

AMENDED IN SENATE FEBRUARY 7, 2011

SENATE BILL

No. 53

Introduced by ~~Senator Calderon~~ *Senators Calderon and Vargas*

December 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~~ *1808.51* to the Vehicle Code, relating to real estate licensees.

LEGISLATIVE COUNSEL'S DIGEST

SB 53, as amended, 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~~ *the license of the licensee* 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~~ or the *Subdivided Lands Law*.

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

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

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

23 10080.9. (a) If, upon inspection, examination, or investigation,
24 based upon a complaint or otherwise, the commissioner has cause
25 to believe that a person who does not possess a real estate license
26 is engaged or has engaged in activities for which a real estate
27 license is required, or that a licensee is violating or has violated
28 any provision of this division or any rule or order thereunder, the
29 commissioner or his or her designated representative may issue a
30 citation to that person in writing, describing with particularity the
31 basis of the citation. Each citation may contain an order to correct
32 the violation or violations identified and a reasonable time period
33 or periods by which the violation or violations must be corrected;
34 an order to desist and refrain from engaging in a specific business
35 activity; or an order to suspend all business operations. In addition,
36 each citation may assess an administrative fine not to exceed two
37 thousand five hundred dollars (\$2,500), which shall be deposited
38 into the Recovery Account of the Real Estate Fund and shall, upon

1 appropriation by the Legislature, be available for expenditure for
2 the purposes specified in Chapter 6.5 (commencing with Section
3 10470). In assessing a fine, the commissioner shall give due
4 consideration to the appropriateness of the amount of the fine with
5 respect to factors such as the gravity of the violation, the good
6 faith of the licensee, and the history of previous violations.

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

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

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

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

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

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

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

3 10141.6. (a) A real estate broker who engages in escrow
4 activities for five or more transactions in a calendar year pursuant
5 to the exemption from the Escrow Law contained in Section 17006
6 of the Financial Code, or whose escrow activities pursuant to that
7 exemption equal or exceed one million dollars (\$1,000,000) in a
8 calendar year, shall file with the department a report, within 60
9 days following the completion of the calendar year, documenting
10 the number of escrows conducted and the dollar volume escrowed
11 during the calendar year in which the threshold was met. This
12 report shall be made on a form acceptable to the commissioner.

13 (b) A real estate broker subject to this section and Section
14 10232.2 may file consolidated reports that include all of the
15 information required under this section and Section 10232.2. Those
16 consolidated reports shall clearly indicate that they are intended
17 to satisfy the requirements of both sections.

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

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

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

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

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

1 10176. The commissioner may, upon his or her own motion,
2 and shall, upon the verified complaint in writing of any person,
3 investigate the actions of any person engaged in the business or
4 acting in the capacity of a real estate licensee within this state, and
5 he or she may temporarily suspend or permanently revoke a real
6 estate license at any time where the licensee, while a real estate
7 licensee, in performing or attempting to perform any of the acts
8 within the scope of this chapter has been guilty of any of the
9 following:

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

1 to purchase reveals in writing to the employer the full amount of
2 licensee's profit and obtains the written consent of the employer
3 approving the amount of the profit.

4 (i) Any other conduct, whether of the same or a different
5 character than specified in this section, which constitutes fraud or
6 dishonest dealing.

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

16 (k) Failing to disburse funds in accordance with a commitment
17 to make a mortgage loan that is accepted by the applicant when
18 the real estate broker represents to the applicant that the broker is
19 either of the following:

20 (1) The lender.

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

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

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

29 (1) Manipulate the lienholder to reject the proposed debt
30 forgiveness sale.

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

34 (n) Violating any section, division, or article of law which
35 provides that a violation of that section, division, or article of law
36 by a licensed person is a violation of that person's licensing law,
37 if it occurs within the scope of that person's duties as a licensee.

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

1 10236.7. (a) A real estate broker, when engaging in acts for
2 which a license is required, who arranges a transaction pursuant
3 to Article 6 (commencing with Section 10237) or one or more
4 provisions of the Corporate Securities Law of 1968 (Division 1
5 (commencing with Section 25000) of Title 4 of the Corporations
6 Code), shall clearly indicate in the real estate broker's transaction
7 file the provision or provisions of this code or the Corporate
8 Securities Law of 1968 pertaining to qualification or exemption
9 from qualification under which the transaction is being conducted.
10 The real estate broker shall retain this information for the period
11 specified in subdivision (a) of Section 10148.

