



## BUSINESS LAW SECTION

### INSOLVENCY LAW COMMITTEE

THE STATE BAR OF CALIFORNIA

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## ***CORRECTIONS TO OUTDATED REFERENCES TO FEDERAL BANKRUPTCY LAW IN CALIFORNIA STATUTES***

### **LEGISLATIVE PROPOSAL (BLS-2009-06)**

**TO:** Office of Governmental Affairs

**FROM:** Donna Parkinson, Chair  
Business Law Section (the "Section"), Insolvency Committee (the "Committee")

**DATE:** July 18, 2008

**RE:** Proposal to Correct Erroneous References to Federal Bankruptcy Law in California Statutes

### **SECTION ACTION AND CONTACTS**

Date of Approval by Section Executive Committee: July 18, 2008

Approval Vote:

For: 13      Against: 0

Date of Approval by the Committee: July 11, 2008

Approval Vote:

For: 14      Against: 0

<b>Executive Committee Contact:<sup>1</sup></b>	<b>Executive Committee Contact:<sup>1</sup></b>
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### **HISTORY, DIGEST AND PURPOSE**

California statutes contain many references to federal bankruptcy law. Many of these statutes have erroneous or antiquated references to former bankruptcy law provisions. The purpose of this proposal is to correct over 50 such erroneous references. A list of the California

<sup>1</sup> Contact information is as of the date submitted. Contact information for the 2008-09 State Bar year is contained in the Supplemental Contacts Information sheet at the end of this document.

statutes that need to be updated is set forth below. The full text of the proposed revisions is attached.

The Committee seeks to promote predictability, efficiency and consistency in the administration of the federal and California laws governing insolvency and the rights and duties of creditors and debtors. The Committee evaluates and advocates changes in federal and state statutes and regulations affecting creditors and debtors; sponsors a broad variety of educational programs in cooperation with the State Bar and local bar associations; and prepares articles on current developments and practice aids to assist practitioners. The Committee draws its members from attorneys throughout California representing a broad cross-section of the diverse disciplines and practices (corporate, commercial, consumer, large firm, small firm, governmental agency, in-house, etc.) with expertise and experience in issues of general concern in insolvency law.

This proposal is within the ambit of the Committee's mission and purpose. This proposal provides technical, non-substantive corrections to California law where needed to update California law due to changes in legal concepts and sections of the federal Bankruptcy Code.

### **History.**

We are not aware of any recent similar proposals considered by the State Bar or the Legislature.

### **Relevant Existing Code Sections.**

The Bankruptcy Code and bankruptcy terms used in it are referenced in numerous California Code sections. Minimal, yet important, technical changes are proposed to correct outdated terminology referenced in these Code sections. The California Codes affected by the proposed changes are as follows: Business & Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Financial Code, Fish & Game Code, Food & Agricultural Code, Government Code, Health & Safety Code, Insurance Code, Probate Code, Public Contracts Code, Revenue & Taxation Code, Streets & Highways Code, and Vehicle Code. Each specific Code section is referenced below.

### **Reasons for the Proposal.**

The Committee performed a systematic and comprehensive review of all California statutes. This review revealed many instances where California statutes used terminology that was found in the Bankruptcy Act of 1898 (the "Bankruptcy Act"). Many terms that were used in the Bankruptcy Act are no longer in use today. In 1978, Congress replaced the Bankruptcy Act with the federal Bankruptcy Code (11 U.S.C. §101 et seq., referred to herein as the "Bankruptcy Code") which continues in use today. In addition, certain sections in the Bankruptcy Code referenced in California statutes were changed in 2005 when Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act.

For example, under the Bankruptcy Act, “adjudication” meant a determination, whether by decree or by operation of law, that a person is a “bankrupt.” Bankruptcy Act §1(2). A “bankrupt” was defined as a person against whom an involuntary petition or an application to revoke a discharge had been filed, or who had filed a voluntary petition, or who had been adjudged a “bankrupt.” Bankruptcy Act § 1(4). The phrase “date of adjudication” was defined under the Bankruptcy Act as the date of the filing of the petition which operated as an adjudication, or the date of the entry of a decree of adjudication, or if such decree was appealed from, then the date when such decree was finally confirmed or the appeal was dismissed. Bankruptcy Act § 1(12). Adjudication also was used to indicate that a debt was discharged in a bankruptcy. The term “adjudication” is used numerous times throughout the California statutes.

Under the current Bankruptcy Code, the commencement of a bankruptcy case is triggered not by an “adjudication” that a person is “bankrupt,” but rather by the entry of an “order for relief” that typically occurs upon filing a petition. Thus, the “date of adjudication” reference in many California Statutes corresponds substantively to the commencement of a bankruptcy case rather than when a court determination of eligibility is issued and is properly revised to be the “petition date” or “the date of the order for relief,” which are the terms used under the Bankruptcy Code as currently in effect. Moreover, the term “bankrupt” used as a noun has been replaced by the term “debtor” and when used as an adjective is modified to reflect that the party has filed bankruptcy.

The term “arrangement” was defined in the Bankruptcy Act as any plan which has for its primary purpose the alteration or modification of the rights of creditors or of any class of them, holding debts secured by real property or a chattel real of which the debtor is the legal or equitable owner. Bankruptcy Act § 806(1). The Bankruptcy Code no longer contains the term “arrangement,” so the reference in the Corporations Code to reorganizations is sufficient and “arrangements” is neither necessary nor meaningful.

The erroneous references, in California statutes, to obsolete or superseded bankruptcy law not only create ambiguity, but also call into question the meaning or enforceability of Code provisions that invoke or rely on such references. Accordingly, the Committee believes the changes proposed in this proposal are important to the effective administration of California law.

### **Summary of the Proposed Changes.**

The proposed changes may be summarized as shown in this section. Where a change is identified as an “update,” it reflects the current usage in the Bankruptcy Code rather than the outdated usage tracing to the Bankruptcy Act of 1898.

#### **I. Proposed Business & Professions Code revisions.**

A. Section 7102 updates the term “adjudicated” to the modern term “discharge.” Section 7102 provides an exception to the requirement to obtain and retain a license for failure to pay debts that are discharged in bankruptcy.

B. Section 7113.5 updates the term “avoiding” debts in bankruptcy to “the discharge of” debts in bankruptcy.

C. Sections 17027 and 17028 update the term “bankrupt” to “bankruptcy” when referring to close-out sales.

D. Section 17511.4 deletes the phrase “adjudicated a bankrupt” and inserts “been the subject of an order for relief in bankruptcy” which properly captures both a voluntary and involuntary bankruptcy filing.

E. Section 17550.52 updates the identification of a party that is “bankrupt” to a one that “has been the subject of an order for relief in bankruptcy” which properly captures both a voluntary and involuntary bankruptcy filing.

F. Section 17919 updates the term “bankrupt” to “debtor” or “bankruptcy estate” as appropriate.

G. Section 20021 updates the identification of a party that is “bankrupt” to one that “has been the subject of an order for relief in bankruptcy” which properly captures both a voluntary and involuntary bankruptcy filing.

H. Section 22903 corrects the reference to the discharge of an involuntary petition to dismissal of an involuntary petition.

I. Section 24071 corrects the reference to “bankrupt person” to a “debtor in bankruptcy.”

II. Proposed Civil Code revisions.

A. Sections 1785.13(a)(1) and 1786.18(a)(1) update the phrase “date of adjudication” to “date of the order for relief.”

B. Section 1788.14(a) deletes the phrase “who has been adjudicated a bankrupt” and the word “such” as unnecessary.

C. Section 1812.206 updates the identification of a party that has been “adjudged a bankrupt” to one that has been “the subject of an order for relief in bankruptcy” which properly captures both a voluntary and involuntary bankruptcy filing.

III. Proposed Code of Civil Procedure revision.

A. Section 703.130 updates the reference from Bankruptcy Code section 522(b)(1) to section 522(b)(2) due to the 2005 amendments to the Bankruptcy Code that renumbered the subsections in section 522. Section 703.130 provides that the use of the federal exemptions in the Bankruptcy Code is not allowed in California, as authorized by former section 522(b)(1), now numbered as section 522(b)(2).

IV. Proposed Corporations Code revisions.

A. Sections 1400, 1401, 1402, 1403, 6110, 8110, 9650, 12560, 15642, 23005, 25103, and 28710 delete the reference to “arrangements” in authorizing the acts of a domestic corporation to reorganize.

B. Sections 6610, 8610, 9680, 12630, 25248 and 28710 update the identification of a party that has been “adjudicated a bankrupt” to one that “has been the subject of an order for relief in bankruptcy,” which properly captures both a voluntary and involuntary bankruptcy filing.

V. Proposed Financial Code revisions.

A. Section 867 deletes the reference to “adjudicated a bankrupt” and changes it to “has been the subject of an order for relief in bankruptcy” which properly captures both a voluntary and involuntary bankruptcy filing.

B. Section 1203 deletes the reference to “bankrupt estates” and changes it to “estates in bankruptcy cases.”

C. Sections 1781, 1889, 6152, 12307.2, 16202, 16902, 17415, 18477, 31709, 34109 and 50319 deletes the reference to “adjudged” or “adjudication” of bankruptcy and changes it to the appropriate variant of filing bankruptcy. For example, section 1781 authorizes the commissioner to suspend or revoke the license of a foreign bank if, among other things, the bank is in bankruptcy. Since the concept of an “adjudication” of bankruptcy is no longer used, the proper triggering event for the ability of the commissioner to suspend or revoke a bank’s license is the entry of an order for relief which properly captures both a voluntary and involuntary bankruptcy filing. The changes to sections 1889, 16202, 16902, 31709, and 34109 address the same issue where appropriate. The changes to sections 12307.2, 17415, 18477, and 50319 all update the reference to being “adjudged” a bankruptcy to the entry of an order for relief which properly captures both a voluntary and involuntary bankruptcy filing since a debtor is no longer adjudged a bankrupt.

VI. Proposed Fish & Game Code revision.

A. Section 1058 corrects a reference to an assignee for the benefit of creditors to be the “assignee” instead of an “agent.”

VII. Proposed Food & Agricultural Code revision.

A. Section 58503.1 corrects an erroneous reference to title 11 of the Internal Revenue Code to the intended reference to title 26. The Internal Revenue Code is codified in title 26, not title 11.

VIII. Proposed Government Code revision.

A. Sections 65863.7 and 65863.12 delete the reference to an “adjudication of bankruptcy” and correct it to refer to the entry of an order for relief in bankruptcy, which properly captures both a voluntary and involuntary bankruptcy filing.

IX. Proposed Health & Safety Code revisions.

A. Sections 1358.4(b), 1793.62, 25169.3, 25359.5 and 25359.6 update and correct the definition of bankruptcy to delete the reference to a “declaration” of bankruptcy since the Bankruptcy Code as currently in effect contains no provisions for a declaration of bankruptcy. The analogous reference is the entry of an order for relief.

B. Section 129174.1 makes revisions for clarity and accuracy. Since a loan does not file bankruptcy, the language clarifies that if an obligor on a loan insured by the office is the subject of an order for relief in bankruptcy and a plan is proposed for confirmation, then the office has the right to vote on the plan in the bankruptcy court confirmation proceeding.

C. Section 25245 deletes outdated references to an “arrangement” and unnecessary language regarding reorganizations under title 11. The reference to “reorganization” when referring to title 11 is unnecessary since the reference to “bankruptcy” necessarily includes reorganizations.

D. Section 25396(j)(1) includes all references to the sections of the Bankruptcy Code that provide for a discharge of debts.

X. Proposed Insurance Code revisions.

A. Section 10192.4 deletes the reference to a declaration of bankruptcy and corrects the reference to filing a petition for bankruptcy or having a petition filed against it.

B. Section 11655 corrects the reference to a discharge in bankruptcy.

XI. Proposed Probate Code revisions.

A. Section 15643 deletes the reference to “adjudication of bankruptcy” and other outdated references from the Bankruptcy Act of 1898 and replaces it with “is the subject of an order for relief in bankruptcy” which properly captures both a voluntary and involuntary bankruptcy filing.

XII. Proposed Public Contracts Code revision.

A. Section 4107 corrects the reference to becoming “bankrupt” to is “the subject of an order for relief in bankruptcy” which properly captures both a voluntary and involuntary bankruptcy filing.

XIII. Proposed Revenue & Taxation Code revisions.

A. Section 11923 updates the reference to the Federal Bankruptcy Act as the Federal Bankruptcy Code.

XIV. Proposed Streets & Highways Code revision.

A. Section 9185 deletes the reference to “bankrupt” and replaces it with the term “debtor.”

XV. Proposed Vehicle Code revision.

A. Section 9859 corrects a reference to an assignee for the benefit of creditors to be the “assignee” instead of an “agent.”

**APPLICATION**

This legislation should be enacted in the normal course so that it is effective as of January 1, 2010.

**PENDING LITIGATION**

We are not aware of any pending litigation that would be affected by this proposal.

**LIKELY SUPPORT AND OPPOSITION**

This proposal likely will be supported by practitioners as the changes are technical and improve the state of the California statutes with respect to references to the Bankruptcy Code and terms. The Committee does not believe that any constituency would oppose this proposal since it merely corrects outdated and erroneous references in the California statutes and does not make any substantive changes to them. This proposal has been circulated to the chairs of all 15 Standing Committees of the California State Bar Business Law Section and the following other State Bar sections: Environmental, Litigation, Real Property, Taxation, and Trusts & Estates. In that process, no opposition has been expressed to this proposal and all suggestions for improving clarity have been included.

