

Introduced by Senator CalderonDecember 16, 2010

An act to amend Sections 10079, 10176, 10237, and 10238 of, to add Sections 10080.9, 10088, 10141.6, and 10236.7 to, to repeal Section 10239.4 of, and to repeal Article 6 (commencing with Section 10237) and Article 6.5 (commencing with Section 10239) of Chapter 3 of Part 1 of Division 4 of, the Business and Professions Code, and to add Section 1810.6 to the Vehicle Code, relating to real estate licensees.

LEGISLATIVE COUNSEL'S DIGEST

SB 53, as introduced, Calderon. Real estate licensees.

(1) The Real Estate Law provides for the regulation and licensure of real estate brokers and real estate salespersons by the Real Estate Commissioner and makes any person who willfully violates or knowingly participates in the violation of its provisions guilty of a crime. Existing law authorizes the commissioner, upon his or her own motion, and requires the commissioner upon the verified complaint in writing of any person, to investigate the actions of a real estate licensee who has engaged in specified acts. If the commissioner finds that a licensee has committed those acts, existing law authorizes the commissioner to suspend or revoke a licensee's real estate license or to, instead, impose specified monetary penalties, which are required to be credited to the Recovery Account in the Real Estate Fund.

This bill would authorize the commissioner to issue citations to unlicensed persons the commissioner believes to be engaging in activities for which a real estate license is required or to licensees who are in violation of any provision of the Real Estate Law or any rule or order thereunder. The bill would authorize citations to include an order to correct the violation, to desist and refrain from engaging in a specific

business activity, or to suspend all business operations. The bill would authorize citations to include an administrative penalty of up to \$2,500. The bill would require any fines collected pursuant to these provisions to be credited to the Recovery Account and made available upon appropriation by the Legislature.

This bill would further authorize the commissioner to apply to the superior court for an order requiring a licensee to appear before the commissioner or to produce evidence under specified circumstances or as pertaining to matters under investigation. The bill would authorize the court to punish as contempt the failure of a licensee to comply with such an order. Because contempt of court is punishable as a crime, the bill would impose a state-mandated local program. The bill would also authorize the commissioner to make information public confirming an investigation or proceeding against an unlicensed person or licensee, as specified.

(2) Existing law imposes certain disclosure and recording requirements on real estate brokers engaging in escrow activities.

This bill would require a real estate broker who is exempt from the Escrow Law and who engages in escrow activities for 5 or more transactions in a calendar year or whose escrow activities equal or exceed \$1,000,000 in a calendar year to file a specified report with the department within 60 days following the completion of the calendar year. The bill would authorize the commissioner to assess specified penalties upon a real estate broker who fails to provide the report to the department, would require the penalties to be deposited in the Recovery Account of the Real Estate Fund, to be made available upon appropriation by the Legislature, and would authorize the commissioner to suspend or revoke the license of a real estate broker for failure to pay those penalties. Because a willful violation of these provisions by a real estate broker would be a crime, the bill would impose a state-mandated local program.

(3) Existing law authorizes the commissioner to suspend or revoke a real estate license, if the licensee has engaged in specified acts.

This bill would authorize the commissioner to suspend or revoke a real estate license if the licensee has violated any provision of law that constitutes a violation of a licensing law applicable to the licensee, as specified.

(4) Existing law makes it unlawful for any person to offer or sell any security in an issuer transaction unless the sale has been qualified or the security or transaction is exempted or is not subject to qualification,

as specified. Existing law exempts from qualification a transaction that involves the sale of a series of notes secured directly by an interest in real property or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction. Existing law requires a real estate broker to indicate in the real estate broker’s transaction file the provisions of the law pertaining to qualification or exemption from qualification under which a transaction is being conducted. Existing law requires a real estate broker to file certain information with the commissioner relative to conducting these transactions that are exempt from qualification.

This bill would require a real estate broker to submit a copy of the information in the real estate broker’s transaction file relative to qualification or exemption from qualification for a transaction to the commissioner and to any investor from whom the real estate broker obtains funds in connection with the transaction. The bill would also recast specified provisions relative to the requirements that apply to transactions exempt from qualification. Because a willful violation of these provisions by a real estate broker would be a crime, the bill would impose a state-mandated local program.

(5) Existing law provides specified government law enforcement entities with access to records of the Department of Motor Vehicles.

This bill would provide the Real Estate Commissioner with access to those records for purposes of enforcing specified provisions of the Real Estate Law relative to the regulation of transactions for subdivided lands.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10079 of the Business and Professions
 2 Code is amended to read:
 3 10079. (a) The Attorney General shall render to the
 4 commissioner opinions upon all questions of law relating to the
 5 construction or interpretation of this part or Chapter 1 of Part 2 or

1 arising in the administration thereof that may be submitted to him
2 by the commissioner. ~~The~~ *Except as provided in subdivision (b),*
3 *the* Attorney General shall act as the attorney for the commissioner
4 in all actions and proceedings brought by or against him under or
5 pursuant to any of the provisions of this part or of Chapter 1 of
6 Part 2.