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

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

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

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

24 10237. This article applies only to the exemption from
25 securities qualification claimed under Section 25102.5 of the
26 Corporations Code. This article does not apply to any other
27 exemption from securities qualification, including subdivision (e)
28 of Section 25102 of the Corporations Code, that may be claimed
29 without complying with this article, or to any permit to qualify the
30 offer and sale of securities under the Corporate Securities Law of
31 1968 (Division 1 (commencing with Section 25000) of Title 4 of
32 the Corporations Code). Any transaction that involves the sale of
33 or offer to sell a series of notes secured directly by interests in one
34 or more parcels of real property, or the sale of undivided interests
35 in a note secured directly by one or more parcels of real property
36 equivalent to a series transaction, shall comply with all of the
37 provisions of this article.

38 SEC. 8. Article 6 (commencing with Section 10237) of Chapter
39 3 of Part 1 of Division 4 of the Business and Professions Code, as
40 added by Chapter 886 of the Statutes of 1961, is repealed.

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

3 10238. (a) A notice in the following form and containing the
4 following information shall be filed with the commissioner within
5 30 days after the first transaction and within 30 days of any material
6 change in the information required in the notice:
7

8 TO: Real Estate Commissioner
9 Mortgage Loan Section
10 2201 Broadway
11 Sacramento, CA 95818

12 This notice is filed pursuant to Section 10237 of the Business and Professions
13 Code.

14 () Original Notice () Amended Notice

- 15 1. Name of Broker conducting transaction under Section 10237:
16 _____
- 17 2. Broker license identification number: _____
18
- 19 3. List the month the fiscal year ends: _____
20
- 21 4. Broker’s telephone number: _____
22
- 23 5. Firm name (if different from “1”):
24 _____
25
- 26 6. Street address (main location):
27 _____
28 # and Street City State ZIP Code
29
- 30 7. Mailing address (if different from “6”):
31 _____
- 32 8. Servicing agent: Identify by name, address, and telephone number the
33 person or entity who will act as the servicing agent in transactions pursuant
34 to Section 10237 (including the undersigned Broker if that is the case):
35 _____
36 _____
37
- 38 9. Total number of multilender notes arranged: _____
39
- 40 10. Total number of interests sold to investors on the

1 multilender's notes: _____

2

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

5 CHECK ONLY ONE OF THE FOLLOWING:

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

9 Amount of Multilender Payments Collected Last Fiscal Quarter: _____

10

11 Total Number of Investors Due Payments Last Fiscal Quarter: _____

12

13 () The undersigned Broker is NOT (or does NOT expect to be) required to
14 file reports of inspection of its trust account(s) with the Real Estate
15 Commissioner pursuant to paragraph (3) of subdivision (k) of Section
16 10238.

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

18

19 _____
Date Type Name of Broker

20

21 _____
Signature of Broker or of Designated Officer of
22 Corporate Broker

23

24 _____
Type Name of Person(s) Signing This Notice

25

26 NOTE: AN AMENDED NOTICE MUST BE FILED BY THE
27 BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE
28 IN THE INFORMATION REQUIRED TO BE SET FORTH
29 HEREIN.

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

37 (c) All advertising employed for transactions under this article
38 shall show the name of the broker and comply with Section 10235
39 and Sections 260.302 and 2848 of Title 10 of the California Code
40 of Regulations. Brokers and their agents are cautioned that a

1 reference to a prospective investor that a transaction is conducted
2 under this article may be deemed misleading or deceptive if this
3 representation may reasonably be construed by the investor as an
4 implication of merit or approval of the transaction.

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

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

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

33 (e) The notes or interests shall be sold by or through a real estate
34 broker, as principal or agent. At the time the interests are originally
35 sold or assigned, neither the broker nor an affiliate of the broker
36 shall have an interest as owner, lessor, or developer of the property
37 securing the loan, or any contractual right to acquire, lease, or
38 develop the property securing the loan. This provision does not
39 prohibit a broker from conducting the following transactions if, in
40 either case, the disclosure statement furnished by the broker

1 pursuant to subdivision (l) discloses the interest of the broker or
2 affiliate in the transaction and the circumstances under which the
3 broker or affiliate acquired the interest:

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

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

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

18
19 Transaction Identifier: _____
20 Name of Purchaser: _____ Date: _____

- 21 Check either one of the following, if true:
- 22 () My investment in the transaction does not exceed 10% of my net worth,
23 exclusive of home, furnishings, and automobiles.
 - 24
25 () My investment in the transaction does not exceed 10% of my adjusted
26 gross income for federal income tax purposes for my last tax year or, in
27 the alternative, as estimated for the current year.

