, or interest in real property, shall be delivered as digitized electronic records.

2. Type 2 Instruments: instruments of reconveyance, substitution of trustee, or assignment of deed of trust, shall be delivered as digitized electronic records or digital electronic records.

B. Additional specifications are set forth in the County specific Operating Procedures, which is hereby incorporated by reference. ERDS SUBMITTER agrees that all users, equipment (owned by SUBMITTER and AGENT, if any), and software interacting with the ERDS shall meet all of the additional specifications set out in the County specific Operating Procedures. The County specific Operating Procedures include specifications for the following:

1. File Type
2. DPI
3. Index Information
4. Priority Levels Available
5. Submission Cut-Off Times
6. Support Procedure and Contact Information

In the event the County specific Operating Procedures does not list File Type, the File Type is assumed to be TIFF. In the event the County specific Operating Procedures does not list DPI, the DPI is assumed to be 300.

ARTICLE IV – MANDATORY PROVISIONS PER CCR

A. **Security Requirements for Computer Workstations.** Pursuant to CCR § 999.138, COUNTY shall ensure that all endpoints are secure. Workstations used to submit, retrieve, or, when applicable, return ERDS payloads shall be protected from unauthorized use and access. At a minimum, ERDS SUBMITTER'S workstations shall meet all of the following requirements:

1. Anti-malware software configured to start on system boot-up.
2. Operating system software with the most up-to-date patches and hot-fixes.
3. Host based firewall configured to restrict inbound and outbound connections.

Applications installed on work stations shall be limited to the purpose of performing the necessary operational needs of the electronic recording process as defined by COUNTY. SUBMITTER shall ensure that the AGENT, (if any) complies with the provisions of this section.

B. Additional specifications shall be set forth in the County specific Operating Procedures. ERDS SUBMITTER agree that all users, equipment (owned by SUBMITTER or AGENT, if any), and software interacting with the ERDS shall meet all of the additional specifications set out in the County specific Operating Procedures.

C. **Establishment of Procedures.** Pursuant to CCR §§ 999.131 and 999.146(b), ERDS SUBMITTER shall follow the ERDS Operating Procedures established by COUNTY, with the assistance of CERTNA, and agrees to comply with them as currently constituted and as they may be amended from time to time at the sole discretion of COUNTY. A Copy of the County's Operating Procedures can be obtained from the COUNTY or may be downloaded from CERTNA's website.

D. **ERDS Role-Based Security Requirements.** Pursuant to CCR § 999.142, ERDS access shall be controlled by COUNTY using a role-based access control system. COUNTY shall also be responsible for controlling the assignment of user accounts and identity credentials.

ARTICLE V – GENERAL PROVISIONS

A. **Independent SUBMITTER.** In the performance of its obligations and responsibilities under this MOU, ERDS SUBMITTER shall act in an independent capacity and not as an officer, employee, or agent of COUNTY or CERTNA.

B. Indemnity and Insurance. The SUBMITTER and AGENT, if any, and each of them, agree to indemnify, defend and hold harmless COUNTY and CERTNA, their authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising from ERDS SUBMITTER's acts, errors or omissions and for any costs or expenses incurred by COUNTY or CERTNA on account of any claim therefore arising out of the performance of this MOU, except where such indemnification is prohibited by law. Requirements for insurance coverages are set forth in the County's Operating Procedures which are incorporated by reference and have the same force and affect as if set forth in full herein.

C. Response to Inquiries. SUBMITTER and AGENT, if any, must respond to COUNTY or CERTNA inquiries within one (1) business hour.

D. AGENT Status. No AGENT shall be a computer security auditor or a vendor of ERDS or any other electronic recording delivery system.

E. Notice of Mailing Address. SUBMITTER and AGENT, if any, shall notify the COUNTY in writing of any change in mailing address within ten (10) business days of the change.

F. Subcontracting. ERDS SUBMITTER shall not enter into any subcontract for services covered by this MOU without first obtaining written approval from COUNTY, which approval may be granted or withheld in the sole discretion of the COUNTY. Any subcontract shall be subject to the same terms and conditions as this MOU. ERDS SUBMITTER shall be fully responsible for the performance and payment of any subcontractor's contract.