7 *(b) In case of contumacy by any licensee, or refusal to obey a*
8 *subpoena issued to any licensee, the commissioner may apply to*
9 *the superior court for, and the superior court may issue to the*
10 *licensee, an order requiring the licensee to appear before the*
11 *commissioner, or the representative designated by the*
12 *commissioner, to produce documentary evidence, if so ordered,*
13 *or to give evidence touching the matter under investigation or in*
14 *question. Failure of the licensee to obey the order of the court may*
15 *be punished by the court as a contempt.*

16 SEC. 2. Section 10080.9 is added to the Business and
17 Professions Code, to read:

18 10080.9. (a) If, upon inspection, examination, or investigation,
19 based upon a complaint or otherwise, the commissioner has cause
20 to believe that a person who does not possess a real estate license
21 is engaged or has engaged in activities for which a real estate
22 license is required, or that a licensee is violating or has violated
23 any provision of this division or any rule or order thereunder, the
24 commissioner or his or her designated representative may issue a
25 citation to that person in writing, describing with particularity the
26 basis of the citation. Each citation may contain an order to correct
27 the violation or violations identified and a reasonable time period
28 or periods by which the violation or violations must be corrected;
29 an order to desist and refrain from engaging in a specific business
30 activity; or an order to suspend all business operations. In addition,
31 each citation may assess an administrative fine not to exceed two
32 thousand five hundred dollars (\$2,500), which shall be deposited
33 into the Recovery Account of the Real Estate Fund and shall, upon
34 appropriation by the Legislature, be available for expenditure for
35 the purposes specified in Chapter 6.5 (commencing with Section
36 10470). In assessing a fine, the commissioner shall give due
37 consideration to the appropriateness of the amount of the fine with
38 respect to factors such as the gravity of the violation, the good
39 faith of the licensee, and the history of previous violations.

1 (b) The sanctions authorized under this section shall be separate
2 from, and in addition to, all other administrative, civil, or criminal
3 penalties.

4 (c) If, within 30 days from the receipt of the citation, the person
5 cited fails to notify the commissioner that he or she intends to
6 request a hearing as described in subdivision (d), the citation shall
7 be deemed final.

8 (d) Any hearing under this section shall be conducted in
9 accordance with Chapter 5 (commencing with Section 11500) of
10 Part 1 of Division 3 of Title 2 of the Government Code.

11 (e) After the exhaustion of the review procedures provided for
12 in this section, the commissioner may apply to the appropriate
13 superior court for a judgment in the amount of any administrative
14 penalty imposed pursuant to subdivision (a) and an order
15 compelling the cited person to comply with the order of the
16 commissioner. The application, which shall include a certified
17 copy of the final order of the commissioner, shall constitute a
18 sufficient showing to warrant the issuance of the judgment and
19 order.

20 SEC. 3. Section 10088 is added to the Business and Professions
21 Code, to read:

22 10088. Upon a finding by the commissioner that action is
23 warranted for the protection of the public, and that failure to act
24 is likely to result in grievous harm to the public, the commissioner
25 may make information public confirming the fact of an
26 investigation or proceeding regarding a licensee or unlicensed
27 person believed to be engaging in activities for which a real estate
28 license is required. Any release that contains the identity of a
29 person or business under investigation shall include language
30 explaining that the subject of the release is entitled to a public
31 hearing on the merits of the accusation or accusations against that
32 person or business. The release may also clarify the procedural
33 aspects and current status of the investigation or proceeding.

34 SEC. 4. Section 10141.6 is added to the Business and
35 Professions Code, to read:

36 10141.6. (a) A real estate broker who engages in escrow
37 activities for five or more transactions in a calendar year pursuant
38 to the exemption from the Escrow Law contained in Section 17006
39 of the Financial Code, or whose escrow activities pursuant to that
40 exemption equal or exceed one million dollars (\$1,000,000) in a

1 calendar year, shall file with the department a report, within 60
2 days following the completion of the calendar year, documenting
3 the number of escrows conducted and the dollar volume escrowed
4 during the calendar year in which the threshold was met. This
5 report shall be made on a form acceptable to the commissioner.

6 (b) A real estate broker subject to this section and Section
7 10232.2 may file consolidated reports that include all of the
8 information required under this section and Section 10232.2. Those
9 consolidated reports shall clearly indicate that they are intended
10 to satisfy the requirements of both sections.

11 (c) A real estate broker who fails to submit the report required
12 pursuant to subdivision (a) shall be assessed a penalty of fifty
13 dollars (\$50) per day for each day the report has not been received
14 by the department, up to and including the 30th day after the first
15 day of the assessment penalty. On and after the 31st day, the
16 penalty shall be one hundred dollars (\$100) per day, not to exceed
17 a total penalty of ten thousand dollars (\$10,000), regardless of the
18 number of days, until the department receives the report.

19 (d) The commissioner may suspend or revoke the license of a
20 real estate broker who fails to pay a penalty imposed pursuant to
21 this section. In addition, the commissioner may bring an action in
22 an appropriate court of this state to collect payment of that penalty.

23 (e) All penalties paid or collected under this section shall be
24 deposited into the Recovery Account of the Real Estate Fund and
25 shall, upon appropriation by the Legislature, be available for
26 expenditure for the purposes specified in Chapter 6.5 (commencing
27 with Section 10470).

28 (f) The reports described in this section are exempted from any
29 requirement of public disclosure by paragraph (2) of subdivision
30 (d) of Section 6254 of the Government Code.