**GERMANENESS**

The subject matter of this proposal is reasonably related to the regulation of the legal profession and is designed to improve the quality of legal services by promoting clarity in the law. The subject matter of this proposed bill calls for the special knowledge, training, experience, or technical expertise of the Business Law Section and particularly the Insolvency Law Committee. The proposal would promote clarity, consistency, and comprehensiveness in the law and thus will also promote judicial efficacy and efficiency.

**TEXT OF PROPOSAL**

The proposed revisions to the California Codes are attached hereto.

## PROPOSED REVISIONS TO CALIFORNIA STATUTES

### BUSINESS & PROFESSIONS CODE

#### § 7102. Reinstatement or reissuance of license

After suspension of the license upon any of the grounds set forth in this chapter, the registrar may reinstate the license upon proof of compliance by the contractor with all provisions of the decision as to reinstatement or, in the absence of such decision or any provisions therein as to reinstatement, in the sound discretion of the registrar.

After revocation of a license upon any of the grounds set forth in this chapter, the license shall not be reinstated or reissued and a license shall not be issued to any member of the personnel of the revoked licensee found to have had knowledge of or participated in the acts or omissions constituting grounds for revocation, within a minimum period of one year and a maximum period of five years after the final decision of revocation and then only on proper showing that all loss caused by the act or omission for which the license was revoked has been fully satisfied and that all conditions imposed by the decision of revocation have been complied with.

The board shall promulgate regulations covering the criteria to be considered when extending the minimum one-year period. The criteria shall give due consideration to the appropriateness of the extension of time with respect to the following factors:

- (a) The gravity of the violation.
- (b) The history of previous violations.
- (c) Criminal convictions.

When any loss has been reduced to a monetary obligation or debt, however, the satisfaction of such monetary obligation or debt as a prerequisite for the issuance, reissuance, or reinstatement of a license shall not be required where such monetary obligation or debt has been ~~adjudicated~~ *discharged* in a bankruptcy proceeding. However, any nonmonetary condition not ~~adjudicated~~ *discharged* in a bankruptcy proceeding shall be complied with prior to the issuance, the reissuance, or reinstatement of the license.

#### § 7113.5. Avoidance or settlement of obligations for less than full amount

The avoidance or settlement by a licensee for less than their full amount of the lawful obligations of such licensee incurred as a contractor, whether by (a) composition, arrangement, or reorganization with creditors under state law, (b) composition, arrangement, or reorganization with creditors under any agreement or understanding, (c) receivership as provided in Chapter 5 (commencing at Section 564) of Title 7 of Part 2 of the Code of Civil Procedure, (d) assignment

for the benefit of creditors, (e) trusteeship, or (f) dissolution constitutes a cause for disciplinary action.

This section shall not apply to an individual settlement of the obligation of a licensee by such licensee with a creditor which is not a part of or in connection with a settlement with other creditors of such licensee.

No disciplinary action shall be commenced against a licensee for the ~~avoiding-discharge~~ of or settling in bankruptcy, ~~or by composition, arrangement, or reorganization~~ with creditors under federal law, the licensee's lawful obligations incurred as a contractor for less than the full amount of such obligations.

§ 17027. Use of invoice cost on purchases at bankruptcy and closeout sales; Advertising requirements

In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of the article or product purchased at a forced, bankruptcy, closeout sale, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of the sale of the article or product replaced through the ordinary channels of trade, unless the article or product is kept separate from goods purchased in the ordinary channels of trade and unless the article or product is advertised and sold as merchandise purchased at a forced, bankruptcy, closeout sale, or by means other than through the ordinary channels of trade.

Such advertising shall state the conditions under which the goods were purchased, and the quantity of the merchandise to be sold or offered for sale.

§ 17028. "Ordinary channels of trade"

"Ordinary channels of trade" means those ordinary, regular and daily transactions in the mercantile trade whereby title to an article or product, in no way damaged or deteriorated, is transferred from one person to another. "Ordinary channels of trade" does not include *bankruptcy* sales of ~~bankrupt~~ stocks, closeout goods, dents, sales of goods bought from a business or merchant retiring from business, fire sales and sales of damaged or deteriorated goods, which damage or deterioration results from any cause whatsoever. This listing is not all inclusive but as example only.

§ 17511.4. Information required to be included in filing

Each filing pursuant to Section 17511.3 shall contain the following information:

(a) The name or names of the seller, including the name under which the seller is doing or intends to do business, if different from the name of the seller, and the name of any parent or affiliated organization (1) that will engage in business transactions with purchasers relating to sales solicited by the seller or (2) that accepts responsibility for statements made by, or acts of, the seller relating to sales solicited by the seller.

(b) The seller's business form and place of organization and, if the seller is a corporation, a copy of its articles of incorporation and bylaws and amendments thereto, or, if a partnership, a copy of the partnership agreement, or if operating under a fictitious business name, the location where the fictitious name has been registered. All the same information shall be included for any parent or affiliated organization disclosed pursuant to subdivision (a).

(c) The complete street address or addresses of all locations, designating the principal location from which the telephonic seller will be conducting business. If the principal business location of the seller is not in this state, then the seller shall also designate which of its locations within this state is its main location in the state.

(d) A listing of all telephone numbers to be used by the seller and the address where each telephone using each of these telephone numbers is located.

(e) The name of, and the office held by, the seller's officers, directors, trustees, general and limited partners, sole proprietor, and owners, as the case may be, and the names of those persons who have management responsibilities in connection with the seller's business activities.

(f) The complete address of the principal residence, the date of birth, and the driver's license number and state of issuance of each of the persons whose names are disclosed pursuant to subdivision (e).

(g) The name and principal residence address of each person the telephonic seller leaves in charge at each location from which the seller does business in this state, as defined in subdivision (a) of Section 17511.3, and the business location which each of these persons is or will be in charge of.

(h) A statement, meeting the requirements of this subdivision, as to both the seller, whether a corporation, partnership, firm, association, joint venture, or any other type of business entity (and whether identified pursuant to subdivision (e) or (g) or not), and as to any person identified pursuant to subdivision (e) or (g) who:

(1) Has been convicted of a felony or misdemeanor involving an alleged violation of this article, or fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. For purposes of this paragraph, a plea of nolo contendere is a conviction.

(2) Has had entered against him or her a final judgment or order in a civil or administrative action, including a stipulated judgment or order, if the complaint or petition in the civil or administrative action alleged acts constituting a violation of this article, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful, or deceptive business practices.

(3) Is subject to any currently effective injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency or unit thereof, including, but not limited to, an action affecting any vocational license.

(4) Has at any time during the previous seven tax years *been the subject of an order for relief* filed in bankruptcy, ~~been adjudged a bankrupt,~~ been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other corporation, partnership, joint venture, or business entity, that has *been the subject of an order for relief in bankruptcy so filed or was so adjudicated or reorganized*, during or within one year after the period that the person held that position.

For purposes of paragraphs (1), (2), and (3), the statement required by this subdivision shall identify the seller or person, the court or administrative agency rendering the conviction, judgment, or order, the docket number of the matter, the date of the conviction, judgment, or order, and the name of the governmental agency, if any, that brought the action resulting in the conviction, judgment, or order. For purposes of paragraph (4), the statement required by this subdivision shall include the name and location of the seller or person *that has been the subject of an order for relief* ~~filing~~ in bankruptcy, ~~adjudicated a bankrupt,~~ or reorganized due to insolvency, and shall include the date thereof, the court which exercised jurisdiction, and the docket number of the matter.

(i) A list of the names, principal residence addresses, the date of birth, and the driver's license number and state of issuance thereof, of salespersons who solicit on behalf of the telephonic seller and the names the salespersons use while so soliciting. No salesperson shall use the same name as used by any other salesperson soliciting for the telephonic seller and no telephonic seller shall permit a salesperson to use the same name as used by any other salesperson soliciting for the telephonic seller.

(j) A description of the items the seller is offering for sale and a copy of all sales scripts the telephonic seller requires salespersons to use when soliciting prospective purchasers, or if no sales script is required to be used, a statement to that effect.

(k) A copy of all sales information and literature (including, but not limited to, scripts, outlines, instructions, and information regarding how to conduct telephonic sales, sample introductions, sample closings, product information, and contest or premium-award information) provided by the telephonic seller to salespersons or of which the seller informs salespersons, and a copy of all written materials the seller sends to any prospective or actual purchaser.

(l) If the telephonic seller represents or implies, or directs salespersons to represent or imply, to purchasers that the purchaser will receive certain specific items (including a certificate of any type which the purchaser must redeem to obtain the item described in the certificate) or one or more items from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or otherwise, the filing shall include the following:

(1) A list of the items offered.

(2) The value or worth of each item described to prospective purchasers and the basis for the valuation.

(3) The price paid by the telephonic seller to its supplier for each of these items and the name, address, and telephone number of each item's supplier.

(4) If the purchaser is to receive fewer than all of the items described by the seller, the filing shall include the following:

(A) The manner in which the telephonic seller decides which item or items a particular prospective purchaser is to receive.

(B) The odds a single prospective purchaser has of receiving each described item.

(C) The name and address of each recipient who has, during the preceding 12 months (or if the seller has not been in business that long, during the period the telephonic seller has been in business) received the item having the greatest value and the item with the smallest odds of being received.

(5) All rules, regulations, terms, and conditions a prospective purchaser must meet in order to receive the item.

(m) If the telephonic seller is offering to sell any metal, stone, or mineral, the filing shall include the following:

(1) The name, address, and telephone number of each of the seller's suppliers and a description of each metal, stone, or mineral provided by the supplier.

(2) If possession of any metal, stone, or mineral is to be retained by the seller or will not be transferred to the purchaser until the purchaser has paid in full, the filing shall include the following:

(A) The address of each location where the metal, stone, or mineral will be kept.

(B) If not kept on premises owned by the seller or at an address or addresses set forth in compliance with subdivision (c), the name of the owner of the business at which the metal, stone, or mineral will be kept.

(C) A copy of any contract or other document which evidences the seller's right to store the metal, stone, or mineral at the address or addresses designated pursuant to subparagraph (A).

(3) If the seller is not selling the metal, stone, or mineral from its own inventory, but instead purchases the metal, stone, or mineral to fill orders taken from purchasers, the filing shall include copies of all contracts or other documents evidencing the seller's ability to call upon suppliers to fill the seller's orders.

(4) If the seller represents to purchasers that the seller has insurance or a surety bond of any type relating to a purchaser's purchase of any metal, stone, or mineral from the seller, the filing shall include a complete copy of all these insurance policies and bonds.

(5) If the seller makes any representation as to the earning or profit potential of purchases of any metal, stone, or mineral, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the seller or a related entity, substantiating data shall be based on the experiences of at least 50 percent of the persons who have purchased the particular metal, stone, or mineral from the seller or related entity during the preceding six months (or if the seller or related entity has not been in business that long, during the period the seller or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following:

(A) The length of time the seller or related entity has been selling the particular metal, stone, or mineral being offered.

(B) The number of purchasers thereof from the seller or related entity known to the seller or related entity to have made at least the same earnings or profit as those represented.

(C) The percentage that the number disclosed pursuant to subparagraph (B) represents of the total number of purchasers from the seller or related entity of the particular metal, stone, or mineral.

(n) If the telephonic seller is offering to sell an interest in oil, gas, or mineral fields, wells, or exploration sites, the filing shall include disclosure of the following:

(1) The seller's ownership interest, if any, in each field, well, or site being offered for sale.

(2) The total number of interests to be sold in each field, well, or site being offered for sale.

(3) If, in selling an interest in any particular field, well, or site, reference is made to an investigation of these fields, wells, or sites by the seller or anyone else, the filing shall include the following:

(A) The name, business address, telephone number, and professional credentials of the person or persons who made the investigation.

(B) A copy of the report and other documents relating to the investigation prepared by the person or persons.

(4) If the seller makes any representation as to the earning or profit potential of purchases of any interest in these fields, wells, or sites, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the seller or a related entity, the substantiating data shall be based on the experiences of at least 50 percent of the purchasers of the particular interests from the seller or the related entity during the preceding six months (or if the seller has not been in business that long, during the period the seller or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following:

(A) The length of time the seller or related entity has been selling the particular interests in the fields, wells, or sites being offered.

(B) The number of purchasers of the particular interests from the seller or related entity known to the seller to have made, at least the same earnings as those represented.

(C) The percentage the number disclosed pursuant to subparagraph (B) represents of the total number of purchasers of the particular interests from the seller or related entity.

(o) The name and address of the telephonic seller's agent in this state, other than the Attorney General, authorized to receive service of process in this state.

(p) If a person, based on paragraph (19) of subdivision (c) of Section 17511.1, claims an

exemption from having to file the information required by subdivisions (a) to (o), inclusive, the person shall file, on a form provided by the Attorney General, the following information:

(1) The name or names of the person claiming the exemption, including the name under which the person is doing or intends to do business.

(2) The person's business form, and place of organization, whether corporate or otherwise; or, if operating under a fictitious business name, the location where the fictitious name has been registered.

(3) The complete street address of the person's retail locations, and telephone numbers located therein and a statement as to how long the person has been selling at retail from each location.

(4) A copy of the person's currently valid business license.

(5) A statement reflecting the dollar amount of the person's total retail sales during the 12 months preceding the filing.

(6) A statement reflecting the dollar amount of the person's sales made telephonically during the 12 months preceding the filing.

The filing shall be verified by a declaration signed under penalty of perjury by each principal of the person claiming the exemption. The declaration shall specify the date and location of signing.

If a person filing pursuant to subdivision (p) makes any representation to a prospective purchaser as to the historical movements or changes in the price or value of any coin or bullion, the person shall maintain in its records sufficient data to substantiate each representation. This data shall be retained in the person's records for a period of at least three years after the last date on which a representation is made and shall be made available for inspection upon request by any governmental agency at each of its business locations.