G. Assignment. The services to be performed by SUBMITTER and/or AGENT are personal in character and neither this MOU nor any duties or obligations hereunder may be assigned or delegated by SUBMITTER and/or AGENT without the prior written consent of the COUNTY, which consent may be granted or withheld in the sole discretion of COUNTY.

H. Entire Agreement. This MOU is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and supersedes any and all prior or contemporaneous Memoranda of Understanding or understandings or contracts.

I. Modification of MOU. This MOU may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this MOU.

J. SUBMITTER Licenses. ERDS SUBMITTER shall ensure that it has all necessary licenses and permits required by applicable federal, state, and local laws, ordinances, rules and regulations. The ERDS SUBMITTER shall maintain these licenses and permits in effect for the duration of this MOU. ERDS SUBMITTER shall notify COUNTY immediately of any loss or suspension of any such licenses and permits. Failure of SUBMITTER or AGENT, if any, to maintain all required licenses and permits constitutes a material breach of this MOU and in the event of any such failure COUNTY may immediately terminate this MOU and pursue all other available remedies.

K. Reporting Problems. In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this MOU, the ERDS SUBMITTER shall notify the COUNTY within one (1) working day, in writing and by telephone.

L. Improper Consideration. Neither SUBMITTER nor AGENT shall offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of COUNTY or CERTNA in an attempt to secure favorable treatment regarding this MOU. The COUNTY, by written notice, may immediately terminate any MOU if it determines that any improper consideration as described in this paragraph was offered to any officer, employee or agent of the COUNTY or CERTNA with respect to the proposal and award process. This prohibition

shall apply to any amendment, extension or evaluation process once an MOU has been awarded. SUBMITTER or AGENT shall immediately report any attempt by a COUNTY officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from SUBMITTER or AGENT . The report shall be made to CERTNA or to the supervisor or manager charged with supervision of the employee or to the COUNTY's Administrative Office.

M. Publicity. No news releases, advertisements, public announcements or photographs arising out of this MOU or the SUBMITTER's and/or AGENT's relationship with COUNTY may be made or used without prior written approval of the COUNTY, which approval may be granted or withheld in the sole discretion of COUNTY.

N. Governing Law; Venue. This MOU shall be governed by the laws of the State of California. Venue for all litigation against the COUNTY relative to the formation, interpretation and performance of this MOU shall be in the COUNTY. Venue for all other litigation regarding CERTNA shall be in San Bernardino County, California.

O. Audit and Inspection of Records. COUNTY and CERTNA shall each have the absolute right to review and audit any aspect of the ERDS system, security, all records, books, papers, documents, licenses and permits required by applicable federal, state, and local laws, ordinances, rules and regulations, and other pertinent items as requested, and each shall have the absolute right to monitor the performance of ERDS SUBMITTER in the delivery of services provided under this MOU. The California Attorney General and COMPUTER SECURITY AUDITORS have the right to review and audit any aspect of the ERDS, security, all related records, books, papers, documents, and other pertinent items under the Act. ERDS SUBMITTER shall provide full cooperation in any auditing or monitoring conducted. ERDS SUBMITTER shall cooperate with COUNTY and CERTNA in the implementation, monitoring and evaluation of this MOU and comply with any and all reporting requirements established by COUNTY and CERTNA. All records pertaining to services under this MOU shall be

available for examination and audit by COUNTY and CERTNA representatives and other authorized personnel for a period of five (5) years from the date of their creation.

P. RESERVED.

Q. Infringement Indemnification. ERDS SUBMITTER shall indemnify and hold COUNTY and CERTNA harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this MOU.

R. Accuracy of Recording Transactions. ERDS SUBMITTER is responsible for the accuracy and completeness of the recording transactions. COUNTY and CERTNA are expressly not liable for damages resulting from the recording or ERDS transactions or processes. The preceding sentence does not apply to liability and damages imposed on COUNTY pursuant to the provisions of Section 27203.