28 _____
29 Signature
30

31 (2) The number of offerees shall not be considered for the
32 purposes of this section.

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

35 (4) A retirement plan, trust, business trust, corporation, or other
36 entity that is wholly owned by an individual and the individual's
37 spouse or the individual's dependents, or any combination thereof,
38 shall not be counted separately from the individual, but the
39 investments of these entities shall be aggregated with those of the
40 individual for the purposes of the statement required by paragraph

1 (1). If the investments of any entities are required to be aggregated
2 under this subdivision, the adjusted gross income or net worth of
3 these entities may also be aggregated with the net worth, income,
4 or both, of the individual.

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

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

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

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

- 36
- 37 (A) Single-family residence, owner occupied 80%
- 38 (B) Single-family residence, not owner occupied 75%
- 39 (C) Commercial and income-producing properties 65%
- 40 (D) Single-family residentially zoned lot or parcel which has

- 1 installed offsite improvements including drainage, curbs,
- 2 gutters, sidewalks, paved roads, and utilities as mandated
- 3 by the political subdivision having jurisdiction over the lot
- 4 or parcel 65%
- 5 (E) Land that has been zoned for (and if required, approved for
- 6 subdivision as) commercial or residential development 50%
- 7 (F) Other real property 35%

8

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

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

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

12 reasonable and prudent considering all relevant factors pertaining

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

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

15 unpaid principal amount of any encumbrances upon the property

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

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

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

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

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

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

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

23 forth the material considerations and facts that the broker relies

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

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

26 statement or the information contained therein shall be included

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

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

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

30 delivered to each purchaser. The broker shall advise purchasers

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

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

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

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

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

36 of special training, preparation, or experience.

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

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

39 project if the following safeguards are met:

1 (A) An independent neutral third-party escrow holder is used
2 for all deposits and disbursements.

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

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

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

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

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

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

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

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

1 designation of the broker, servicing agent, or other person acting
2 on their behalf, and the sale, encumbrance, or lease of real property
3 owned by the holders resulting from foreclosure or receipt of a
4 deed in lieu of foreclosure. The terms called for by this subdivision
5 may be included in the deed of trust, in the assignment of interests,
6 or in any other documentation as is necessary or appropriate to
7 make them binding on the parties.

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

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

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

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

39 (5) For the purposes of this subdivision, the transaction that
40 constitutes a “sale” is the series of transactions by which a series

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

18 (6) Within 30 days of the close of the period for which the report
19 is made, or within any additional time as the commissioner may
20 in writing allow in a particular case, the accountant shall forward
21 to the broker or servicing agent, as the case may be, and to the
22 commissioner, the report of the accountant, stating that the
23 inspection was performed in accordance with this section, listing
24 the sales and the payments examined, specifying the nature of the
25 deficiencies, if any, noted by the accountant with respect to each
26 sale or payment, together with any further information as the
27 accountant may wish to include, such as corrective steps taken
28 with respect to any deficiency so noted, or stating that no
29 deficiencies were observed. If the broker meets the threshold
30 criteria of Section 10232, the report of the accountant shall be
31 submitted as part of the quarterly reports required under Section
32 10232.25.

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

1 offer to the lenders or purchasers the services of the broker or one
2 or more affiliates of the broker, or both, as servicing agent for each
3 transaction conducted pursuant to this article. The agreement shall
4 require all of the following:

5 (1) (A) That payments received on the note or notes be
6 deposited immediately to a trust account maintained in accordance
7 with this section and with the provisions for trust accounts of
8 licensed real estate brokers contained in Section 10145 and Article
9 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of
10 the California Code of Regulations.

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

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

29 (3) If the broker or person who is or becomes the servicing agent
30 for notes or interests sold pursuant to this article upon which the
31 payments due during any period of three consecutive months in
32 the aggregate exceed one hundred twenty-five thousand dollars
33 (\$125,000) or the number of persons entitled to the payments
34 exceeds 120, the trust account or accounts of that broker or affiliate
35 shall be inspected by an independent certified public accountant
36 at no less than three-month intervals during the time the volume
37 is maintained. Within 30 days after the close of the period for
38 which the review is made, the report of the accountant shall be
39 forwarded as provided in paragraph (6) of subdivision (j). If the
40 broker is required to file an annual report pursuant to subdivision

1 (o) or pursuant to Section 10232.2, the quarterly report pursuant
2 to this subdivision need not be filed for the last quarter of the year
3 for which the annual report is made. For the purposes of this
4 subdivision, an affiliate of a broker is any person controlled by,
5 controlling, or under common control with the broker.