(q) If the telephonic seller represents or implies, or directs salespersons to represent or imply, that the telephonic seller can, or may be able to, make a loan or arrange or assist in arranging a loan or to assist in providing information which may lead to the obtaining of a loan, the filing shall include the following:

(1) The names and addresses of all persons who, in the previous 24 months, lent money to those who responded to the seller's solicitations or lent money to the telephonic seller for the seller to lend to those who responded to the seller's representations that it could make a loan or arrange or assist in arranging a loan or could assist in providing information which could lead to the obtaining of a loan.

(2) The names and addresses of all persons who, in the previous 24 months, lent money to those who responded to the solicitations of the seller's predecessor or the seller's officers, owners,

or those persons having present management responsibilities or to companies with which they were associated, that they could make a loan or arrange or assist in arranging a loan or could assist in providing information which could lead to the obtaining of a loan or lent money to the seller's predecessor or the seller's officers, owners, or those persons having present management responsibilities or to companies with which they were associated for then, to lend to those who responded to these representations.

(3) The names and addresses of all persons who have informed the telephonic seller that they may be able to lend money within the next 12 months from the date of this registration, to persons solicited by the seller or to the telephonic seller for the seller to lend to those who respond to the seller's representations that it can make a loan or arrange or assist in arranging a loan or can assist in providing information which can lead to the obtaining of a loan.

(4) Copies of all contracts between the seller and lenders or prospective lenders who may lend money: (A) to the seller to lend to individuals who, in connection with the seller's business activities, respond to the seller's representations that it can make a loan or arrange or assist in arranging a loan or can assist in providing information which can lead to the obtaining of a loan; or (B) directly to persons to whom the seller may represent that it can arrange or assist in providing information which can lead to the obtaining of a loan.

#### § 17550.52. Failure or cessation of corporation

The Attorney General or his or her delegate may determine that the Travel Consumer Restitution Corporation has failed or ceased to operate upon a finding that any one of the following has occurred with respect to the corporation:

- (a) Was not created.
- (b) Has been dissolved.
- (c) Has ceased to operate.
- (d) Is insolvent; or ~~bankrupt~~ *been the subject of an order for relief in bankruptcy.*
- (e) Has failed to pay its operating costs.
- (f) Has failed to pay any claim or judgment in a timely manner.
- (g) Has violated its articles of incorporation or any law of this state.
- (h) Has invested its funds in violation of this article.
- (i) Has not levied assessments as required by this article.

(j) Has not diligently decided upon a claim made by a person aggrieved.

(k) Has violated any section of this article.

(l) Has neglected or refused to submit its books, papers, and affairs to the inspection of the office of the Attorney General.

§ 17919. Validity of filing after bankruptcy, death, sale

(a) A fictitious business name statement may be executed, filed, and published by the trustee in bankruptcy at any time after bankruptcy where a failure to comply with the provisions of this chapter would otherwise preclude the maintenance of an action to recover any sums due to the *debtor or bankruptcy estate* or the partnership of which the *debtor or bankruptcy estate* was a member.

(b) A fictitious business name statement may be executed, filed, and published by the conservator, executor, or administrator at any time after the appointment of a conservator for or death of any individual or partner where a failure to comply with the provisions of this chapter would otherwise preclude the maintenance of an action to recover any sums due the conservatee or deceased person or the partnership of which he was a member.

(c) A fictitious business name statement may be executed, filed, and published by an assignee or purchaser of the business at any time after the assignment or sale where a failure to comply with the provisions of this chapter would otherwise preclude the maintenance of an action to recover any sums due to the assignee or purchaser by reason of the assignment or sale.

(d) The fictitious business name statement referred to in this section shall be in substantially the same form as prescribed in Section 17913, except:

(1) The person or persons who were doing business under the fictitious business name shall be stated as such person or persons existed (i) immediately prior to the bankruptcy, conservatorship, or death or the assignment or sale of the business or (ii) at the time they ceased to do business under the fictitious business name, whichever is the earlier time.

(2) The statement shall include the following additional sentence: "This statement has been executed pursuant to Section 17919 of the Business and Professions Code."

(3) The person executing the statement shall (i) sign the statement on behalf of the person or persons formerly doing business under the fictitious business name, (ii) state his full name and the street address of his place of business or, if he has none, of his residence, and (iii) indicate whether he is a trustee in bankruptcy, conservator, executor, or administrator or assignee or purchaser of the business.

§ 20021. Termination without opportunity to cure

If during the period in which the franchise is in effect, there occurs any of the following events which is relevant to the franchise, immediate notice of termination without an opportunity to cure, shall be deemed reasonable:

(a) The franchisee or the business to which the franchise relates *has been the subject of an order for relief in bankruptcy, is declared bankrupt or* judicially determined to be insolvent, or all or a substantial part of the assets thereof are assigned to or for the benefit of any creditor, or the franchisee admits his inability to pay his debts as they come due;

(b) The franchisee abandons the franchise by failing to operate the business for five consecutive days during which the franchisee is required to operate the business under the terms of the franchise, or any shorter period after which it is not unreasonable under the facts and circumstances for the franchisor to conclude that the franchisee does not intend to continue to operate the franchise, unless such failure to operate is due to fire, flood, earthquake or other similar causes beyond the franchisee's control;

(c) The franchisor and franchisee agree in writing to terminate the franchise;

(d) The franchisee makes any material misrepresentations relating to the acquisition of the franchise business or the franchisee engages in conduct which reflects materially and unfavorably upon the operation and reputation of the franchise business or system;

(e) The franchisee fails, for a period of 10 days after notification of noncompliance, to comply with any federal, state or local law or regulation applicable to the operation of the franchise;

(f) The franchisee, after curing any failure in accordance with Section 20020 engages in the same noncompliance whether or not such noncompliance is corrected after notice;

(g) The franchisee repeatedly fails to comply with one or more requirements of the franchise, whether or not corrected after notice;

(h) The franchised business or business premises of the franchise are seized, taken over or foreclosed by a government official in the exercise of his duties, or seized, taken over, or foreclosed by a creditor, lienholder or lessor, provided that a final judgment against the franchisee remains unsatisfied for 30 days (unless a supersedeas or other appeal bond has been filed); or a levy of execution has been made upon the license granted by the franchise agreement or upon any property used in the franchised business, and it is not discharged within five days of such levy;

(i) The franchisee is convicted of a felony or any other criminal misconduct which is relevant to the operation of the franchise;

(j) The franchisee fails to pay any franchise fees or other amounts due to the franchisor or its affiliate within five days after receiving written notice that such fees are overdue; or

(k) The franchisor makes a reasonable determination that continued operation of the franchise by the franchisee will result in an imminent danger to public health or safety.

§ 22903. Application of section; Supplier's notice of intent to terminate; Notice and good cause required; Exception; Contract negotiations with potential replacement dealer

(a) This section shall only apply to a dealer contract between a dealer who is not a single-line dealer and a supplier who is not a single-line supplier.

(b) Except where there are grounds for termination of a dealer contract pursuant to paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of subdivision (c), a supplier shall give a dealer 180 days written notice of the supplier's intent to terminate a dealer contract. The notice shall include all reasons constituting good cause for the termination and shall provide the dealer with 60 days to cure any claimed deficiency. If the deficiency is cured within 60 days to the satisfaction of the supplier, which shall be determined in good faith, the notice of termination shall be void. Except as provided in subdivision (d), a supplier may not terminate a dealer contract based on paragraph (12) of subdivision (c) unless the supplier gives the dealer notice of that action at least one year before the effective date of that action. If the dealer achieves the supplier's requirements for reasonable standards or performance objectives before the expiration of the one-year notice period, the notice shall be void and the dealer contract shall continue in full force and effect.

(c) No supplier, directly or through an officer, agent, or employee, may terminate, cancel, fail to renew, or materially change the competitive circumstances of a dealer contract without good cause. In addition to the definition in subdivision (l) of Section 22901, good cause exists whenever the dealer has taken any of the following actions:

(1) Transferred a controlling ownership interest in the dealership without the consent of the supplier, who shall not withhold consent unreasonably.

(2) Made a material misrepresentation or falsification of any record.

(3) Filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the dealer that has not been ~~discharged~~ *dismissed* within 60 days after the filing or is insolvent or in receivership.

(4) Pledged guilty to or has been convicted of a felony involving an act of moral turpitude.

(5) Failed to operate in the normal course of business for seven consecutive business days, without the consent of the supplier, or has terminated the business.

(6) Relocated or established a new or additional dealer's place of business without the supplier's consent.

(7) Materially defaulted under any chattel mortgage or other security agreement between the dealer and the supplier, or there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier. However, good cause does not exist if a person revokes any guarantee in connection with or following the transfer of that person's entire ownership interest in the dealer unless the supplier requires that person to execute a new guarantee of the dealer's present or future obligations in connection with that transfer of ownership interest.

(8) Failed to satisfy any payment obligation as it became due and payable to the supplier, failed to promptly account to the supplier for any proceeds from the sale of equipment, or failed to hold those proceeds in trust for the benefit of the supplier.

(9) Engaged in conduct that is injurious or detrimental to any of the following:

(A) The dealer's customers. This includes, but is not limited to, the following conduct: excessive pricing, misleading advertising, failure to provide service and replacement parts, and failure to perform warranty obligations.

(B) The public welfare.

(C) The representation or reputation of the supplier's product.

(10) Consistently failed to meet building and housekeeping requirements, or failed to provide adequate sales, service, or parts personnel commensurate with the dealer contract.

(11) Consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on the supplier's behalf.

(12) Consistently failed to meet and maintain the supplier's requirements for reasonable standards and performance objectives, if the supplier has given the dealer reasonable standards and performance objectives that are based on the manufacturer's experience in other comparable market areas.

(d) Notwithstanding subdivision (c), if the sales, service, rental, and repair of a supplier's product represents the lesser of 10 percent or three hundred fifty thousand dollars (\$ 350,000) of the dealer's total gross annual revenue that includes, but is not limited to, the sales, service, rental, or repair, for each dealer location, the supplier may terminate a dealer contract based on paragraph (12) of subdivision (c) upon providing the dealer with notice of that action at least 180 days before the effective date of that action. If the dealer achieves the supplier's requirements for

reasonable standards or performance objectives within 60 days of receipt of the termination notice, the notice shall be void and the dealer contract shall continue in full force and effect.

(e) Notwithstanding a dealer contract that provides for exclusivity during the term of the contract, a supplier may begin contract negotiations with a potential replacement dealer 60 days prior to the expiration of the notice period that has been provided pursuant to subdivisions (b) or (d) if the dealer failed to achieve the supplier's requirements for reasonable standards or performance objectives within 60 days of receipt of the termination notice. Nothing in this subdivision shall authorize a replacement dealer to conduct operations with a supplier during the term of a dealer contract.

#### § 24071. Transfers by and between certain persons

The license of one spouse may be transferred to the other spouse when the application for transfer is made prior to the entry of a final decree of divorce, and the license of a decedent, minor ward, incompetent person, conservatee, ~~bankrupt person~~ *debtor in a bankruptcy case*, person for whose estate a receiver is appointed, or assignor for the benefit of creditors may be transferred by or to the surviving partners of a deceased licensee, the executor, administrator, conservator or guardian of an estate of a licensee, the surviving spouse of a deceased licensee in the event that the deceased licensee leaves no estate to be administered, the trustee of a bankruptcy estate of a licensee, a receiver of the estate of a licensee, or an assignee for the benefit of creditors of a licensee with the consent of the assignor, or a license may be transferred by or to a receiver appointed for a judgment debtor as provided by Section 708.630 of the Code of Civil Procedure, or a license may be transferred to a revocable living trust when the licensee is also the trustee, or a license may be transferred between partners where no new partner is being licensed, or a license may be transferred between corporations whose outstanding shares of stock are owned by the same natural persons, or a licensee may transfer upon compliance with Section 24073 any license to a corporation whose entire stock is owned by the licensee, or his or her spouse, or a licensee may transfer upon compliance with Section 24073 any license to a limited liability company whose entire membership consists of the licensee, or his or her spouse, or a license may be transferred from a corporation to a person who owns, or whose spouse owns, the entire stock of the corporation, and the fee for transfer of each license is fifty dollars (\$ 50). The regular transfer fee provided in Section 24072 shall be due and payable upon the subsequent transfer of 25 percent of the stock in a corporation to which a license has been transferred by a licensee or his or her spouse pursuant to this section, except if the transfer of stock is from a parent to his or her child or grandchild, in which case the fee shall be one-half of the regular transfer fee. In no case shall a fee be charged for the transfer of an importer's license. All money collected from the fees provided for in this section shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

Nothing in this section shall be deemed to authorize the formation of a limited liability company composed of only one member in violation of subdivision (b) of Section 17050 of the Corporations Code.

## CIVIL CODE

### § 1785.13. Contents of reports

(a) No consumer credit reporting agency shall make any consumer credit report containing any of the following items of information:

(1) Bankruptcies that, from the date of ~~adjudication~~ *the order for relief*, antedate the report by more than 10 years.

(2) Suits and judgments that, from the date of entry or renewal, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Unlawful detainer actions, unless the lessor was the prevailing party. For purposes of this paragraph, the lessor shall be deemed to be the prevailing party only if (A) final judgment was awarded to the lessor (i) upon entry of the tenant's default, (ii) upon the granting of the lessor's motion for summary judgment, or (iii) following trial, or (B) the action was resolved by a written settlement agreement between the parties that states that the unlawful detainer action may be reported. In any other instance in which the action is resolved by settlement agreement, the lessor shall not be deemed to be the prevailing party for purposes of this paragraph.