31 SEC. 5. Section 10176 of the Business and Professions Code
32 is amended to read:

33 10176. The commissioner may, upon his or her own motion,
34 and shall, upon the verified complaint in writing of any person,
35 investigate the actions of any person engaged in the business or
36 acting in the capacity of a real estate licensee within this state, and
37 he or she may temporarily suspend or permanently revoke a real
38 estate license at any time where the licensee, while a real estate
39 licensee, in performing or attempting to perform any of the acts

1 within the scope of this chapter has been guilty of any of the
2 following:

- 3 (a) Making any substantial misrepresentation.
- 4 (b) Making any false promises of a character likely to influence,
5 persuade or induce.
- 6 (c) A continued and flagrant course of misrepresentation or
7 making of false promises through real estate agents or salespersons.
- 8 (d) Acting for more than one party in a transaction without the
9 knowledge or consent of all parties thereto.
- 10 (e) Commingling with his or her own money or property the
11 money or other property of others which is received and held by
12 him or her.
- 13 (f) Claiming, demanding, or receiving a fee, compensation or
14 commission under any exclusive agreement authorizing or
15 employing a licensee to perform any acts set forth in Section 10131
16 for compensation or commission where the agreement does not
17 contain a definite, specified date of final and complete termination.
- 18 (g) The claiming or taking by a licensee of any secret or
19 undisclosed amount of compensation, commission or profit or the
20 failure of a licensee to reveal to the employer of the licensee the
21 full amount of the licensee's compensation, commission or profit
22 under any agreement authorizing or employing the licensee to do
23 any acts for which a license is required under this chapter for
24 compensation or commission prior to or coincident with the signing
25 of an agreement evidencing the meeting of the minds of the
26 contracting parties, regardless of the form of the agreement,
27 whether evidenced by documents in an escrow or by any other or
28 different procedure.
- 29 (h) The use by a licensee of any provision allowing the licensee
30 an option to purchase in an agreement authorizing or employing
31 the licensee to sell, buy, or exchange real estate or a business
32 opportunity for compensation or commission, except when the
33 licensee prior to or coincident with election to exercise the option
34 to purchase reveals in writing to the employer the full amount of
35 licensee's profit and obtains the written consent of the employer
36 approving the amount of the profit.
- 37 (i) Any other conduct, whether of the same or a different
38 character than specified in this section, which constitutes fraud or
39 dishonest dealing.

1 (j) Obtaining the signature of a prospective purchaser to an
2 agreement which provides that the prospective purchaser shall
3 either transact the purchasing, leasing, renting or exchanging of a
4 business opportunity property through the broker obtaining the
5 signature, or pay a compensation to the broker if the property is
6 purchased, leased, rented or exchanged without the broker first
7 having obtained the written authorization of the owner of the
8 property concerned to offer the property for sale, lease, exchange
9 or rent.

10 (k) Failing to disburse funds in accordance with a commitment
11 to make a mortgage loan that is accepted by the applicant when
12 the real estate broker represents to the applicant that the broker is
13 either of the following:

14 (1) The lender.

15 (2) Authorized to issue the commitment on behalf of the lender
16 or lenders in the mortgage loan transaction.

17 (l) Intentionally delaying the closing of a mortgage loan for the
18 sole purpose of increasing interest, costs, fees, or charges payable
19 by the borrower.

20 (m) Generating an inaccurate opinion of the value of residential
21 real property, requested in connection with a debt forgiveness sale,
22 in order to do either or both of the following:

23 (1) Manipulate the lienholder to reject the proposed debt
24 forgiveness sale.

25 (2) Acquire a financial or business advantage, including a listing
26 agreement, that directly results from the inaccurate opinion of
27 value, with regard to the subject property.

28 (n) *Violating any section, division, or article of law which*
29 *provides that a violation of that section, division, or article of law*
30 *by a licensed person is a violation of that person's licensing law,*
31 *if it occurs within the scope of that person's duties as a licensee.*

32 SEC. 6. Section 10236.7 is added to the Business and
33 Professions Code, to read:

34 10236.7. (a) A real estate broker, when engaging in acts for
35 which a license is required, who arranges a transaction pursuant
36 to Article 6 (commencing with Section 10237) or one or more
37 provisions of the Corporate Securities Law of 1968 (Division 1
38 (commencing with Section 25000) of Title 4 of the Corporations
39 Code), shall clearly indicate in the real estate broker's transaction
40 file the provision or provisions of this code or the Corporate

1 Securities Law of 1968 pertaining to qualification or exemption
2 from qualification under which the transaction is being conducted.
3 The real estate broker shall retain this information for the period
4 specified in subdivision (a) of Section 10148.

5 (b) The real estate broker shall submit a copy of the information
6 described in subdivision (a) to all of the following:

7 (1) The commissioner, within 30 days of soliciting potential
8 investors pursuant to Article 6 (commencing with Section 10237)
9 or the Corporate Securities Law of 1968 (Division 1 (commencing
10 with Section 25000) of Title 4 of the Corporations Code).

11 (2) Any investor from whom the real estate broker obtains funds
12 in connection with the transaction, either directly or through an
13 agent or affiliate, within 10 days of receipt of those funds.

14 SEC. 7. Section 10237 of the Business and Professions Code,
15 as added by Section 2 of Chapter 901 of the Statutes of 2003, is
16 amended to read:

17 10237. *This article applies only to the exemption from securities*
18 *qualification claimed under Section 25102.5 of the Corporations*
19 *Code. This article does not apply to any other exemption from*
20 *securities qualification, including subdivision (e) of Section 25102*
21 *of the Corporations Code, that may be claimed without complying*
22 *with this article, or to any permit to qualify the offer and sale of*
23 *securities under the Corporate Securities Law of 1968 (Division*
24 *1 (commencing with Section 25000) of Title 4 of the Corporations*
25 *Code). Any transaction that involves the sale of or offer to sell a*
26 *series of notes secured directly by interests in one or more parcels*
27 *of real property, or the sale of undivided interests in a note secured*
28 *directly by one or more parcels of real property equivalent to a*
29 *series transaction, shall comply with all of the provisions of this*
30 *article.*

31 SEC. 8. Article 6 (commencing with Section 10237) of Chapter
32 3 of Part 1 of Division 4 of the Business and Professions Code, as
33 added by Chapter 886 of the Statutes of 1961, is repealed.