S. System Monitoring. ERDS SUBMITTER shall carefully monitor and control use of the system, ensuring compliance with procedural safeguards. ERDS SUBMITTER assumes full responsibility for any malicious act that harms, damages or has a damaging effect to the COUNTY's system or databases. It is understood and acknowledged by ERDS SUBMITTER that COUNTY and CERTNA assume no liability whatsoever for any information transmitted electronically by a SUBMITTER and AGENT, if any. It is further understood and acknowledged by ERDS SUBMITTER that COUNTY and CERTNA shall have no liability for refusal to record electronically transmitted records that do not comply with any statutorily imposed standards or requirements of recordability (including but not limited to those requirements imposed by Section 27201, such as photographic reproducibility).

T. Fraud. COUNTY and CERTNA assume no liability for any breach of security, fraud, or deceit as a result of ERDS. In the event of fraud impacting the value of or title to real estate, ERDS SUBMITTER bears the financial responsibility for transactions in which the ERDS SUBMITTER engages. This responsibility lies with the ERDS SUBMITTER notwithstanding any contrary waiver and/or disclaimer language that may be present in any title insurance policy, escrow instruction, loan closing instruction, or other document pertaining to the real estate transaction associated with said fraud. This provision is not intended to create any third party beneficiary rights, nor alter any rights or obligations between ERDS SUBMITTER and its insureds and/or customer.

ARTICLE VI – OPTIONAL DESIGNATION OF SUBMITTER’S AGENT

SUBJECT TO APPROVAL AND AUTHORIZATION BY COUNTY

A. No access to ERDS shall be made available to any designated AGENT of SUBMITTER, unless and until COUNTY has determined, in the good-faith exercise of COUNTY’s discretion, whether to accord recognition to such designee of SUBMITTER as its authorized AGENT for purposes of this MOU.

B. It is understood and agreed that AGENT’s express representation and agreement to be bound by all provisions of this MOU, by AGENT’s execution of the signature page hereof, together with the furnishing (at a minimum) of all contact information required for AGENT under Article VII of this MOU, shall be prerequisites to COUNTY’s recognition and authorization of SUBMITTER’s designated AGENT and to COUNTY’s willingness to deal with AGENT on such basis for any purpose under this MOU; and it is further understood and acknowledged that COUNTY may require such additional information pertaining to SUBMITTER’s designated AGENT as COUNTY deems necessary or appropriate for the protection of the public, regarding the identity and/or background of SUBMITTER’s designated AGENT (including but not limited to

confirmation of compliance with the requirements for secure access to ERDS as specified in Section 27395), before determining, in the good faith exercise of COUNTY's discretion, whether to accord recognition to such designee of SUBMITTER as its authorized AGENT for any purpose under this MOU.

C. It is understood and acknowledged by the parties that COUNTY's prior authorization of a designated AGENT of SUBMITTER may subsequently be withdrawn, in the good-faith exercise of COUNTY's discretion, whether based on Article II section O of this MOU or otherwise; and in such event, written notice of such withdrawal of authorization shall be provided, by letter from the COUNTY addressed to both SUBMITTER and AGENT in accordance with Article VII hereof, and a copy of said letter shall be attached as a specifically denominated Attachment to this MOU.

ARTICLE VI – NOTICES AND REPORTS

Any notice or report desired to be served by either party onto the other shall be addressed, personally delivered, or mailed via certified, return receipt, first class mail, to CERTNA and the ERDS SUBMITTER as set forth below, and to the County as stated in the County's Operating Procedures which can be obtained from the COUNTY or may be downloaded from CERTNA's website.

CERTNA:

CONTACT NAME

Company Name

Street/ Mailing Address

City, ST Zip

SUBMITTER:

CONTACT NAME

Company Name

Street/ Mailing Address

City, ST Zip

AGENT (if any):

CONTACT NAME

Company Name

Street/ Mailing Address

City, ST Zip

ARTICLE VII – TERM AND TERMINATION

A. This MOU shall take effect on the date it is signed by the COUNTY and shall continue in force and effect until terminated hereunder.