(4) Paid tax liens that, from the date of payment, antedate the report by more than seven years.

(5) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years.

(6) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that in the case of a conviction a full pardon has been granted, or in the case of an arrest, indictment, information, or misdemeanor complaint a conviction did not result.

(7) Any other adverse information that antedates the report by more than seven years.

(b) The seven-year period specified in paragraphs (5) and (7) of subdivision (a) shall commence to run, with respect to any account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency that immediately preceded the collection activity, charge to profit and loss, or similar action. Where more than one of these actions is taken with respect to a

particular account, the seven-year period specified in paragraphs (5) and (7) shall commence concurrently for all these actions on the date of the first of these actions.

(c) Any consumer credit reporting agency that furnishes a consumer credit report containing information regarding any case involving a consumer arising under the bankruptcy provisions of Title 11 of the United States Code shall include an identification of the chapter of Title 11 of the United States Code under which the case arose if that can be ascertained from what was provided to the consumer credit reporting agency by the source of the information.

(d) A consumer credit report shall not include any adverse information concerning a consumer antedating the report by more than 10 years or that otherwise is prohibited from being included in a consumer credit report.

(e) If a consumer credit reporting agency is notified by a furnisher of credit information that an open-end credit account of the consumer has been closed by the consumer, any consumer credit report thereafter issued by the consumer credit reporting agency with respect to that consumer, and that includes information respecting that account, shall indicate the fact that the consumer has closed the account. For purposes of this subdivision, "open-end credit account" does not include any demand deposit account, such as a checking account, money market account, or share draft account.

(f) Consumer credit reporting agencies shall not include medical information in their files on consumers or furnish medical information for employment, insurance, or credit purposes in a consumer credit report without the consent of the consumer.

(g) A consumer credit reporting agency shall include in any consumer credit report information, if any, on the failure of the consumer to pay overdue child or spousal support, where the information either was provided to the consumer credit reporting agency pursuant to Section 4752 or has been provided to the consumer credit reporting agency and verified by another federal, state, or local governmental agency.

#### § 1786.18. Contents of report

(a) Except as authorized under subdivision (b), an investigative consumer reporting agency may not make or furnish any investigative consumer report containing any of the following items of information:

(1) Bankruptcies that, from the date of ~~adjudication~~ *the order for relief*, antedate the report by more than 10 years.

(2) Suits that, from the date of filing, and satisfied judgments that, from the date of entry, antedate the report by more than seven years.

(3) Unsatisfied judgments that, from the date of entry, antedate the report by more than seven years.

(4) Unlawful detainer actions where the defendant was the prevailing party or where the action is resolved by settlement agreement.

(5) Paid tax liens that, from the date of payment, antedate the report by more than seven years.

(6) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years.

(7) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that, in the case of a conviction, a full pardon has been granted or, in the case of an arrest, indictment, information, or misdemeanor complaint, a conviction did not result; except that records of arrest, indictment, information, or misdemeanor complaints may be reported pending pronouncement of judgment on the particular subject matter of those records.

(8) Any other adverse information that antedates the report by more than seven years.

(b) The provisions of subdivision (a) are not applicable in either of the following circumstances:

(1) If the investigative consumer report is to be used in the underwriting of life insurance involving, or that may reasonably be expected to involve, an amount of two hundred fifty thousand dollars (\$ 250,000) or more.

(2) If the investigative consumer report is to be used by an employer who is explicitly required by a governmental regulatory agency to check for records that are prohibited by subdivision (a) when the employer is reviewing a consumer's qualification for employment.

(c) Except as otherwise provided in Section 1786.28, an investigative consumer reporting agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

(d) An investigative consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of the item of information, unless either (1) the investigative consumer reporting

agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information, or (2) the person interviewed is the best possible source of the information.

§ 1788.14. Collection of fee or discharged debt; Communication with debtor represented by attorney

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

(a) Obtaining an affirmation from a debtor ~~who has been adjudicated a bankrupt~~, of a consumer debt which has been discharged in ~~such~~ bankruptcy, without clearly and conspicuously disclosing to the debtor, in writing, at the time such affirmation is sought, the fact that the debtor is not legally obligated to make such affirmation;

(b) Collecting or attempting to collect from the debtor the whole or any part of the debt collector's fee or charge for services rendered, or other expense incurred by the debt collector in the collection of the consumer debt, except as permitted by law; or

(c) Initiating communications, other than statements of account, with the debtor with regard to the consumer debt, when the debt collector has been previously notified in writing by the debtor's attorney that the debtor is represented by such attorney with respect to the consumer debt and such notice includes the attorney's name and address and a request by such attorney that all communications regarding the consumer debt be addressed to such attorney, unless the attorney fails to answer correspondence, return telephone calls, or discuss the obligation in question. This subdivision shall not apply where prior approval has been obtained from the debtor's attorney, or where the communication is a response in the ordinary course of business to a debtor's inquiry.

§ 1812.206. Information sheets

At least 48 hours prior to the execution of a seller assisted marketing plan contract or agreement or at least 48 hours prior to the receipt of any consideration, whichever occurs first, the seller or his or her representative shall provide to the prospective purchaser in writing a document entitled "SELLER ASSISTED MARKETING PLAN INFORMATION SHEET." The seller may combine the information required under this section with the information required under Section 1812.205 and, if done, shall utilize the single title "DISCLOSURES REQUIRED BY CALIFORNIA LAW," and the title page required by Section 1812.205. If a combined document is used, it shall be given at the time required by Section 1812.205, provided that this time meets the 48-hour test of this section. The information sheet required by this section shall contain the following:

(a) The name of and the office held by the seller's owners, officers, directors, trustees and

general or limited partners, as the case may be, and the names of those individuals who have management responsibilities in connection with the seller's business activities.

(b) A statement whether the seller, any person identified in subdivision (a), and any other company managed by a person identified in subdivision (a):

(1) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if the felony or misdemeanor involved an alleged violation of this title, fraud, embezzlement, fraudulent conversion or misappropriation of property.

(2) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged a violation of this title, fraud, embezzlement, fraudulent conversion or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful or deceptive business practices.

(3) Is subject to any currently effective agreement, injunction, or restrictive order, including, but not limited to, a "cease and desist" order, an "assurance of discontinuance," or other comparable agreement or order, relating to business activity as the result of an action or investigation brought by a public agency or department, including, but not limited to, an action affecting any vocational license.

The statements required by paragraphs (1), (2) and (3) of this subdivision shall set forth the terms of the agreement, or the court, the docket number of the matter, the date of the conviction or of the judgment and, when involved, the name of the governmental agency that initiated the investigation or brought the action resulting in the conviction or judgment.

(4) Has at any time during the previous seven fiscal years *has been the subject of an order for relief filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other person, as defined in subdivision (b) of Section 1812.201, that has so filed or was so adjudicated or reorganized, during or within one year after the period that the individual held that position. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, the court which exercised jurisdiction, and the docket number of the matter shall be set forth.*

(c) The length of time the seller:

(1) Has sold seller assisted marketing plans.

(2) Has sold the specific seller assisted marketing plan being offered to the purchaser.

(d) If the seller is required to secure a bond or establish a trust account pursuant to the requirements of Section 1812.204, the information sheet shall state either:

(1) "Seller has secured a bond issued by

\_\_\_\_\_,  
(name and address of surety company)

a surety company admitted to do business in this state. Before signing a contract to purchase this seller assisted marketing plan, you should check with the surety company to determine the bond's current status," or

(2) "Seller has deposited with the office of the Attorney General information regarding its trust account. Before signing a contract to purchase this seller assisted marketing plan, you should check with the Attorney General to determine the current status of the trust account."

(e) A copy of a recent, not more than 12 months old, financial statement of the seller, together with a statement of any material changes in the financial condition of the seller from the date thereof. That financial statement shall either be audited or be under penalty of perjury signed by one of the seller's officers, directors, trustees or general or limited partners. The declaration under penalty of perjury shall indicate that to the best of the signatory's knowledge and belief the information in the financial statement is true and accurate; the date of signature and the location where signed shall also be indicated. Provided, however, that where a seller is a subsidiary of another corporation which is permitted by generally accepted accounting standards to prepare financial statements on a consolidated basis, the above information may be submitted in the same manner for the parent if the corresponding financial statement of the seller is also provided and the parent absolutely and irrevocably has agreed to guarantee all obligations of the seller.

(f) An unexecuted copy of the entire seller assisted marketing plan contract.

(g) For purposes of this section, "seller's owners" means any individual who holds an equity interest of at least 10 percent in the seller.

## **CIVIL PROCEDURE**

### § 703.130. Exemptions in bankruptcy

Pursuant to the authority of paragraph (4 2) of subsection (b) of Section 522 of Title 11 of the United States Code, the exemptions set forth in subsection (d) of Section 522 of Title 11 of the United States Code (Bankruptcy) are not authorized in this state.

## CORPORATIONS CODE

§ 1400. Authorization for reorganization of corporations under United States statutes; Permissible manner of authorization

(a) Any domestic corporation with respect to which a proceeding has been initiated under any applicable statute of the United States, as now existing or hereafter enacted, relating to reorganizations ~~or arrangements~~ of corporations, has full power and authority to put into effect and carry out any plan of reorganization ~~or arrangement~~ and the orders of the court or judge entered in such proceeding and may take any proceeding and do any act provided in the plan or directed by such orders, without further action by its board or shareholders. Such power and authority may be exercised and such proceedings and acts may be taken, as may be directed by such orders, by the trustee or trustees of such corporation appointed in the reorganization ~~or arrangement~~ proceeding (or a majority thereof), or if none is appointed and acting, by officers of the corporation designated or a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the board and shareholders of the corporation.

(b) Such corporation may, in the manner provided in subdivision (a), but without limiting the generality or effect of subdivision (a), alter, amend or repeal its bylaws; constitute or reconstitute its board and name, constitute or appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its articles; make any change in its capital stock; make any other amendment, change, alteration or provision authorized by this division; be dissolved, transfer all or part of its assets or merge as permitted by this division, in which case, however, no shareholder shall have any statutory dissenter's rights; change the location of its principal executive office or remove or appoint an agent to receive service of process; authorize and fix the terms, manner and conditions of the issuance of bonds, debentures or other obligations, whether or not convertible into shares of any class or bearing warrants or rights to purchase or subscribe to shares of any class; or lease its property and franchises to any corporation, if permitted by law.

§ 1401. Certificate of amendment, change, etc; Filing; Signature and verification

(a) A certificate of any amendment, change or alteration or of dissolution or any agreement of merger made by such corporation pursuant to Section 1400 and executed as provided in subdivision (b), shall be filed and shall thereupon become effective in accordance with its terms and the provisions of this chapter.

(b) Such certificate, agreement of merger or other instrument shall be signed and verified, as may be directed by such orders of the court or judge, by the trustee or trustees appointed in the reorganization ~~or arrangement~~ proceeding (or a majority thereof) or, if none is appointed and acting, by officers of the corporation designated or by a master or other representative appointed

by the court or judge, and shall state that provision for the making of such certificate, agreement or instrument is contained in an order, identifying the same, of a court or judge having jurisdiction of a proceeding under a statute of the United States for the reorganization ~~or arrangement~~ of such corporation.

§ 1402. Cessation of application of chapter's provisions

The provisions of this chapter shall cease to apply to a corporation upon the entry of a final decree in the reorganization ~~or arrangement~~ proceeding closing the case and discharging the trustee or trustees, if any, whether or not jurisdiction may be retained thereafter by the court for limited purposes which do not relate to the consummation of the plan.

§ 1403. Filing fees

For filing any certificate, agreement or other paper pursuant to this chapter there shall be paid to the Secretary of State the same fees as are payable by corporations not in reorganization ~~or arrangement~~ proceedings upon the filing of like certificates, agreements or other papers.

§ 6110. Law governing reorganizations ~~and arrangements~~

Any proceeding, initiated with respect to a corporation, under any applicable statute of the United States, as now existing or hereafter enacted, relating to reorganizations ~~or arrangements~~ of corporations, shall be governed by the provisions of Chapter 14 (commencing with Section 1400) of Division 1 of Title 1, and for this purpose the reference in Chapter 14 to "shareholders" shall be deemed to be a reference to members and the reference to "this division" shall be deemed to be a reference to this part.

§ 6610. Corporations authorized to dissolve

(a) Any corporation may elect voluntarily to wind up and dissolve (1) by approval of a majority of all members (Section 5033) or (2) by approval of the board and approval of the members (Section 5034).

(b) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(1) A corporation which has been *the subject of an order for relief in* ~~adjudicated~~ a bankruptcy.

(2) A corporation which has disposed of all of its assets and has not conducted any activity for a

period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has no members.

(4) A corporation which is required to dissolve under provisions of its articles adopted pursuant to subdivision (a), paragraph (2), clause (i), of Section 5132.

#### § 8110. Law governing reorganizations ~~and arrangements~~

Any proceeding, initiated with respect to a corporation, under any applicable statute of the United States, as now existing or hereafter enacted, relating to reorganizations ~~or arrangements~~ of corporations, shall be governed by the provisions of Chapter 14 (commencing with Section 1400) of Division 1 of Title 1, and for this purpose the reference in Chapter 14 to "shareholders" shall be deemed to be a reference to members and the reference to "this division" shall be deemed to be a reference to this part.

#### § 8610. Status of corporations authorized to wind up and dissolve

(a) Any corporation may elect voluntarily to wind up and dissolve (1) by approval of a majority of all members (Section 5033), or (2) by approval of the board and approval of the members (Section 5034).