34 SEC. 9. Section 10238 of the Business and Professions Code
35 is amended to read:

36 10238. (a) A notice in the following form and containing the
37 following information shall be filed with the commissioner within
38 30 days after the first transaction and within 30 days of any material
39 change in the information required in the notice:

1 TO: Real Estate Commissioner
 2 Mortgage Loan Section
 3 2201 Broadway
 4 Sacramento, CA 95818

5 This notice is filed pursuant to Section 10237 of the Business and Professions
 6 Code.

7 () Original Notice () Amended Notice

8 1. Name of Broker conducting transaction under Section 10237:
 9 _____

10 2. Broker license identification number: _____

11 12 3. List the month the fiscal year ends: _____

13 14 4. Broker’s telephone number: _____

15 16 5. Firm name (if different from “1”):
 17 _____

18 19 6. Street address (main location):
 20 _____
 21 # and Street City State ZIP Code

22 23 7. Mailing address (if different from “6”):
 24 _____

25 8. Servicing agent: Identify by name, address, and telephone number the
 26 person or entity who will act as the servicing agent in transactions pursuant
 27 to Section 10237 (including the undersigned Broker if that is the case):
 28 _____
 29 _____

30 31 9. Total number of multilender notes arranged: _____

32 33 10. Total number of interests sold to investors on the
 34 multilender’s notes: _____

35 36 11. Inspection of trust account (before answering this question, review the
 37 provisions of paragraph (3) of subdivision (k) of Section 10238).

38 CHECK ONLY ONE OF THE FOLLOWING:

1 () The undersigned Broker is (or expects to be) required to file reports of
 2 inspection of its trust account(s) with the Real Estate Commissioner
 3 pursuant to paragraph (3) of subdivision (k) of Section 10238.

4 Amount of Multilender Payments Collected Last Fiscal Quarter: _____

5
 6 Total Number of Investors Due Payments Last Fiscal Quarter: _____

7
 8 () The undersigned Broker is NOT (or does NOT expect to be) required to
 9 file reports of inspection of its trust account(s) with the Real Estate
 10 Commissioner pursuant to paragraph (3) of subdivision (k) of Section
 11 10238.

12 12. Signature. The contents of this notice are true and correct.

13 _____
 14 Date Type Name of Broker
 15
 16 _____
 17 Signature of Broker or of Designated Officer of
 18 Corporate Broker
 19 _____
 20 Type Name of Person(s) Signing This Notice

21 NOTE: AN AMENDED NOTICE MUST BE FILED BY THE
 22 BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE
 23 IN THE INFORMATION REQUIRED TO BE SET FORTH
 24 HEREIN.

25 (b) A broker or person who becomes the servicing agent for
 26 notes or interest sold pursuant to this article, upon which payments
 27 due during any period of three consecutive months in the aggregate
 28 exceed one hundred twenty-five thousand dollars (\$125,000) or
 29 the number of persons entitled to the payments exceeds 120, shall
 30 file the notice required by subdivision (a) with the commissioner
 31 within 30 days after becoming the servicing agent.

32 (c) All advertising employed for transactions under this article
 33 shall show the name of the broker and comply with Section 10235
 34 and Sections 260.302 and 2848 of Title 10 of the California Code
 35 of Regulations. Brokers and their agents are cautioned that a
 36 reference to a prospective investor that a transaction is conducted
 37 under this article may be deemed misleading or deceptive if this
 38 representation may reasonably be construed by the investor as an
 39 implication of merit or approval of the transaction.

1 (d) Each parcel of real property directly securing the notes or
2 interests ~~is~~ *shall be* located in this state, the note or notes ~~are~~ *shall*
3 not by their terms *be* subject to subordination to any subsequently
4 created deed of trust upon the real property, and the note or notes
5 ~~are~~ *shall not be* promotional notes secured by liens on separate
6 parcels of real property in one subdivision or in contiguous
7 subdivisions. For purposes of this subdivision, a promotional note
8 means a promissory note secured by a trust deed, executed on
9 unimproved real property or executed after construction of an
10 improvement of the property but before the first purchase of the
11 property as so improved, or executed as a means of financing the
12 first purchase of the property as so improved, that is subordinate,
13 or by its terms may become subordinate, to any other trust deed
14 on the property. However, the term “promotional note” does not
15 include either of the following:

16 (1) A note that was executed in excess of three years prior to
17 being offered for sale.

18 (2) A note secured by a first trust deed on real property in a
19 subdivision that evidences a bona fide loan made in connection
20 with the financing of the usual cost of the development in a
21 residential, commercial, or industrial building or buildings on the
22 property under a written agreement providing for the disbursement
23 of the loan funds as costs are incurred or in relation to the progress
24 of the work and providing for title insurance ensuring the priority
25 of the security as against mechanic’s and materialmen’s liens or
26 for the final disbursement of at least 10 percent of the loan funds
27 after the expiration of the period for the filing of mechanic’s and
28 materialmen’s liens.

29 (e) The notes or interests ~~are~~ *shall be* sold by or through a real
30 estate broker, as principal or agent. At the time the interests are
31 originally sold or assigned, neither the broker nor an affiliate of
32 the broker shall have an interest as owner, lessor, or developer of
33 the property securing the loan, or any contractual right to acquire,
34 lease, or develop the property securing the loan. This provision
35 does not prohibit a broker from conducting the following
36 transactions if, in either case, the disclosure statement furnished
37 by the broker pursuant to subdivision (l) discloses the interest of
38 the broker or affiliate in the transaction and the circumstances
39 under which the broker or affiliate acquired the interest:

1 (1) A transaction in which the broker or an affiliate of the broker
2 is acquiring the property pursuant to a foreclosure under, or sale
3 pursuant to, a deed of trust securing a note for which the broker is
4 the servicing agent or that the broker sold to the holder or holders.