B. **Termination for Convenience.** Either party may terminate this MOU for any reason by serving the other party with prior written notice of at least fifteen (15) business days.

C. Upon termination, all ERDS software and/or equipment owned by COUNTY or CERTNA must be returned to its owner within thirty (30) days of termination.

D. **Termination for Cause.** In addition to other termination provisions contained herein, in the event that COUNTY determines that SUBMITTER'S and AGENT'S, if any, performance of their respective duties or other terms of this MOU are deficient in any manner, COUNTY may notify ERDS SUBMITTER of such deficiency in writing or orally, provided written confirmation is provided five (5) days thereafter. ERDS

ATTACHMENT A

DECLARATION

I, _____, do hereby acknowledge and declare that I have reviewed the California statutes (copies of which are attached to hereto as Exhibits 'A', 'B', and 'C') that define a title insurer, and underwritten title company and an institutional lender, and on that basis hereby represent and warrant that, to the best of my knowledge and belief, **NAME OF ENTITY**, on whose behalf authorization as an Authorized Submitter is sought, falls within the statutory definition indicated by my checkmark set forth below:

☐ a title insurer (Cal. Insurance Code section 12340.4)

☐ an underwritten title company, Cal. Insurance Code section 12340.5) or

☐ an institutional lender, (Cal. Financial Code section 50003) or

☐ an entity of local, state, or federal government

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, 201_ at _____, _____
Date City State

SUBMITTER:

BY: _____

Name (Print or Type): _____

Name of Submitter: _____

Title (if applicable): _____

Exhibit A

Deering's California Codes Annotated
Copyright © 2014 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

INSURANCE CODE
Division 2. Classes of Insurance
Part 6. Insurance Covering Land
Chapter 1. Title Insurance
Article 1. Definitions

§ 12340.4. "Title insurer"

"Title insurer" means any company issuing title policies as insurer, guarantor or indemnitor.

"Domestic title insurer" means any title insurer organized under the laws of this state.

"Foreign title insurer" means any title insurer organized under the laws of any other jurisdiction.

Exhibit B

Deering's California Codes Annotated
Copyright © 2014 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

INSURANCE CODE
Division 2. Classes of Insurance
Part 6. Insurance Covering Land
Chapter 1. Title Insurance
Article 1. Definitions

§ 12340.5. “Underwritten title company”

“Underwritten title company” means any corporation engaged in the business of preparing title searches, title examinations, title reports, certificates or abstracts of title upon the basis of which a title insurer writes title policies.

Exhibit C

DEERING'S CALIFORNIA CODES ANNOTATED
Copyright (c) 2014 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

FINANCIAL CODE

Division 20. California Residential Mortgage Lending Act
Chapter 1. General

§ 50003. Definitions

(a) "Annual audit" means a certified audit of the licensee's books, records, and systems of internal control performed by an independent certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards.

(b) "Borrower" means the loan applicant.

(c) "Buy" includes exchange, offer to buy, or solicitation to buy.

(d) "Commissioner" means the Commissioner of Business Oversight.

(e) "Control" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a licensee under this division, whether through voting or through the ownership of voting power of an entity that possesses voting power of the licensee, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, or holds 10 percent or more of the voting power of a licensee or of an entity that owns, controls, or holds, with power to vote, 10 percent or more of the voting power of a licensee. No person shall be deemed to control a licensee solely by reason of his or her status as an officer or director of the licensee.

(f) "Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(g) "Engage in the business" means the dissemination to the public, or any part of the public, by means of written, printed, or electronic communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communications media, of any information relating to the making of residential mortgage loans, the servicing of residential mortgage loans, or both. "Engage in the business" also means, without limitation, making residential mortgage loans or servicing residential mortgage loans, or both.