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

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

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

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

18 (l) The broker shall disclose in writing to each purchaser or
19 lender the material facts concerning the transaction on a disclosure
20 form adopted or approved by the commissioner pursuant to Section
21 10232.5, subject to the following:

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

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

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

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

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

32 (iv) The name and address of the escrow holder for the
33 transaction.

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

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

39 (i) The name and address of the escrow holder for the
40 transaction.

- 1 (ii) The anticipated closing date.
- 2 (iii) A description of, and the estimated amount of, each cost
3 payable by the borrower in connection with the loan and a
4 description of, and the estimated amount of, each cost payable by
5 the lenders in connection with the loan.
- 6 (C) In the case of a transaction involving a note or interest
7 secured by more than one parcel of real property, in addition to
8 the requirements of subparagraphs (A) and (B):
- 9 (i) The address, description, and estimated fair market value of
10 each property securing the loan.
- 11 (ii) The amount of the available equity in each property securing
12 the loan after the loan amount to be apportioned to each property
13 is assigned.
- 14 (iii) The loan to value percentage for each property after the
15 loan amount to be apportioned to each property is assigned pursuant
16 to subdivision (h).
- 17 (2) A copy of the written statement or information contained
18 therein, as required by paragraph (2) of subdivision (h), shall be
19 included in the disclosure form.
- 20 (3) Any interest of the broker or affiliate in the transaction, as
21 described in subdivision (e), shall be included with the disclosure
22 form.
- 23 (4) When the particular circumstances of a transaction make
24 information not specified in the disclosure form material or
25 essential to keep the information provided in the form from being
26 misleading, and the other information is known to the broker, the
27 other information shall also be provided by the broker.
- 28 (5) If more than one parcel of real property secures the notes or
29 interests, the disclosure form shall also fully disclose any risks to
30 investors associated with securing the notes or interests with
31 multiple parcels of real property.
- 32 (m) The broker or servicing agent shall furnish any purchaser
33 of a note or interest, upon request, with the names and addresses
34 of the purchasers of the other notes or interests in the loan.
- 35 (n) No agreement in connection with a transaction covered by
36 this article shall grant to the real estate broker, the servicing agent,
37 or any affiliate of the broker or agent the option or election to
38 acquire the interests of the purchasers or lenders or to acquire the
39 real property securing the interests. This subdivision shall not
40 prohibit the broker or affiliate from acquiring the interests, with

1 the consent of the purchasers or lenders whose interests are being
2 purchased, or the property, with the consent of the purchasers or
3 lenders, if the consent is given at the time of the acquisition.

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

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

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

27 SEC. 11. Section 10239.4 of the Business and Professions
28 Code, as added by Section 2 of Chapter 901 of the Statutes of
29 2003, is repealed.

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

31 ~~1810.6. The Real Estate Commissioner, and his or her~~
32 ~~designated Department of Real Estate staff representatives, shall~~
33 ~~be entitled to the access described in Section 1810.5, and may~~
34 ~~obtain all of the following directly from the Department of Motor~~
35 ~~Vehicles, for the purposes of enforcing Chapter 1 (commencing~~
36 ~~with Section 11000) of Part 2 of Division 4 of the Business and~~
37 ~~Professions Code:~~

38 ~~(a) Copies of fullface engraved pictures or photographs of~~
39 ~~licensees and specified persons believed to be unlawfully acting~~
40 ~~without a license.~~

1 ~~(b) Addresses of licensees and specified persons believed to be~~
2 ~~unlawfully acting without a license.~~

3 ~~(c) Addresses of registered vehicles.~~

4 SEC. 12. Section 1808.51 is added to the Vehicle Code, to
5 read:

6 1808.51. Notwithstanding Section 1808.5, the Department of
7 Real Estate, as a department, individually, or through its staff,
8 may obtain copies of fullface engraved pictures or photographs
9 of individuals directly from the Department of Motor Vehicles, for
10 the purposes of enforcing the Real Estate Law (Part 1 (commencing
11 with Section 10000) of Division 4 of the Business and Professions
12 Code) or the Subdivided Lands Law (Chapter 1 (commencing with
13 Section 11000) of Part 2 of Division 4 of the Business and
14 Professions Code).

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

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

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

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