5 (2) A transaction in which the broker or an affiliate of the broker
6 is reselling from inventory property acquired by the broker pursuant
7 to a foreclosure under, or sale pursuant to, a deed of trust securing
8 a note for which the broker is the servicing agent or that the broker
9 sold to the holder or holders.

10 (f) (1) The notes or interests shall not be sold to more than 10
11 persons, each of whom meets one or both of the qualifications of
12 income or net worth set forth below and signs a statement, which
13 shall be retained by the broker for four years, conforming to the
14 following:

15
16 Transaction Identifier: _____

17 Name of Purchaser: _____ Date: _____

18 Check either one of the following, if true:

19 () My investment in the transaction does not exceed 10% of my net worth,
20 exclusive of home, furnishings, and automobiles.

21
22 () My investment in the transaction does not exceed 10% of my adjusted
23 gross income for federal income tax purposes for my last tax year or, in
24 the alternative, as estimated for the current year.

25 _____
26 Signature

27
28 (2) The number of offerees shall not be considered for the
29 purposes of this section.

30 (3) A husband and wife and their dependents, and an individual
31 and his or her dependents, shall be counted as one person.

32 (4) A retirement plan, trust, business trust, corporation, or other
33 entity that is wholly owned by an individual and the individual's
34 spouse or the individual's dependents, or any combination thereof,
35 shall not be counted separately from the individual, but the
36 investments of these entities shall be aggregated with those of the
37 individual for the purposes of the statement required by paragraph
38 (1). If the investments of any entities are required to be aggregated
39 under this subdivision, the adjusted gross income or net worth of

1 these entities may also be aggregated with the net worth, income,
2 or both, of the individual.

3 (5) The “institutional investors” enumerated in subdivision (i)
4 of Section 25102 or subdivision (c) of Section 25104 of the
5 Corporations Code, or in a rule adopted pursuant thereto, shall not
6 be counted.

7 (6) A partnership, limited liability company, corporation, or
8 other organization that was not specifically formed for the purpose
9 of purchasing the security offered in reliance upon this exemption
10 from securities qualification is counted as one person.

11 (g) The notes or interests of the purchasers shall be identical in
12 their underlying terms, including the right to direct or require
13 foreclosure, rights to and rate of interest, and other incidents of
14 being a lender, and the sale to each purchaser pursuant to this
15 section shall be upon the same terms, subject to adjustment for the
16 face or principal amount or percentage interest purchased and for
17 interest earned or accrued. This subdivision does not preclude
18 different selling prices for interests to the extent that these
19 differences are reasonably related to changes in the market value
20 of the loan occurring between the sales of these interests. The
21 interest of each purchaser shall be recorded pursuant to
22 subdivisions (a) to (c), inclusive, of Section 10234.

23 (h) (1) Except as provided in paragraph (2), the aggregate
24 principal amount of the notes or interests sold, together with the
25 unpaid principal amount of any encumbrances upon the real
26 property senior thereto, shall not exceed the following percentages
27 of the current market value of each parcel of the real property, as
28 determined in writing by the broker or appraiser pursuant to Section
29 10232.6, plus the amount for which the payment of principal and
30 interest in excess of the percentage of current market value is
31 insured for the benefit of the holders of the notes or interests by
32 an insurer admitted to do business in this state by the Insurance
33 Commissioner:

- 34
- 35 (A) Single-family residence, owner occupied 80%
- 36 (B) Single-family residence, not owner occupied 75%
- 37 (C) Commercial and income-producing properties 65%
- 38 (D) Single-family residentially zoned lot or parcel which has
- 39 installed offsite improvements including drainage, curbs,
- 40 gutters, sidewalks, paved roads, and utilities as mandated

1	by the political subdivision having jurisdiction over the lot	
2	or parcel	65%
3	(E) Land that has been zoned for (and if required, approved for	
4	subdivision as) commercial or residential development	50%
5	(F) Other real property	35%

6

7 (2) The percentage amounts specified in paragraph (1) may be

8 exceeded when and to the extent that the broker determines that

9 the encumbrance of the property in excess of these percentages is

10 reasonable and prudent considering all relevant factors pertaining

11 to the real property. However, in no event shall the aggregate

12 principal amount of the notes or interests sold, together with the

13 unpaid principal amount of any encumbrances upon the property

14 senior thereto, exceed 80 percent of the current fair market value

15 of improved real property or 50 percent of the current fair market

16 value of unimproved real property, except in the case of a

17 single-family zoned lot or parcel as defined in paragraph (1), which

18 shall not exceed 65 percent of the current fair market value of that

19 lot or parcel, plus the amount insured as specified in paragraph

20 (1). A written statement shall be prepared by the broker that sets

21 forth the material considerations and facts that the broker relies

22 upon for his or her determination, which shall be retained as a part

23 of the broker’s record of the transaction. Either a copy of the

24 statement or the information contained therein shall be included

25 in the disclosures required pursuant to subdivision (l).