(h) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(i) "In this state" includes any activity of a person relating to making or servicing a residential mortgage loan that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons

1 inside this state, or that originates inside this state and is directed to persons inside this
2 state, or that leads to the formation of a contract and the offer or acceptance thereof is
3 directed to a person in this state (whether from inside or outside this state and whether
4 the offer was made inside or outside the state).

5 (j) "Institutional investor" means the following:

6 (1) The United States or any state, district, territory, or commonwealth thereof, or any
7 city, county, city and county, public district, public authority, public corporation, public
8 entity, or political subdivision of a state, district, territory, or commonwealth of the
9 United States, or any agency or other instrumentality of any one or more of the
10 foregoing, including, by way of example, the Federal National Mortgage Association
11 and the Federal Home Loan Mortgage Corporation.

12 (2) Any bank, trust company, savings bank or savings and loan association, credit
13 union, industrial bank or industrial loan company, personal property broker, consumer
14 finance lender, commercial finance lender, or insurance company, or subsidiary or
15 affiliate of one of the preceding entities, doing business under the authority of or in
16 accordance with a license, certificate, or charter issued by the United States or any
17 state, district, territory, or commonwealth of the United States.

18 (3) Trustees of pension, profit-sharing, or welfare funds, if the pension, profit-sharing,
19 or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000),
20 except pension, profit-sharing, or welfare funds of a licensee or its affiliate, self-
21 employed individual retirement plans, or individual retirement accounts.

22 (4) A corporation or other entity with outstanding securities registered under section
23 12 of the federal Securities Exchange Act of 1934 or a wholly owned subsidiary of
24 that corporation or entity, provided that the purchaser represents either of the
25 following:

26 (A) That it is purchasing for its own account for investment and not with a view to,
27 or for sale in connection with, any distribution of a promissory note.

28 (B) That it is purchasing for resale pursuant to an exemption under Rule 144A
(17 C.F.R. 230.144A) of the Securities and Exchange Commission.

(5) An investment company registered under the Investment Company Act of 1940;
or a wholly owned and controlled subsidiary of that company, provided that the
purchaser makes either of the representations provided in paragraph (4).

(6) A residential mortgage lender or servicer licensed to make residential mortgage
loans under this law or an affiliate or subsidiary of that person.

(7) Any person who is licensed as a securities broker or securities dealer under any
law of this state, or of the United States, or any employee, officer, or agent of that
person, if that person is acting within the scope of authority granted by that license or
an affiliate or subsidiary controlled by that broker or dealer, in connection with a
transaction involving the offer, sale, purchase, or exchange of one or more
promissory notes secured directly or indirectly by liens on real property or a security
representing an ownership interest in a pool of promissory notes secured directly or
indirectly by liens on real property, and the offer and sale of those securities is
qualified under the California Corporate Securities Law of 1968 or registered under
federal securities laws, or exempt from qualification or registration.

1
2 (8) A licensed real estate broker selling the loan to an institutional investor specified
in paragraphs (1) to (7), inclusive, or paragraph (9) or (10).

3 (9) A business development company as defined in section 2(a)(48) of the
4 Investment Company Act of 1940 or a small business investment company licensed
by the United States Small Business Administration under section 301(c) or (d) of the
5 Small Business Investment Act of 1958.

6 (10) A syndication or other combination of any of the foregoing entities that is
organized to purchase a promissory note.

7 (11) A trust or other business entity established by an institutional investor for the
8 purpose of issuing or facilitating the issuance of securities representing undivided
interests in, or rights to receive payments from or to receive payments primarily from,
9 a pool of financial assets held by the trust or business entity, provided that all of the
following apply:

10 (A) The business entity is not a sole proprietorship.

11 (B) The pool of assets consists of one or more of the following:

12 (i) Interest-bearing obligations.

13 (ii) Other contractual obligations representing the right to receive payments
14 from the assets.

15 (iii) Surety bonds, insurance policies, letters of credit, or other instruments
providing credit enhancement for the assets.