(b) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(1) A corporation which has been *the subject of an order for relief adjudicated as* bankruptcy.

(2) A corporation which has disposed of all of its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has no members.

(4) A corporation which is required to dissolve under provisions of its articles adopted pursuant to subdivision (a), paragraph (4), clause (i) of Section 7132.

#### § 9650. Provisions applicable

Any proceeding, initiated with respect to a corporation, under any applicable statute of the United States, as now existing or hereafter enacted, relating to reorganizations ~~or arrangements~~ of

corporations, shall be governed by the provisions of Chapter 14 (commencing with Section 1400) of Division 1 of Title 1, and for this purpose the reference in Chapter 14 to "shareholders" shall be deemed to be a reference to members and the reference to "this division" shall be deemed to be a reference to this part.

§ 9680. Provisions applicable; Powers and duties of directors after commencement of dissolution proceeding; Vacancies on board

(a) Chapters 16 (commencing with Section 6610) and 17 (commencing with Section 6710) of Part 2 apply to religious corporations except for Sections 6610, 6614, 6710, 6711 and 6716.

(b)

(1) Any corporation may elect voluntarily to wind up and dissolve (A) by approval of a majority of all the members (Section 5033) or (B) by approval of the board and approval of the members (Section 5034).

(2) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(A) A corporation which has been *the subject of an order for relief in adjudicated a bankruptcy.*

(B) A corporation which has disposed of all its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(C) A corporation which has no members.

(D) A corporation which is required to dissolve under provisions of its articles adopted pursuant to subparagraph (i) of paragraph (2) of subdivision (a) of Section 9132.

(c) If a corporation is in the process of voluntary winding up, the superior court of the proper county, upon the petition of (1) the corporation, or (2) the authorized number (Section 5036), or (3) the Attorney General, or (4) three or more creditors, and upon such notice to the corporation and members and creditors as the court may order, may take jurisdiction over the voluntary winding up proceeding if that appears necessary for the protection of the assets of the corporation. The court, if it assumes jurisdiction, may make such orders as to any and all matters concerning the winding up of the affairs of the corporation and the protection of its creditors and its assets as justice and equity may require. Chapter 15 (commencing with Section 6510) (except Sections 6510 and 6511) shall apply to those court proceedings.

(d) The powers and duties of the directors (or other persons appointed by the court pursuant to

Section 6515) and officers after commencement of a dissolution proceeding include, but are not limited to, the following acts in the name and on behalf of the corporation:

- (1) To elect officers and to employ agents and attorneys to liquidate or wind up its affairs.
  - (2) To continue the conduct of the affairs of the corporation insofar as necessary for the disposal or winding up thereof.
  - (3) To carry out contracts and collect, pay, compromise, and settle debts and claims for or against the corporation.
  - (4) To defend suits brought against the corporation.
  - (5) To sue, in the name of the corporation, for all sums due or owing to the corporation or to recover any of its property.
  - (6) To collect any amounts remaining unpaid on memberships or to recover unlawful distributions.
  - (7) Subject to the provisions of Section 9142, to sell at public or private sale, exchange, convey, or otherwise dispose of all or any part of the assets of the corporation in an amount deemed reasonable by the board without compliance with Section 9631, and to execute bills of sale and deeds of conveyance in the name of the corporation.
  - (8) In general, to make contracts and to do any and all things in the name of the corporation which may be proper or convenient for the purposes of winding up, settling and liquidating the affairs of the corporation.
- (e) After complying with Section 6713:
- (1) Except as provided in Section 6715, all of a corporation's assets shall be disposed of on dissolution in conformity with its articles or bylaws subject to complying with the provisions of any trust under which such assets are held.
  - (2) Except as provided in subdivision (3), the disposition required in subdivision (1) shall be made by decree of the superior court of the proper county. The decree shall be made upon petition therefor, upon 30 days' notice to the Attorney General, by any person concerned in the dissolution.
  - (3) The disposition required in subdivision (1) may be made without the decree of the superior court, subject to the rights of persons concerned in the dissolution, if the Attorney General makes a written waiver of objections to the disposition.

(f) A vacancy on the board may be filled during a winding up proceeding in the manner provided in Section 9224.

(g) Chapter 15 (commencing with Section 6510) does not apply to religious corporations except to the extent its provisions apply under subdivision (d) of Section 6617, subdivision (c) of Section 6719, or subdivision (c) or (d) of this section.

§ 12560. Applicable statutory provisions

Any proceeding, initiated with respect to a corporation, under any applicable statute of the United States, as now existing or hereafter enacted, relating to reorganizations ~~or arrangements~~ of corporations, shall be governed by the provisions of Chapter 14 (commencing with Section 1400) of Division 1 of Title 1, and for this purpose the reference in Chapter 14 to "shareholders" shall be deemed to be a reference to members and the reference to "this division" shall be deemed to be a reference to this part.

§ 12630. Required approvals

(a) Any corporation may elect voluntarily to wind up and dissolve (1) by approval of a majority of all members (Section 12223) or (2) by approval of the board and approval of the members (Section 12224).

(b) Any corporation which comes within one of the following descriptions may elect by approval of the board to wind up and dissolve:

(1) A corporation which has been *the subject of an order for relief in adjudicated as* ~~bankruptcy~~.

(2) A corporation which has disposed of all of its assets and has not conducted any activity for a period of five years immediately preceding the adoption of the resolution electing to dissolve the corporation.

(3) A corporation which has no members.

§ 15642. Cessation of status as general partner

A person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(a) The general partner withdraws from the limited partnership as provided in Section 15662.

(b) The general partner is removed as a general partner.

(c) Unless otherwise provided in the partnership agreement, an order for relief against the general partner is entered under Chapter 7 of the federal bankruptcy law, or the general partner: (1) makes a general assignment for the benefit of creditors, (2) files a voluntary petition under the federal bankruptcy law, (3) files a petition or answer seeking for that partner any reorganization, ~~arrangement~~, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, (4) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against that partner in any proceeding of this nature, or (5) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that partner's properties.

(d) Unless otherwise provided in the partnership agreement, 60 days after the commencement of any proceeding against the general partner seeking reorganization, ~~arrangement~~, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within 60 days after the appointment without that partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of that partner's properties, the appointment is not vacated or stayed, or within 60 days after the expiration of any such stay, the appointment is not vacated.

(e) In the case of a general partner who is an individual, either of the following:

(1) The death of that partner.

(2) The entry by a court of competent jurisdiction of an order adjudicating the partner incompetent to manage the general partner's estate.

(f) Unless otherwise provided in the partnership agreement, in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee, in which case the new trustee automatically becomes the new general partner).

(g) Unless otherwise provided in the partnership agreement, in the case of a general partner that is a separate partnership, the dissolution of the separate partnership.

(h) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation.

(i) In the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited partnership.

(j) In the case of a general partner that is a limited liability company, the filing of a certificate of dissolution or its equivalent for the limited liability company.

Notwithstanding the provisions of this section, a person who ceases to be a general partner of a limited partnership, shall be deemed to be acting as a general partner with respect to a third party doing business with the limited partnership, until an amended certificate of limited partnership is filed in accordance with Section 15622.

§ 23005. Applicability of provisions governing bankruptcy reorganizations ~~and arrangements~~ for corporations to real estate investment trusts; Definitions

The provisions of Sections 1400 and 1402 governing bankruptcy reorganizations ~~and arrangements~~ for corporations also apply to real estate investment trust. For that purpose where the term "corporation" is used in such sections it shall also include the term "real estate investment trust", the terms "director" or "board of directors" shall include "trustee" or "board of trustees", the term "articles" shall include "declaration of trust" and the term "capital stock" shall include "shares of beneficial interest."

§ 25103. Issuer transactions, recapitalizations, and reorganizations exempt from certain qualification requirements

The following transactions are exempt from the provisions of Section 25110 and Section 25120:

(a) Any negotiations or agreements prior to general solicitation of approval by the holders of equity securities, and subject to that approval, of (1) a change in the rights, preferences, privileges, or restrictions of or on outstanding securities, (2) a merger, consolidation, or sale of assets in consideration of the issuance of securities, or (3) an entity conversion transaction.

(b) Any change in the rights, preferences, privileges, or restrictions of or on outstanding securities or any entity conversion transaction, unless the holders of at least 25 percent of the outstanding shares or units of any class of securities that will be directly or indirectly affected substantially and adversely by that change or transaction have addresses in this state according to the records of the issuer.

(c) Any exchange incident to a merger, consolidation, or sale of assets in consideration of the issuance of securities of another issuer, unless at least 25 percent of the outstanding securities of any class, any holders of which are to receive securities in the exchange, are held by persons who have addresses in this state according to the records of the issuer of which they are holders. This exemption is not available for a rollup transaction as defined by Section 25014.6. The exemption is also not available for a transaction excluded from the definition of rollup transaction by virtue of paragraph (5) or (6) of subdivision (b) of Section 25014.6 if the transaction is one of a series of transactions that directly or indirectly through acquisition or otherwise involves the combination or reorganization of one or more rollup participants.

(d) For the purposes of subdivision (b) and subdivision (c) of this section, (1) any securities held to the knowledge of the issuer in the names of broker-dealers or nominees of broker-dealers and (2) any securities controlled by any one person who controls directly or indirectly 50 percent or more of the outstanding securities of that class shall not be considered outstanding. The determination of whether 25 percent of the outstanding securities are held by persons having addresses in this state, for the purposes of subdivision (b) and subdivision (c) of this section, shall be made as of the record date for the determination of the security holders entitled to vote on or consent to the action, if approval of those holders is required, or, if not, as of the date of directors' approval of that action.

(e) Any change (other than a stock split or reverse stock split) in the rights, preferences, privileges, or restrictions of or on outstanding equity securities, except the following if they materially and adversely affect any class of equity securities: (1) to add, change, or delete assessment provisions; (2) to change the rights to dividends thereon; (3) to change the redemption provisions; (4) to make them redeemable; (5) to change the amount payable on liquidation; (6) to change, add, or delete conversion rights; (7) to change, add, or delete voting rights; (8) to change, add, or delete preemptive rights; (9) to change, add, or delete sinking fund provisions; (10) to rearrange the relative priorities of outstanding equity securities; (11) to impose, change, or delete restrictions upon the transfer of equity securities in the organizational documents for the entity; (12) to change the right of holders of equity securities with respect to the calling of special meetings of holders of equity securities; and (13) to change, add, or delete any rights, preferences, privileges, or restrictions of, or on, the outstanding shares or memberships of a mutual water company or other corporation or entity organized primarily to provide services or facilities to its shareholders or members. Changes in the rights, preferences, privileges, or restrictions of or on outstanding equity securities do not materially and adversely affect any class of holders of equity securities within the meaning of this subdivision if they arise from (i) the addition to articles of incorporation of the provisions described or referred to in subdivision (a) of Section 158 upon the conversion of an existing corporation to a close corporation pursuant to subdivision (b) of Section 158, (ii) the deletion from the articles of incorporation of the provisions described or referred to in subdivision (a) of Section 158 upon the voluntary termination of close corporation status pursuant to subdivisions (c) and (e) of Section 158, (iii) the involuntary cessation of close corporation status pursuant to subdivision (e) of Section 158, or (iv) the termination of a shareholders' agreement pursuant to subdivision (b) of Section 300.

(f) Any stock split or reverse stock split, except the following: (1) any stock split or reverse stock split if the corporation has more than one class of shares outstanding and the split would have a material effect on the proportionate interests of the respective classes as to voting, dividends, or distributions; (2) any stock split of a stock that is traded in the market and its market price as of the date of directors' approval of the stock split adjusted to give effect to the split was less than two dollars (\$ 2) per share; and (3) any reverse stock split if the corporation has the option of paying cash for any fractional shares created by the reverse split and as a result of that action the proportionate interests of the shareholders would be substantially altered. Any

shares issued upon a stock split or reverse stock split exempted by this subdivision shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.

(g) Any change in the rights of outstanding debt securities, except the following if they substantially and adversely affect any class of securities: (1) to change the rights to interest thereon; (2) to change their redemption provisions; (3) to make them redeemable; (4) to extend the maturity thereof or to change the amount payable thereon at maturity; (5) to change their voting rights; (6) to change their conversion rights; (7) to change sinking fund provisions; and (8) to make them subordinate to other indebtedness.

(h) Any exchange incident to a merger, consolidation, or sale of assets, other than a rollup transaction (as defined in Section 25014.6), in consideration of the issuance of equity securities of another entity or any entity conversion transaction that meets the following conditions:

(1) The exchange incident to a merger, consolidation, or sale of assets or the entity conversion transaction, had the exchange transaction involved the issuance of a security in a transaction subject to the provisions of Section 25110, would have been exempt from qualification by subdivision (f) of Section 25102, without giving effect to paragraph (3) thereof, and either of the following is applicable:

(A)(i) Not less than 75 percent of the outstanding equity securities of each constituent or converting entity entitled to vote on the proposed transaction voted in favor of the transaction, (ii) not more than 10 percent of the outstanding equity securities of each constituent or converting entity entitled to vote on the proposed transaction voted against the transaction, and (iii) each constituent or converting entity whose security holders are entitled to vote on the proposed transaction is subject to a state statute that has provisions for dissenters' rights for holders of equity securities entitled to vote on the proposed transaction that do not vote in favor of or voted against the transaction.

(B)(i) The transaction is solely for the purposes of changing the issuer's state of incorporation or organization, or form of organization, (ii) all the securities of the same class or series, unless all the security holders of the class or series consent, are treated equally, and (iii) the holders of nonredeemable voting equity securities receive nonredeemable voting equity securities.