26 (3) A copy of the appraisal or the broker’s evaluation, for each

27 parcel of real property securing the notes or interests, shall be

28 delivered to each purchaser. The broker shall advise purchasers

29 of their right to receive a copy. For purposes of this paragraph,

30 “appraisal” means a written estimate of value based upon the

31 assembling, analyzing, and reconciling of facts and value indicators

32 for the real property in question. A broker shall not purport to make

33 an appraisal unless the person so employed is qualified on the basis

34 of special training, preparation, or experience.

35 (4) For construction or rehabilitation loans, the term “current

36 market value” may be deemed to be the value of the completed

37 project if the following safeguards are met:

38 (A) An independent neutral third-party escrowholder is used

39 for all deposits and disbursements.

1 (B) The loan is fully funded, with the entire loan amount to be
2 deposited in escrow prior to recording of the deed or deeds of trust.

3 (C) A comprehensive, detailed, draw schedule is used to ensure
4 proper and timely disbursements to allow for completion of the
5 project.

6 (D) The disbursement draws from the escrow account are based
7 on verification from an independent qualified person who certifies
8 that the work completed to date meets the related codes and
9 standards and that the draws were made in accordance with the
10 construction contract and draw schedule. For purposes of this
11 subparagraph, “independent qualified person” means a person who
12 is not an employee, agent, or affiliate of the broker and who is a
13 licensed architect, general contractor, structural engineer, or active
14 local government building inspector acting in his or her official
15 capacity.

16 (E) An appraisal is completed by a qualified and licensed
17 appraiser in accordance with the Uniform Standards of Professional
18 Appraisal Practice (USPAP).

19 (F) In addition to the transaction documentation required by
20 subdivision (i), the documentation shall include a detailed
21 description of actions that may be taken in the event of a failure
22 to complete the project, whether that failure is due to default,
23 insufficiency of funds, or other causes.

24 (G) The entire amount of the loan does not exceed two million
25 five hundred thousand dollars (\$2,500,000).

26 (5) If a note or an interest will be secured by more than one
27 parcel of real property, for the purpose of determining the
28 maximum amount of the note or interest, each security property
29 shall be assigned a portion of the note or interest which shall not
30 exceed the percentage of current market value determined by, and
31 in accordance with, the provisions of paragraphs (1) and (2).

32 (i) The documentation of the transaction shall require that (1)
33 a default upon any interest or note is a default upon all interests
34 or notes and (2) the holders of more than 50 percent of the recorded
35 beneficial interests of the notes or interests may govern the actions
36 to be taken on behalf of all holders in accordance with Section
37 2941.9 of the Civil Code in the event of default or foreclosure for
38 matters that require direction or approval of the holders, including
39 designation of the broker, servicing agent, or other person acting
40 on their behalf, and the sale, encumbrance, or lease of real property

1 owned by the holders resulting from foreclosure or receipt of a
2 deed in lieu of foreclosure. The terms called for by this subdivision
3 may be included in the deed of trust, in the assignment of interests,
4 or in any other documentation as is necessary or appropriate to
5 make them binding on the parties.

6 (j) (1) The broker shall not accept any purchase or loan funds
7 or other consideration from a prospective lender or purchaser, or
8 directly or indirectly cause the funds or other consideration to be
9 deposited in an escrow or trust account, except as to a specific loan
10 or note secured by a deed of trust that the broker owns, is
11 authorized to negotiate, or is unconditionally obligated to buy.

12 (2) All funds received by the broker from the purchasers or
13 lenders shall be handled in accordance with Section 10145 for
14 disbursement to the persons thereto entitled upon recordation of
15 the interests of the purchasers or lenders in the note and deed of
16 trust. No provision of this article shall be construed as modifying
17 or superseding applicable law regulating the escrowholder in any
18 transaction or the handling of the escrow account.

19 (3) The books and records of the broker or servicing agent, or
20 both, shall be maintained in a manner that readily identifies
21 transactions under this article and the receipt and disbursement of
22 funds in connection with these transactions.

23 (4) If required by paragraph (3) of subdivision (k), the review
24 by the independent certified public accountant shall include a
25 sample of transactions, as reflected in the records of the trust
26 account required pursuant to paragraph (1) of subdivision (k), and
27 the bank statements and supporting documents. These documents
28 shall be reviewed for compliance with this article with respect to
29 the handling and distribution of funds. The sample shall be selected
30 at random by the accountant from all these transactions and shall
31 consist of the following: (A) three sales made or 5 percent of the
32 sales made pursuant to this article during the period for which the
33 examination is conducted, whichever is greater, and (B) 10
34 payments processed or 2 percent of payments processed under this
35 article during the period for which the examination is conducted,
36 whichever is greater.

37 (5) For the purposes of this subdivision, the transaction that
38 constitutes a “sale” is the series of transactions by which a series
39 of notes of a maker, or the interests in the note of a maker, are sold
40 or issued to their various purchasers under this article, including

1 all receipts and disbursements in that process of funds received
2 from the purchasers or lenders. The transaction that constitutes a
3 “payment,” for the purposes of this subdivision, is the receipt of
4 a payment from the person obligated on the note or from some
5 other person on behalf of the person so obligated, including the
6 broker or servicing agent, and the distribution of that payment to
7 the persons entitled thereto. If a payment involves an advance paid
8 by the broker or servicing agent as the result of a dishonored check,
9 the inspection shall identify the source of funds from which the
10 payment was made or, in the alternative, the steps that are
11 reasonably necessary to determine that there was not a
12 disbursement of trust funds. The accountant shall inspect for
13 compliance with the following specific provisions of this section:
14 paragraphs (1), (2), and (3) of subdivision (j) and paragraphs (1)
15 and (2) of subdivision (k).