16 (C) The securities will be either one of the following:

17 (i) Rated as "investment grade" by Standard and Poor's Corporation or
18 Moody's Investors Service, Inc. "Investment grade" means that the securities
will be rated by Standard and Poor's Corporation as AAA, AA, A, or BBB or by
19 Moody's Investors Service, Inc. as Aaa, Aa, A, or Baa, including any of those
ratings with "+" or "-" designation or other variations that occur within those
20 ratings.

21 (ii) Sold to an institutional investor.

22 (D) The offer and sale of the securities is qualified under the California Corporate
23 Securities Law of 1968 or registered under federal securities laws, or exempt
from qualification or registration.

24 (k) "Institutional lender" means the following:

25 (1) The United States or any state, district, territory, or commonwealth thereof, or
any city, county, city and county, public district, public authority, public corporation,
26 public entity, or political subdivision of a state, district, territory, or commonwealth of
the United States, or any agency or other instrumentality of any one or more of the
27 foregoing, including, by way of example, the Federal National Mortgage Association
and the Federal Home Loan Mortgage Corporation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company, or insurance company, or service or investment company that is wholly owned and controlled by one of the preceding entities, doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Any corporation with outstanding securities registered under section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(4) A residential mortgage lender or servicer licensed to make residential mortgage loans under this law.

(l) "Law" means the California Residential Mortgage Lending Act.

(m) "Lender" means a person that (1) is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, (2) directly makes residential mortgage loans, and (3) makes the credit decision in the loan transactions.

(n) "Licensee" means, depending on the context, a person licensed under Chapter 2 (commencing with section 50120), Chapter 3 (commencing with section 50130), or Chapter 3.5 (commencing with section 50140).

(o) "Makes or making residential mortgage loans" or "mortgage lending" means processing, underwriting, or as a lender using or advancing one's own funds, or making a commitment to advance one's own funds, to a loan applicant for a residential mortgage loan.

(p) "Mortgage loan," "residential mortgage loan," or "home mortgage loan" means a federally related mortgage loan as defined in section 3500.2 of Title 24 of the Code of Federal Regulations, or a loan made to finance construction of a one-to-four family dwelling.

(q) "Mortgage servicer" or "residential mortgage loan servicer" means a person that (1) is an approved servicer for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, and (2) directly services or offers to service mortgage loans.

(r) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

(s) "Net worth" has the meaning set forth in section 50201.

(t) "Own funds" means (1) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on a lender's financial statements, whether secured or unsecured, or (2) a lender's affiliate's cash, corporate capital, or

1 warehouse credit lines at commercial banks or other sources that are liability items on
2 the affiliate's financial statements, whether secured or unsecured. "Own funds" does not
3 include funds provided by a third party to fund a loan on condition that the third party will
4 subsequently purchase or accept an assignment of that loan.

(u) "Person" means a natural person, a sole proprietorship, a corporation, a partnership,
a limited liability company, an association, a trust, a joint venture, an unincorporated
organization, a joint stock company, a government or a political subdivision of a
government, and any other entity.

(v) "Residential real property" or "residential real estate" means real property located in
this state that is improved by a one-to-four family dwelling.

(w) "SAFE Act" means the federal Secure and Fair Enforcement for Mortgage Licensing
Act of 2008 (Public Law 110-289).

(x) "Service" or "servicing" means receiving more than three installment payments of
principal, interest, or other amounts placed in escrow, pursuant to the terms of a
mortgage loan and performing services by a licensee relating to that receipt or the
enforcement of its receipt, on behalf of the holder of the note evidencing that loan.

(y) "Sell" includes exchange, offer to sell, or solicitation to sell.

(z) "Unique identifier" means a number or other identifier assigned by protocols
established by the Nationwide Mortgage Licensing System and Registry.

(aa) For purposes of sections 50142, 50143, and 50145, "nontraditional mortgage
product" means any mortgage product other than a 30-year fixed rate mortgage.

(ab) For purposes of section 50141, "expungement" means the subsequent order under
the provisions of section 1203.4 of the Penal Code allowing such individual to withdraw
his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of
guilty or dismissing the accusation, information, or indictment. With respect to criminal
convictions in another state, that state's definition of expungement will apply.