(2) The commissioner may, by rule, require the acquiring or surviving entity to file a notice of transaction under this section. However, the failure to file the notice or the failure to file the notice within the time specified by the rule of the commissioner shall not affect the availability of this exemption. An acquiring or surviving entity that fails to file the notice as provided by rule of the commissioner shall, within 15 business days after demand by the commissioner, file the notice and pay to the commissioner a fee equal to the fee payable had the transaction been qualified under Section 25110 or 25120.

(i) Any exchange of securities in connection with any merger or consolidation or sale of

corporate assets in consideration wholly or in part of the issuance of securities or any entity conversion transaction under, or pursuant to, a plan of reorganization ~~or arrangement~~ that pursuant to the provisions of the United States Bankruptcy Code (Title 11 of the United States Code) has been confirmed or is subject to confirmation by the decree or order of a court of competent jurisdiction.

§ 25248. Order directing discontinuance of specified operations by person who is insolvent or is conducting unsafe or unauthorized business; Hearing

(a) If the commissioner finds, as a result of any examination or investigation or from any report made to the commissioner, that any person subject to this part, other than an investment adviser subject to Section 25230.1, is in an insolvent condition, or is conducting a securities, broker-dealer, or investment advisory business in such an unsafe, injurious, or unauthorized manner as to render further operations hazardous to the public or to customers, the commissioner may, by an order addressed to and served by registered or certified mail or by personal service on that person and on any other person having in his or her possession or control any client funds, trust funds, or other property deposited with that person, direct discontinuance of the disbursement of client or trust funds by the parties or any of them, the receipt of client or trust funds, or other business operations. No person having in his or her possession any of these funds shall be liable for failure to comply with the order unless he or she has received written notice of the order. Subject to subdivision (b), the order shall remain in effect until set aside by the commissioner, in whole or in part, the person ~~has been~~ *is the subject of an order for relief in adjudged a* bankruptcy, or pursuant to Section 25253, the commissioner has assumed possession of the broker-dealer or investment adviser.

(b) Within 15 days from the date of an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code). Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after that receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of the notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing. Neither the request for a hearing nor the hearing itself shall stay the order issued by the commissioner under subdivision (a).

§ 28710. Suspension or revocation of license

The commissioner may issue an order suspending or revoking the license of a licensee, if, after notice and a hearing, the commissioner finds any of the following:

(a) That the licensee or any controlling person or affiliate of the licensee has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law.

- (b) That the licensee is conducting its business in an unsafe and unsound manner.
- (c) That the licensee is in a condition that it is unsafe or unsound for it to transact business.
- (d) That the licensee has ceased to transact business as a capital access company.
- (e) That the licensee is insolvent.
- (f) That the licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.
- (g) That the licensee has *the subject of an order for relief in* ~~applied for an adjudication of~~ bankruptcy, ~~reorganization, arrangement,~~ or *sought other similar* relief under any *other* bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any of that relief under any of those laws against any licensee and the licensee has by any affirmative act approved of or consented to the action or the relief has been granted.
- (h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying the application.

## **FINANCIAL CODE**

### § 867. Availability of funds deposited in account

- (a) Funds deposited in an account at a depository institution shall be available on the second business day after the business day on which those funds are deposited in the case of a cashier's check, certified check, teller's check, or depository check subject to the following:
  - (1) The check is endorsed only by the person to whom it was issued.
  - (2) The check is deposited in a receiving depository institution that is staffed by individuals employed by that institution.
  - (3) The check is deposited with a special deposit slip that indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be.
  - (4) The check is deposited into an account in the name of a customer that has maintained any account with the receiving depository institution for a period of 60 days or more.
  - (5) The face amount of the check is for five thousand dollars (\$5,000) or less.

In the case of funds deposited on any business day in an account at a depository institution by

depository checks, the aggregate amount of which exceeds five thousand dollars (\$5,000), this subdivision shall apply only with respect to the first five thousand dollars (\$5,000) of the aggregate amount.

(b) Subdivision (a) does not apply to a depository check if the receiving depository institution reasonably believes that the check is uncollectible from the originating depository institution. For purposes of this subdivision, "reasonable cause to believe" requires the existence of facts that would cause a well-grounded belief in the mind of a reasonable person. These reasons shall include, but not be limited to, a belief that (1) the drawer or drawee of the depository check has been, or will imminently be, ~~adjudicated a bankrupt~~ *the subject of an order for relief in bankruptcy* or placed in receivership or (2) the depository check may be involved in a fraud or in a scheme commonly known as "kiting." In these situations, the depository institution electing to proceed under this subdivision shall so notify the drawer and drawee no later than the close of the next business day following deposit of the depository check.

(c) For purposes of this section, the following terms have the following meanings:

(1) "Account" means any demand deposit account and any other similar transaction account at a depository institution.

(2) "Business day" means any day other than a Saturday, Sunday, or legal holiday.

(3) "Cashier's check" means any check that is subject to the following:

(A) The check is drawn on a depository institution.

(B) The check is signed by an officer or employee of the depository institution.

(C) The check is a direct obligation of the depository institution.

(4) "Certified check" means any check with respect to which a depository institution certifies the following:

(A) That the signature on the check is genuine.

(B) The depository institution has set aside funds that are equal to the amount of the check and will be used only to pay that check.

(5) "Depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument, as determined by the Board of Governors of the Federal Reserve System or the commissioner.

(6) "Depository institution" has the meaning given in clauses (i) to (vi), inclusive, of Section 19(b)(1)(A) of the Federal Reserve Act.

(7) "Teller's check" means any check issued by a depository institution and drawn on another depository institution.

(d) Except for the specific circumstances and checks described in this section, this section is not intended to restrict or preempt the regulatory authority of the commissioner.

(e) In the event of a suspension or modification of any similar provisions in the federal Expedited Funds Availability Act, the effect of this section shall be similarly suspended or modified.

#### § 1203. Hypothecation of assets to secure deposits

A commercial bank may hypothecate its assets in any manner provided by law to secure the deposits of moneys of the United States, of postal savings funds, of ~~bankrupt~~ estates *in bankruptcy cases*, of the State of California, or of any political subdivision, public corporation, or district of the State of California. With the prior approval of the commissioner a bank may hypothecate its assets to secure moneys payable to other states.

#### § 1781. Suspension or revocation of license

If, after notice and a hearing, the commissioner finds any of the following with respect to a foreign (other nation) bank that is licensed to maintain an office, the commissioner may issue an order suspending or revoking the license of the bank:

(a) That the bank has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law, regulation, or order;

(b) That the bank, in case it is licensed to transact business in this state, is transacting the business in an unsafe or unsound manner or, in any case, is transacting business elsewhere in an unsafe or unsound manner;

(c) That the bank is in unsafe or unsound condition;

(d) That the bank has ceased to operate its office;

(e) That the bank is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities exceed its assets;

(f) That the bank has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That the bank ~~has~~ *is the subject of an order for relief in* ~~applied for an adjudication of~~

bankruptcy, ~~reorganization, arrangement,~~ or *has sought* other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against the bank and the bank has by any affirmative act approved of or consented to the action or the relief has been granted;

(h) That a receiver, liquidator, or conservator has been appointed for the bank or that any proceeding for such an appointment or any similar proceeding has been initiated in the place where the bank is domiciled;

(i) That the existence of the bank or the authority of the bank to transact banking business under the laws of the place where the bank is domiciled has been suspended or terminated; or

(j) That any fact or condition exists that, if it had existed at the time when the bank applied for its license to transact business in this state, would have been grounds for denying the application.

§ 1889. Grounds for suspension or revocation of license

If, after notice and a hearing, the commissioner finds:

(a) That any licensee has violated any provision of this chapter or of any regulation or order issued under this chapter or any provision of any other applicable law;

(b) That any licensee is conducting its business in an unsafe or unsound manner;

(c) That any licensee is in such condition that it is unsafe or unsound for it to transact the business of selling in this state payment instruments issued by it;

(d) That any licensee has ceased to transact the business of selling in this state payment instruments issued by it;

(e) That any licensee is insolvent;

(f) That any licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That any licensee ~~has is the subject of an order for relief in applied for an adjudication of~~ bankruptcy, ~~reorganization, arrangement,~~ or *has sought* other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against any licensee and such licensee has by any affirmative act approved of or consented to such action or such relief has been granted; or

(h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying such application:

The commissioner may issue an order suspending or revoking the license of such licensee.

§ 6152. Disqualifications from retaining position; Restriction on removal of directors in case of conversion

(a) A director shall automatically cease to be a director upon *becoming the subject of an order for relief in bankruptcy* ~~been adjudicated as bankrupt~~ or upon conviction of a criminal offense involving dishonesty or a breach of trust.

(b) In the case of an association which converts from a mutual association to a stock association, for a period of up to five years from the date of the conversion, a director may not otherwise be removed except for cause on the affirmative vote of a majority of the votes of members or stockholders eligible to be cast at a legal meeting.

§ 12307.2. Procedure where licensee is insolvent or conducting business in unsafe or injurious manner

If the commissioner finds as a result of an examination or report that a licensee is insolvent or conducting business in such an unsafe or injurious manner as to render its further operations hazardous to the public, he may forthwith by an order addressed to and served on the licensee by registered mail and on any other person having funds of the licensee or its customers in his possession, direct discontinuance of the disbursement of such funds and the further conduct of business by the licensee. The order shall be conditioned to remain in effect unless the commissioner fails to hold a hearing within 15 days after receipt of a written request by the licensee, until set aside by the commissioner in whole or in part, until the licensee ~~has been~~ *is the subject of an order for relief in bankruptcy* ~~adjudged bankrupt~~, or pursuant to a petition filed by the commissioner or other interested person a receiver has been appointed by a court of competent jurisdiction.

§ 16202. Grounds for revocation or suspension of license

If, after notice and hearing, the commissioner finds any of the following with respect to a foreign (other state) credit union that is licensed to maintain an office in this state, the commissioner may issue an order suspending or revoking the license of the foreign (other state) credit union:

(a) That the foreign (other state) credit union has violated a provision of this division or of any

regulation or order issued under this division or a provision of any other applicable law, regulation, or order.

(b) That the foreign (other state) credit union is transacting the business in this state or elsewhere in an unsafe or unsound manner.

(c) That the foreign (other state) credit union is in unsafe or unsound condition.

(d) That the foreign (other state) credit union has ceased to operate its office.

(e) That the foreign (other state) credit union is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities, including share accounts and certificates for funds, exceed its assets.

(f) That the foreign (other state) credit union has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) That the foreign (other state) credit union *is the subject of an order for relief in* ~~has applied for an adjudication of bankruptcy, reorganization, arrangement,~~ or *has sought* other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for such relief under any such law against the foreign (other state) credit union, and the foreign (other state) credit union has by any affirmative act approved of or consented to the action or the relief has been granted.

(h) That a receiver, liquidator, or conservator has been appointed for the foreign (other state) credit union or that any proceeding for an appointment or any similar proceeding has been initiated in the home state of the foreign (other state) credit union.

(i) That the existence of the foreign (other state) credit union or the authority of the foreign (other state) credit union to transact banking business under the laws of the home state of the foreign (other state) credit union has been suspended or terminated.

(j) That any fact or condition exists that, if it had existed at the time when the foreign (other state) credit union applied for approval to transact business in this state, would have been grounds for denying the application.

#### § 16902. Grounds for suspension or revocation of license

If, after notice and hearing, the commissioner finds any of the following with respect to a foreign (other nation) credit union that is licensed to maintain an office, the commissioner may issue an order suspending or revoking the license of the foreign (other nation) credit union.

(a) That the foreign (other nation) credit union has violated a provision of this division or of any regulation or order issued under this division or a provision of any other applicable law, regulation, or order.

(b) That the foreign (other nation) credit union is transacting the business in this state or elsewhere in an unsafe or unsound manner.

(c) That the foreign (other nation) credit union is in unsafe or unsound condition.

(d) That the foreign (other nation) credit union has ceased to operate its office.

(e) That the foreign (other nation) credit union is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities exceed its assets.

(f) That the foreign (other nation) credit union has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) That the foreign (other nation) credit union *is the subject of an order for relief in* ~~has applied for an adjudication of bankruptcy, reorganization, arrangement,~~ or *has sought* other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for such relief under any such law against the foreign (other nation) credit union, and the foreign (other nation) credit union has by any affirmative act approved of or consented to the action or the relief has been granted.

(h) That a receiver, liquidator, or conservator has been appointed for the foreign (other nation) credit union or that any proceeding for an appointment or any similar proceeding has been initiated in the home country of the foreign (other nation) credit union.

(i) That the existence of the foreign (other nation) credit union or the authority of the foreign (other nation) credit union to transact banking business under the laws of the home country of the foreign (other nation) credit union has been suspended or terminated.

(j) That any fact or condition exists that, if it had existed at the time when the foreign (other nation) credit union applied for approval to transact business in this state, would have been grounds for denying the application.