16 (6) Within 30 days of the close of the period for which the report
17 is made, or within any additional time as the commissioner may
18 in writing allow in a particular case, the accountant shall forward
19 to the broker or servicing agent, as the case may be, and to the
20 commissioner, the report of the accountant, stating that the
21 inspection was performed in accordance with this section, listing
22 the sales and the payments examined, specifying the nature of the
23 deficiencies, if any, noted by the accountant with respect to each
24 sale or payment, together with any further information as the
25 accountant may wish to include, such as corrective steps taken
26 with respect to any deficiency so noted, or stating that no
27 deficiencies were observed. If the broker meets the threshold
28 criteria of Section 10232, the report of the accountant shall be
29 submitted as part of the quarterly reports required under Section
30 10232.25.

31 (k) The notes or interests shall be sold subject to a written
32 agreement that obligates a licensed real estate broker, or a person
33 exempted from the licensing requirement for real estate brokers
34 under this chapter, to act as agent for the purchasers or lenders to
35 service the note or notes and deed of trust, including the receipt
36 and transmission of payments and the institution of foreclosure
37 proceedings in the event of a default. A copy of this servicing
38 agreement shall be delivered to each purchaser. The broker shall
39 offer to the lenders or purchasers the services of the broker or one
40 or more affiliates of the broker, or both, as servicing agent for each

1 transaction conducted pursuant to this article. The agreement shall
2 require all of the following:

3 (1) (A) That payments received on the note or notes be
4 deposited immediately to a trust account maintained in accordance
5 with this section and with the provisions for trust accounts of
6 licensed real estate brokers contained in Section 10145 and Article
7 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of
8 the California Code of Regulations.

9 (B) That payments deposited pursuant to subparagraph (A) shall
10 not be commingled with the assets of the servicing agent or used
11 for any transaction other than the transaction for which the funds
12 are received.

13 (2) That payments received on the note or notes shall be
14 transmitted to the purchasers or lenders pro rata according to their
15 respective interests within 25 days after receipt thereof by the
16 agent. If the source for the payment is not the maker of the note,
17 the agent shall inform the purchasers or lenders of the source for
18 payment. A broker or servicing agent who transmits to the
19 purchaser or lenders the broker's or servicing agent's own funds
20 to cover payments due from the borrower but unpaid as a result
21 of a dishonored check may recover the amount of the advances
22 from the trust fund when the past due payment is received.
23 However, this article does not authorize the broker, servicing agent,
24 or any other person to issue, or to engage in any practice
25 constituting, any guarantee or to engage in the practice of
26 advancing payments on behalf of the borrower.

27 (3) If the broker or person who is or becomes the servicing agent
28 for notes or interests sold pursuant to this article upon which the
29 payments due during any period of three consecutive months in
30 the aggregate exceed one hundred twenty-five thousand dollars
31 (\$125,000) or the number of persons entitled to the payments
32 exceeds 120, the trust account or accounts of that broker or affiliate
33 shall be inspected by an independent certified public accountant
34 at no less than three-month intervals during the time the volume
35 is maintained. Within 30 days after the close of the period for
36 which the review is made, the report of the accountant shall be
37 forwarded as provided in paragraph (6) of subdivision (j). If the
38 broker is required to file an annual report pursuant to subdivision
39 (o) or pursuant to Section 10232.2, the quarterly report pursuant
40 to this subdivision need not be filed for the last quarter of the year

1 for which the annual report is made. For the purposes of this
2 subdivision, an affiliate of a broker is any person controlled by,
3 controlling, or under common control with the broker.

4 (4) Unless the servicing agent will receive notice pursuant to
5 Section 2924b of the Civil Code, the servicing agent shall file a
6 request for notice of default upon any prior encumbrances and
7 promptly notify the purchasers or lenders of any default on the
8 prior encumbrances or on the note or notes subject to the servicing
9 agreement.

10 (5) The servicing agent shall promptly forward copies of the
11 following to each purchaser or lender:

12 (A) Any notice of trustee sale filed on behalf of the purchasers
13 or lenders.

14 (B) Any request for reconveyance of the deed of trust received
15 on behalf of the purchasers or lenders.

16 (I) The broker shall disclose in writing to each purchaser or
17 lender the material facts concerning the transaction on a disclosure
18 form adopted or approved by the commissioner pursuant to Section
19 10232.5, subject to the following:

20 (1) The disclosure form shall include a description of the terms
21 upon which the note and deed of trust are being sold, including
22 the terms of the undivided interests being offered therein, including
23 the following:

24 (A) In the case of the sale of an existing note:

25 (i) The aggregate sale price of the note.

26 (ii) The percent of the premium over or discount from the
27 principal balance plus accrued but unpaid interest.

28 (iii) The effective rate of return to the purchasers if the note is
29 paid according to its terms.

30 (iv) The name and address of the escrowholder for the
31 transaction.

32 (v) A description of, and the estimated amount of, each cost
33 payable by the seller in connection with the sale and a description
34 of, and the estimated amount of, each cost payable by the
35 purchasers in connection with the sale.

36 (B) In the case of the origination of a note:

37 (i) The name and address of the escrowholder for the transaction.

38 (ii) The anticipated closing date.

39 (iii) A description of, and the estimated amount of, each cost
40 payable by the borrower in connection with the loan and a

1 description of, and the estimated amount of, each cost payable by
2 the lenders in connection with the loan.

3 (C) In the case of a transaction involving a note or interest
4 secured by more than one parcel of real property, in addition to
5 the requirements of subparagraphs (A) and (B):

6 (i) The address, description, and estimated fair market value of
7 each property securing the loan.

8 (ii) The amount of the available equity in each property securing
9 the loan after the loan amount to be apportioned to each property
10 is assigned.

11 (iii) The loan to value percentage for each property after the
12 loan amount to be apportioned to each property is assigned pursuant
13 to subdivision (h).

14 (2) A copy of the written statement or information contained
15 therein, as required by paragraph (2) of subdivision (h), shall be
16 included in the disclosure form.

17 (3) Any interest of the broker or affiliate in the transaction, as
18 described in subdivision (e), shall be included with the disclosure
19 form.

20 (4) When the particular circumstances of a transaction make
21 information not specified in the disclosure form material or
22 essential to keep the information provided in the form from being
23 misleading, and the other information is known to the broker, the
24 other information shall also be provided by the broker.

25 (5) If more than one parcel of real property secures the notes or
26 interests, the disclosure form shall also fully disclose any risks to
27 investors associated with securing the notes or interests with
28 multiple parcels of real property.

29 (m) The broker or servicing agent shall furnish any purchaser
30 of a note or interest, upon request, with the names and addresses
31 of the purchasers of the other notes or interests in the loan.

32 (n) No agreement in connection with a transaction covered by
33 this article shall grant to the real estate broker, the servicing agent,
34 or any affiliate of the broker or agent the option or election to
35 acquire the interests of the purchasers or lenders or to acquire the
36 real property securing the interests. This subdivision shall not
37 prohibit the broker or affiliate from acquiring the interests, with
38 the consent of the purchasers or lenders whose interests are being
39 purchased, or the property, with the consent of the purchasers or
40 lenders, if the consent is given at the time of the acquisition.

1 (o) Each broker who conducts transactions under this article,
2 or broker or person who becomes the servicing agent for notes or
3 interest sold pursuant to this article, who meets the criteria of
4 paragraph (3) of subdivision (k) shall file with the commissioner
5 an annual report of a review of its trust account. The report shall
6 be prepared and filed in accordance with subdivision (a) of Section
7 10232.2 and the rules and procedures thereunder of the
8 commissioner. That report shall cover the broker's transactions
9 under this article and, if the broker also meets the threshold criteria
10 set forth in Section 10232, the broker's transactions subject to that
11 section shall be included as well.

12 (p) Each broker conducting transactions pursuant to this article,
13 or broker or person who becomes the servicing agent for notes or
14 interest sold pursuant to this article, who meets the criteria of
15 paragraph (3) of subdivision (k) shall file with the commissioner
16 a report of the transactions that is prepared in accordance with
17 subdivision (c) of Section 10232.2. If the broker also meets the
18 threshold criteria of Section 10232, the report shall include the
19 transactions subject to that section as well. This report shall be
20 confidential pursuant to subdivision (f) of Section 10232.2.

21 SEC. 10. Article 6.5 (commencing with Section 10239) of
22 Chapter 3 of Part 1 of Division 4 of the Business and Professions
23 Code, as added by Chapter 791 of the Statutes of 1963, is repealed.

24 SEC. 11. Section 10239.4 of the Business and Professions
25 Code, as added by Section 2 of Chapter 901 of the Statutes of
26 2003, is repealed.

27 ~~10239.4. This article applies only to the exemption from~~
28 ~~securities qualification claimed under Section 25102.5 of the~~
29 ~~Corporations Code. This article does not apply to any other~~
30 ~~exemption from securities qualification, including subdivision (e)~~
31 ~~of Section 25102 of the Corporations Code, which may be claimed~~
32 ~~without complying with this article, or to any permit to qualify the~~
33 ~~offer and sale of securities under the Corporate Securities Law of~~
34 ~~1968. A real estate broker, when engaging in acts for which a~~
35 ~~license is required, who arranges a transaction pursuant to this~~
36 ~~article or pursuant to an offering subject to the Corporations Code,~~
37 ~~shall clearly indicate in the broker's transaction file the provision~~
38 ~~of the Corporate Securities Law of 1968 pertaining to qualification~~
39 ~~or exemption from qualification under which the transaction is~~

1 ~~being conducted, and shall retain this information for the period~~
2 ~~specified in subdivision (a) of Section 10148.~~

3 SEC. 12. Section 1810.6 is added to the Vehicle Code, to read:

4 1810.6. The Real Estate Commissioner, and his or her
5 designated Department of Real Estate staff representatives, shall
6 be entitled to the access described in Section 1810.5, and may
7 obtain all of the following directly from the Department of Motor
8 Vehicles, for the purposes of enforcing Chapter 1 (commencing
9 with Section 11000) of Part 2 of Division 4 of the Business and
10 Professions Code:

11 (a) Copies of fullface engraved pictures or photographs of
12 licensees and specified persons believed to be unlawfully acting
13 without a license.

14 (b) Addresses of licensees and specified persons believed to be
15 unlawfully acting without a license.

16 (c) Addresses of registered vehicles.

17 SEC. 13. The Legislature finds and declares that Section 4 of
18 this act imposes a limitation on the public's right of access to the
19 meetings of public bodies or the writings of public officials and
20 agencies within the meaning of Section 3 of Article I of the
21 California Constitution. Pursuant to that constitutional provision,
22 the Legislature makes the following findings to demonstrate the
23 interest protected by this limitation and the need for protecting
24 that interest:

25 In order to allow the Department of Real Estate to fully
26 accomplish its goals, it is imperative to protect the interests of
27 those persons submitting information to the department to ensure
28 that any personal or sensitive business information that this act
29 requires those persons to submit is protected as confidential
30 information.

31 SEC. 14. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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