§ 17415. Discontinuance of business operations on order of commissioner; Grounds; Hearing

(a) If the commissioner, as a result of any examination or from any report made to him or her, shall find that any person subject to this division is in an insolvent condition, is conducting

escrow business in such an unsafe or injurious manner as to render further operations hazardous to the public or to customers, has failed to comply with the provisions of Section 17212.1 or 17414.1, has permitted its tangible net worth to be lower than the minimum required by law, has failed to maintain its liquid assets in excess of current liabilities as set forth in Section 17210, or has failed to comply with the bonding requirements of Chapter 2 (commencing with Section 17200) of this division, the commissioner may, by an order addressed to and served by registered or certified mail or by personal service on such person and on any other person having in his or her possession or control any escrowed funds, trust funds or other property deposited in escrow with said person, direct discontinuance of the disbursement of trust funds by the parties or any of them the receipt of trust funds, the delivery or recording of documents received in escrow, or other business operations. No person having in his or her possession any of these funds or documents shall be liable for failure to comply with the order unless he or she has received written notice of the order. Subject to subdivision (b), the order shall remain in effect until set aside by the commissioner in whole or in part, the person ~~has been adjudged bankrupt~~ *is the subject of an order for relief in bankruptcy*, or pursuant to Chapter 6 (commencing with Section 17621) of this division the commissioner has assumed possession of the escrow agent.

(b) Within 15 days from the date of an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. Upon receipt of a request, the matter shall be set for hearing to commence within 30 days after such receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of such notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing. Neither the request for a hearing nor the hearing itself shall stay the order issued by the commissioner under subdivision (a).

§ 18477. "Thrift obligations"

"Thrift obligations" as used in this chapter include principal invested in investment or thrift certificates however evidenced, and unpaid interest thereon accrued as of the last interest accrual date prior to the date the commissioner takes possession of the property and business of a member or the date such member is ~~declared bankrupt~~ *the subject of an order for relief in bankruptcy*, whichever occurs sooner.

§ 31709. Findings for order suspending or revoking license

If, after notice and a hearing, the commissioner finds:

(a) That any licensee or any controlling person or affiliate of a licensee has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law;

- (b) That any licensee is conducting its business in an unsafe and unsound manner;
- (c) That any licensee is in such condition that it is unsafe or unsound for it to transact business;
- (d) That any licensee has ceased to transact business as a business and industrial development corporation;
- (e) That any licensee is insolvent;
- (f) That any licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;
- (g) That any licensee ~~has~~ *is the subject of an order for relief in applied for an adjudication of* bankruptcy, ~~reorganization, arrangement,~~ or *has sought* other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against any licensee and such licensee has by any affirmative act approved of or consented to such action or such relief has been granted; or
- (h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying such application;

the commissioner may issue an order suspending or revoking the license of such licensee.

§ 34109. Grounds for suspension or revocation of license

If, after notice and a hearing, the commissioner finds:

- (a) That any licensee has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law;
- (b) That any licensee is conducting its business in an unsafe or unsound manner;
- (c) That any licensee is in such condition that it is unsafe or unsound for it to transact the business of selling in this state payment instruments issued by it;
- (d) That any licensee has ceased to transact the business of selling in this state payment instruments issued by it;
- (e) That any licensee is insolvent;

(f) That any licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That any licensee ~~has~~ *is the subject of an order for relief in* ~~applied for an adjudication of~~ bankruptcy, ~~reorganization, arrangement,~~ or *has sought* other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against any licensee and such licensee has by any affirmative act approved of or consented to such action or such relief has been granted; or

(h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying such application:

The commissioner may issue an order suspending or revoking the license of such licensee.

#### § 50319. Finding of insolvency; Orders pertaining to trust funds; Request for hearing

(a) If the commissioner, as a result of any examination or from any report made to him or her, shall find that any person subject to this division is in an insolvent condition, is conducting business in an unsafe or injurious manner that renders further operations hazardous to the public or to customers, has failed to comply with the provision of Section 50317, has permitted its tangible net worth to be lower than the minimum required by law, or has failed to comply with the bonding requirements of Section 50205, the commissioner may, by an order addressed to and served by registered or certified mail, or by personal service on that person, and on any other person having in his or her possession or control any trust funds or other property deposited in escrow with that person, direct discontinuance of the disbursement, in whole or in part, of trust funds held by the licensee and order the establishment of a separate trust account for all subsequent trust funds received by the licensee. No person having in his or her possession any of these funds or documents shall be liable for failure to comply with the order unless he or she has received written notice of the order. Subject to subdivision (b), the order shall remain in effect until set aside by the commissioner, or the person *is the subject of an order for relief in bankruptcy* ~~has been adjudged bankrupt~~.

(b) Within 15 days from the date of an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 2 of Division 3 of Title 2 of the Government Code). Upon receiving a request, the matter shall be set for hearing to commence within 30 days after the receipt unless the person subject to this division consents to a later date. If no hearing is requested within 15 days after the mailing or service of the notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing. Neither the request for a hearing nor the hearing itself shall stay the order issued by the commissioner under subdivision (a).

## **FISH & GAME**

### § 1058. State to have preferred claim for license fees; Estoppel

In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state shall have a preferred claim against the license ~~agent~~ *assignee*, receiver, or trustee for all moneys owing the state for the issuing of licenses, permits, reservations, tags, and other entitlements as provided in this code and shall not be estopped from asserting that claim by reason of the commingling of funds or otherwise.

## **FOOD & AGRICULTURAL**

### § 58503.1. Qualification as food bank

In order to qualify as a food bank, an organization shall meet all of the following minimum standards:

(a) It shall have access to storage facilities and refrigeration equipment for the purpose of collecting, receiving, handling, storing, and distributing donated agricultural products.

(b) It shall be incorporated as a nonprofit tax exempt organization and be eligible as a charitable organization under paragraph (3) of subsection (c) of Section 501 of Title ~~44~~ 26 of the United States Code or shall be affiliated with such an organization.

(c) It shall maintain records for the proper control of inventory.

(d) It shall demonstrate the availability of adequate liability insurance to cover the activities conducted pursuant to this chapter.

(e) It shall show local support through funding sources, letters of endorsement, and a board of directors reflective of the community and population to be served.

## **GOVERNMENT**

### § 65863.7. Report of impact on conversion of mobile homepark to another use

(a) Prior to the conversion of a mobilehome park to another use, except pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a mobilehome park or cessation of use of the land as a mobilehome park, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced

mobilehome park residents, the report shall address the availability of adequate replacement housing in mobilehome parks and relocation costs.

(b) The person proposing the change in use shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at least 15 days prior to the hearing, if any, on the impact report by the advisory agency, or if there is no advisory agency, by the legislative body.

(c) When the impact report is filed prior to the closure or cessation of use, the person or entity proposing the change shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at the same time as the notice of the change is provided to the residents pursuant to paragraph (2) of subdivision (f) of Section 798.56 of the Civil Code.

(d) When the impact report is filed prior to the closure or cessation of use, the person or entity filing the report or park resident may request, and shall have a right to, a hearing before the legislative body on the sufficiency of the report.

(e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation.

(f) If the closure or cessation of use of a mobilehome park results from ~~an adjudication of the~~ *entry of an order for relief in bankruptcy*, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to Section 66016 to cover any costs incurred by the local agency in implementing this section and Section 65863.8. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

(j) This section is applicable when the closure, cessation, or change of use is the result of a decision by an enforcement agency, as defined in Section 18207 of the Health and Safety Code, to suspend the permit to operate the mobilehome park. In this case, the mobilehome park owner is the person proposing the change in use for purposes of preparing the impact report required by

this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

§ 65863.12. Report on impact of conversion

(a) Prior to the conversion of a floating home marina to another use, except pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a floating home marina or cessation of use of the land as a floating home marina, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the floating home marina to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced floating home marina residents, the report shall address the availability of adequate replacement housing in floating home marinas and relocation costs.

(b) The person proposing the change in use shall provide a copy of the report to a resident of each floating home in the floating home marina at least 15 days prior to the hearing, if any, on the impact report by the advisory agency, or if there is no advisory agency, by the legislative body.

(c) When the impact report is filed prior to the closure or cessation of use, the person or entity proposing the change shall provide a copy of the report to a resident of each floating home in the floating home marina at the same time as the notice of the change is provided to the residents pursuant to subdivision (f) of Section 800.71 of the Civil Code.

(d) When the impact report is filed prior to the closure or cessation of use, the person or entity filing the report or any resident may request, and shall have a right to, a hearing before the legislative body on the sufficiency of the report.

(e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced floating home marina residents to find adequate housing in a floating home marina. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation.

(f) If the closure or cessation of use of a floating home marina results from ~~an adjudication of~~ *the entry of an order for relief in bankruptcy*, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to Chapter 13 (commencing with Section 54990) of Part 1 of Division 2 of Title 5 to cover any costs incurred by the local agency in implementing this section. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the floating home marina has operated, or as a result of any other zoning or planning decision, action, or inaction. However, a state or local governmental agency is not required to take steps to mitigate the adverse impact of the change pursuant to subdivision (e).

(j) This section applies to any floating home marina as defined in Section 800.4 of the Civil Code, and to any marina or harbor (1) which is managed by a nonprofit organization, the property, assets, and profits of which may not inure to any individual or group of individuals, but only to another nonprofit organization; (2) the rules and regulations of which are set by majority vote of the berthholders thereof; and (3) which contains berths for fewer than 25 floating homes.

## **HEALTH & SAFETY**

### § 1358.4. Definitions

For the purposes of this article, the following terms have the following meanings:

(a) "Applicant" means:

(1) An individual enrollee who seeks to contract for health coverage, in the case of an individual Medicare supplement contract.

(2) An enrollee who seeks to obtain health coverage through a group, in the case of a group Medicare supplement contract.

(b) "Bankruptcy" means that situation in which a Medicare + Choice organization that is not an issuer has filed, or has had filed against it, a petition ~~for declaration of~~ *under federal* bankruptcy law and has ceased doing business in the state.

### § 1793.62. Application for termination of unsuccessful rehabilitation proceedings

(a) The department, administrator, or any interested person, upon due notice to the parties, may petition the court for an order terminating the rehabilitation proceedings when the rehabilitation efforts have not been successful, the continuing care retirement community has been sold at foreclosure sale, the provider *is the subject of an order for relief in* ~~has been declared~~ bankruptcy, or the provider has otherwise been shown to be unable to perform its obligations under the continuing care contracts.

(b) The court shall not issue the order requested pursuant to subdivision (a) unless all of the following have occurred:

(1) There has been a full hearing and the court has determined that the provider is unable to perform its contractual obligations.

(2) The administrator has given the court a full and complete report and financial accounting signed by the administrator as being a full and complete report and accounting.

(3) The court has determined that the residents of the continuing care retirement community have been protected to the extent possible and has made such orders in this regard as the court deems proper.

#### § 129174.1. Bankruptcy

In the event *an obligor on a loan insured by the office has gone into* *is the subject of an order for relief in* bankruptcy and that a plan has been proposed for ~~adoption~~ *confirmation*, upon a certification by the office that the insurance is in place and would be in place if the plan were ~~adopted~~ *confirmed*, then the office shall have the right to vote ~~on~~ *whether to accept or reject* the plan on behalf of the holders of the loan insured by the office.

#### § 25169.3. Prerequisites to transportation of hazardous waste from abandoned site to other site

Before hazardous waste is transported from an abandoned site to another disposal site, all of the following conditions shall be met:

(a) The department shall conduct such tests, or cause such tests to be completed by the responsible party, as are necessary to determine the general chemical and mineral composition of hazardous waste that is being transported.

(b) The hazardous waste hauler shall prepare a transportation and safety plan outlining safety features and procedures to be used by the hauler to protect the public during the transportation process.

(c) The department shall review and approve the transportation and safety plan.

(d) The hazardous waste hauler shall, under penalty of perjury, certify that he or she will follow the provisions of the transportation and safety plan.

(e) The department shall issue a certificate to the hazardous waste hauler certifying that the transportation and safety plan has been approved by the department. The person transporting the

waste shall have the certificate in his or her possession while transporting the waste. Such certificate shall be shown upon demand to any department official, officer of the California Highway Patrol, or any local health officer.

The term "abandoned site", as used in this section, means an inactive waste disposal, treatment, or storage facility which cannot, with reasonable effort, be traced to a specific owner; a site whose owner ~~has been determined~~ *is the subject of an order for relief in bankruptcy*, or who has not taken corrective action on or before the date specified in an order issued pursuant to Section 25187; or a location where hazardous waste has been illegally disposed.

(f) The requirements of this section shall not apply when the hazardous waste disposal is the direct result of an accidental spill or the department determines that emergency action is needed to protect the environment or the public health.

#### § 25245. Adoption of standards and regulations

(a) The department shall adopt, and revise when appropriate, standards and regulations which shall do both of the following:

(1) Specify the financial assurances to be provided by the owner or operator of a hazardous waste facility that are necessary to respond adequately to damage claims arising out of the operation of that type of facility and to provide for the cost of closure and subsequent maintenance of the facility, including, but not limited to, the monitoring of groundwater and other aspects of the environment after closure. If the facility is required to obtain a permit under the federal act, the financial assurance shall be a trust fund, surety bond, letter of credit, insurance, or any other mechanism authorized under the federal act and the regulations adopted pursuant to the federal act. If the facility is not required to obtain a permit under the federal act, the financial assurance may include any other equivalent financial arrangement acceptable to the department.

(2) Provide that every hazardous waste facility can be closed and maintained for at least 30 years subsequent to its closure in a manner that protects human health and the environment and minimizes or eliminates the escape of hazardous waste constituents, leachate, contaminated rainfall, and waste decomposition products to ground and surface waters and to the atmosphere.

(b) In adopting regulations pursuant to subdivision (a), to carry out the purposes of this chapter, the department may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing evidence of financial responsibility.

(1) If an owner or operator is in bankruptcy, ~~reorganization, or other arrangement~~ pursuant to

Title 11 of the United States Code, or where, with reasonable diligence, jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which this section requires evidence of financial responsibility may be asserted directly against the guarantor who provided the evidence of financial responsibility.

(2) The total liability of any guarantor is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter.

(3) This subdivision does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to the owner or operator, including, but not limited to, the liability of the guarantor for bad faith in either negotiating or in failing to negotiate the settlement of any claim.

(4) This subdivision does not diminish the liability of any person under Section 107 or 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Secs. 9607 and 9611).

(5) For purposes of this subdivision, "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

#### § 25359.5. Securing site of hazardous substance release; Conditions

(a) After making a determination, based upon a preliminary site assessment that there has been a release of a hazardous substance on, under, or into the land on a site, the department or a county health officer shall order the property owner to secure the site if all of the following conditions apply to that site:

(1) The release does not comply with the terms of a current permit or interim status document or regulation of the department.

(2) The site poses a public health risk if human contact is made with the hazardous waste or the surrounding contaminated area.

(3) There is a likelihood of human or domestic animal contact.

(b) The order to secure the site shall require, within five days after receiving notification of the order, the posting of the site with signs. The order shall also require, within five days after receiving notification of the order, that the site be enclosed with a fence, unless it is physically and economically infeasible or unless the fencing is unnecessary because it will not alleviate the danger to the public health.

(c) If fencing is ordered, the fences shall be maintained at the site to prevent unauthorized persons from gaining access to the site. The signs shall be maintained and shall meet all of the following requirements:

(1) The signs shall be bilingual, appropriate to the local area, and may include international symbols, as required by the department.

(2) The signs shall have lettering which is legible from a distance of at least 25 feet.

(3) The signs shall read: "Caution: Hazardous Substance Area, Unauthorized Persons Keep Out" and shall have the name and phone number of the department or the county health officer that ordered the posting.

(4) The signs shall be visible from the surrounding contaminated area and posted at each route of entry into the site, including those routes which are likely to be used by unauthorized persons, at access roads leading to the site, and facing navigable waterways where appropriate.

(5) The signs shall be of a material able to withstand the elements.

(d) A property owner who fails to comply with an order of the department or the county health officer is subject to a civil penalty of up to twenty-five thousand dollars (\$25,000). In determining the amount of a civil penalty to be imposed, the court shall consider all relevant circumstances, including, but not limited to, the economic assets of the property owner and whether the property owner has acted in good faith.

If the property owner fails to secure and post the site, the department or the county health officer shall secure and post the site pursuant to subdivision (b) within 30 days of the expiration of the five-day period and shall seek recovery of the costs of that securing and posting from the property owner. If the site is an abandoned site, as defined in Section 25359.6, if the site cannot be traced to a specific owner, or if the owner ~~has been declared bankrupt~~ *is the subject of an order for relief in bankruptcy*, the department or the county health officer shall secure and post the site, using any source of funds, pursuant to subdivision (b).

(e) The department or the county health officer shall advise other agencies on the public health risks and the need for fencing and posting of sites when those agencies confirm the release of a hazardous substance pursuant to subdivision (a).

(f) The remedies and penalties specified in this section and Section 25359.6 are in addition to, and do not affect, any other remedies, enforcement actions, requirements, or penalties otherwise authorized by law.

§ 25359.6. Notification of appropriate health officers of potential abandoned sites

(a) The director shall notify, within 20 working days, each of the appropriate county health officers as to all the potential abandoned sites of which the department has knowledge or which the department is investigating for releases of hazardous substances that may have occurred or might be occurring at abandoned sites. The county health officers may request quarterly updates on the status of the investigations of these sites.

As used in this section, "abandoned site" means an inactive disposal, treatment, or storage facility which cannot, with reasonable effort, be traced to a specific owner, a site whose owner ~~has been determined bankrupt~~ *is the subject of an order for relief in bankruptcy*, or a location where a hazardous substance has been illegally disposed.

(b) Within 10 working days of the identification of an abandoned site, the department or a county health officer shall notify the other agency of the status of the site. The department and the county health officer shall inform the other agency of orders to fence and post these sites and the status of compliance with those orders. The department or the county health officers may request quarterly updates of the testing, enforcement action, and remedial or removal actions that are proposed or ongoing.

§ 25396. Definitions

Unless the context indicates otherwise, the following definitions govern the construction of this chapter.

(a) "Affected community" means the local residents or workers living or working, and owners of businesses operating, in proximity to the site, who are, or may be, directly impacted by the conditions at the site, or by any response action. "Affected community" also includes the legislative body of the jurisdiction in which a site is located.

(b) "Agency" means the California Environmental Protection Agency.

(c) "Arbitration panel" means the arbitration panel convened pursuant to Section 25398.10.

(d) "Beneficial uses of water" means uses of the waters of the state that are identified in the current State Water Resources Control Board and California regional water quality control boards' water quality control plans for the area in which the site is located.

(e) "Department" means the Department of Toxic Substances Control.

(f) "Engineering controls" means measures to control or contain migration of hazardous substances or to prevent, minimize or mitigate environmental damage which may otherwise result from a release or threatened release, including, but not limited to, caps, covers, dikes,

trenches, leachate collection systems, treatment systems, and groundwater containment systems or procedures.

(g) "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (42 U.S.C. Sec. 9601 et seq.).

(h) "Fund administrator" means the state officer assigned the responsibility of protecting the viability of the trust fund as the representative of the state for the orphan share in all actions concerning apportionment of liability if there is a potential apportionment of liability to the orphan share for payment from the trust fund.

(i) "Hazardous substance" shall have the same meaning as set forth in Sections 25316 and 25317.

(j) (1) "Insolvent" means a person or entity who has received a discharge of liability under Section 727, 944, ~~or~~ 1141, 1228, or 1328 of Title 11 of the United States Code, for pre-petition response costs relating to a site selected for response actions pursuant to this chapter.

## **INSURANCE**

### § 10192.4. Definitions

For the purposes of this article, the following terms have the following meanings:

(a) "Applicant" means:

(1) The person who seeks to contract for insurance benefits, in the case of an individual Medicare supplement policy.

(2) The proposed certificate holder, in the case of a group Medicare supplement policy.

(b) "Bankruptcy" means that situation in which a Medicare + Choice organization that is not an issuer has filed, or has had filed against it, a petition for ~~declaration of~~ bankruptcy and has ceased doing business in the state.

(c) "Certificate" means a certificate issued for delivery in this state under a group Medicare supplement policy.

(d) "Certificate form" means the form on which the certificate is issued for delivery by the issuer.

(e) "Continuous period of creditable coverage" means the period during which an individual

was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.

(f)(1) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(A) Any individual or group contract, policy, certificate, or program that is written or administered by a health care service plan, disability insurer, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage.

(B) Part A or B of Title XVIII of the federal Social Security Act (Medicare).

(C) Title XIX of the federal Social Security Act (medicaid), other than coverage consisting solely of benefits under Section 1928 of that act.

(D) Chapter 55 of Title 10 of the United States Code (CHAMPUS).

(E) A medical care program of the Indian Health Service or of a tribal organization.

(F) A state health benefits risk pool.

(G) A health plan offered under Chapter 89 of Title 5 of the United States Code (Federal Employees Health Benefits Program).

(H) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the federal Public Health Service Act, as amended by Public Law 104-191, the federal Health Insurance Portability and Accountability Act of 1996.

(I) A health benefit plan under Section 5(e) of the federal Peace Corps Act (Section 2504(e) of Title 22 of the United States Code).

(J) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(K) Any other creditable coverage as defined by subsection (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(2) "Creditable coverage" shall not include one or more, or any combination of, the following:

(A) Coverage only for accident or disability income insurance, or any combination thereof.

(B) Coverage issued as a supplement to liability insurance.

- (C) Liability insurance, including general liability insurance and automobile liability insurance.
  - (D) Workers' compensation or similar insurance.
  - (E) Automobile medical payment insurance.
  - (F) Credit-only insurance.
  - (G) Coverage for onsite medical clinics.
  - (H) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.
- (3) "Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:
- (A) Limited scope dental or vision benefits.
  - (B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.
  - (C) Other similar, limited benefits as are specified in federal regulations.
- (4) "Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:
- (A) Coverage only for a specified disease or illness.
  - (B) Hospital indemnity or other fixed indemnity insurance.
- (5) "Creditable coverage" shall not include the following if offered as a separate policy, certificate, or contract of insurance:
- (A) Medicare supplemental health insurance as defined under Section 1882(g)(1) of the federal Social Security Act.
  - (B) Coverage supplemental to the coverage provided under Chapter 55 of Title 10 of the United States Code.
  - (C) Similar supplemental coverage provided to coverage under a group health plan.
- (g) "Employee welfare benefit plan" means a plan, fund, or program of employee benefits as

defined in Section 1002 of Title 29 of the United States Code (Employee Retirement Income Security Act).

(h) "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(i) "Issuer" includes insurance companies, fraternal benefit societies, and any other entity delivering, or issuing for delivery, Medicare supplement policies or certificates in this state, except entities subject to Article 3.5 (commencing with Section 1358) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(j) "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as amended.

(k) "Medicare + Choice Plan" means a plan of coverage for health benefits under Medicare Part C and includes:

(1) Coordinated care plans that provide health care services, including, but not limited to, health care service plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organizations plans.

(2) Medical savings account plans coupled with a contribution into a Medicare + Choice medical savings account.

(3) Medicare + Choice private fee-for-service plans.

(l) "Medicare supplement policy" means a group or individual policy of disability insurance, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C.A. Section 1395mm) or an issued policy under a demonstration project specified in Section 1395ss(g)(1) of Title 42 of the United States Code, which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare.

(m) "Policy form" means the form on which the policy is issued for delivery by the issuer.

(n) "Secretary" means the Secretary of the United States Department of Health and Human Services.

#### § 11655. Employer's insolvency

Such policy shall not contain any provisions relieving the insurer from payment when the employer becomes insolvent or *obtains a discharge* in bankruptcy, or otherwise, during the period that the policy is in operation or the compensation remains owing.

## **PROBATE**

### § 15643. Vacancy in office of trustee

There is a vacancy in the office of trustee in any of the following circumstances:

- (a) The person named as trustee rejects the trust.
- (b) The person named as trustee cannot be identified or does not exist.
- (c) The trustee resigns or is removed.
- (d) The trustee dies.
- (e) A conservator or guardian of the person or estate of an individual trustee is appointed.

(f) The trustee *is the subject of an order for relief in bankruptcy* ~~files a petition for adjudication of bankruptcy or for approval of an arrangement, composition, or other extension under the federal Bankruptcy Code, or a petition filed against the trustee for any of these purposes is approved.~~

(g) A trust company's charter is revoked or powers are suspended, if the revocation or suspension is to be in effect for a period of 30 days or more.

(h) A receiver is appointed for a trust company if the appointment is not vacated within a period of 30 days.

## **PUBLIC CONTRACTS**

### § 4107. Substitution, assignment, and subletting; Notice and hearing

A prime contractor whose bid is accepted may not:

(a) Substitute a person as subcontractor in place of the subcontractor listed in the original bid, except that the awarding authority, or its duly authorized officer, may, except as otherwise provided in Section 4107.5, consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor's bid and at the price specified in the subcontractor's bid, when that written contract, based upon

the general terms, conditions, plans, and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes ~~bankrupt~~ or insolvent, *or the subject of an order for relief in bankruptcy.*

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor as set forth in Section 4108.

(5) When the prime contractor demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions set forth in Section 4107.5, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to the Contractors License Law.

(7) When the awarding authority, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the listed subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(9) When the awarding authority determines that a listed subcontractor is not a responsible contractor.

Prior to approval of the prime contractor's request for the substitution, the awarding authority, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified has five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections constitutes the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding authority on the prime contractor's request for substitution.

(b) Permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer.

(c) Other than in the performance of "change orders" causing changes or deviations from the original contract, sublet or subcontract any portion of the work in excess of one-half of 1 percent of the prime contractor's total bid as to which his or her original bid did not designate a subcontractor.

## **REVENUE & TAXATION**

§ 11923. Instruments involving bankruptcy, reorganization, receivership or change of identity

(a) Any tax imposed pursuant to this part shall not apply to the making, delivering, or filing of conveyances to make effective any plan of reorganization or adjustment that is any of the following:

(1) Confirmed under the Federal Bankruptcy ~~Act~~ *Code*, as amended.

(2) Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in Section 101 of Title 11 of the United States Code, as amended.

(3) Approved in an equity receivership proceeding in a court involving a corporation, as defined in Section 101 of Title 11 of the United States Code, as amended.

(4) Whereby a mere change in identity, form, or place of organization is effected.

(b) Subdivision (a) shall only apply if the making, delivery, or filing of instruments of transfer or conveyances occurs within five years from the date of the confirmation, approval, or change.

## **STREETS AND HIGHWAYS**

§ 9185. Executors, administrators, guardians, and trustees may consent; Deemed owners of land

Executors, administrators, special administrators and guardians may consent for any property of the estate represented by them. Any trustee of an express trust of land other than as security for the payment of money may consent for all or any part of the land held in such trust. A trustee in bankruptcy may consent for all or any part of the property of the ~~bankrupt~~ *debtor*. Such executors, administrators, guardians and trustees are deemed owners of land within the meaning of this division.

## **VEHICLE**

### § 9859. Funds received by agent

All money received by an agent from the sale of certificates of number or temporary certificates of number and use tax shall be kept separate and apart from any other funds of the agent, and shall at all times belong to the state.

In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state shall have a preferred claim against the ~~agent~~ *assignee*, receiver, or trustee for all moneys owing the state for the sale of certificates as provided in this code and any use tax, and shall not be estopped from asserting such claim by reason of the commingling of funds or otherwise.

**SUPPLEMENTAL CONTACTS INFORMATION  
(2008-09 STATE BAR YEAR)**

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