

Senate Bill No. 53

CHAPTER 717

An act to amend Sections 10079, 10176, 10237, and 10238 of, to amend, repeal, and add Sections 10156.2 and 10177 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 1808.51 to the Vehicle Code, relating to real estate licensees.

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 53, 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 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 or 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, to be made available upon appropriation by the Legislature. The bill would make additional changes with regard to the commissioner's authority pertaining to discipline and, on and after July 1, 2012, licensure renewal.

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. 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, on and after July 1, 2012, 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 the 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 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 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 or the Subdivided Lands Law.

(6) This bill would incorporate additional changes in Section 10176 of the Business and Professions Code, proposed by SB 6, to be operative only if SB 6 and this bill are both chaptered and become effective on or before January 1, 2012, and this bill is chaptered last.

(7) 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.

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

SECTION 1. Section 10079 of the Business and Professions Code is amended to read:

10079. (a) The Attorney General shall render to the commissioner opinions upon all questions of law relating to the construction or interpretation of this part or Chapter 1 of Part 2 or arising in the administration thereof that may be submitted to him or her by the commissioner. Except as provided in subdivision (b), the Attorney General shall act as the attorney for the commissioner in all actions and proceedings brought by or against him or her under or pursuant to any of the provisions of this part or of Chapter 1 of Part 2.

(b) In the case of refusal by a licensee to obey a subpoena issued to that licensee, the commissioner may, by a noticed motion, apply to the superior court for, and the superior court may issue to the licensee, an order requiring the licensee to appear before the commissioner, or the representative designated by the commissioner, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure of the licensee to obey the order of the court may be punished by the court as a contempt.

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

10080.9. (a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a person who does not possess a real estate license is engaged or has engaged in activities for which a real estate license is required, or that a licensee is violating or has violated any provision of this division or any rule or order thereunder, the commissioner or his or her designated representative may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars (\$2,500), which shall be

deposited into the Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470). In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the person cited, and the history of previous violations. A citation issued and a fine assessed pursuant to this section, while constituting discipline for a violation of the law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation against and payment of any fine by a licensee shall not be reported as disciplinary action taken by the commissioner.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business activity or activities or an order to suspend all business operations to a person who is engaged in or has engaged in continued or repeated violations of this part. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal penalties.

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

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

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

(f) Failure of any person to comply with the terms of a citation or pay a fine assessed pursuant to this section, within a reasonable period specified by the commissioner, shall subject that person to disciplinary action by the commissioner. In no event may a license be renewed if an unpaid fine remains outstanding or the terms of a citation have not been complied with.

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

10088. After the filing of a desist and refrain order or a bar order, or the commencement of a formal disciplinary action by the commissioner, and upon a finding by the commissioner that action is warranted for the protection of the public, and that failure to act is likely to result in grievous harm to the public, the commissioner may make information public confirming the fact of an investigation or proceeding regarding a licensee or unlicensed person believed to be engaging in activities for which a real

estate license is required. Any release that contains the identity of a person or business under investigation shall include language explaining that the subject of the release is entitled to a public hearing on the merits of the desist and refrain order, bar order, or accusation or accusations against that person or business. The release may also clarify the procedural aspects and current status of the investigation or proceeding.

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

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

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

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

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

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

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

(g) This section shall become operative on July 1, 2012.

SEC. 5. Section 10156.2 of the Business and Professions Code is amended to read:

10156.2. An application on the form prescribed by the commissioner for the renewal of a license, filed before midnight of the last day of the period for which a previous license was issued, accompanied by the applicable renewal fee and good faith evidence of compliance with the provisions of Article 2.5 (commencing with Section 10170), entitles the

applicant to continue operating under his or her existing license after its specified expiration date, if not previously suspended or revoked.

If the commissioner determines that the applicant has not complied with the continuing education requirements, he or she shall either (1) advise the applicant of the applicability of Section 10171.2 on an extended period for compliance; or (2) advise the applicant that his or her rights to operate under the prior license will expire five days from the date the notice is mailed, or on the date the license would normally expire, whichever is later; and the commissioner's reason for that determination, and the right of the applicant to request a hearing on the decision.

This section shall become inoperative on July 1, 2012, and, as of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 10156.2 is added to the Business and Professions Code, to read:

10156.2. An application on the form prescribed by the commissioner for the renewal of a license, filed before midnight of the last day of the period for which a previous license was issued, accompanied by the applicable renewal fee and good faith evidence of compliance with the provisions of Article 2.5 (commencing with Section 10170), entitles the applicant to continue operating under his or her existing license after its specified expiration date, if not previously suspended or revoked.

If the commissioner determines that the applicant has not complied with the continuing education requirements, he or she shall either (1) advise the applicant of the applicability of Section 10171.2 on an extended period for compliance; or (2) advise the applicant that his or her rights to operate under the prior license will expire five days from the date the notice is mailed, or on the date the license would normally expire, whichever is later; and the commissioner's reason for that determination, and the right of the applicant to request a hearing on the decision. Nothing in this section shall prevent the commissioner from delaying the renewal of the license of a licensee pursuant to Section 10177.

This section shall become operative on July 1, 2012.

SEC. 7. Section 10176 of the Business and Professions Code is amended to read:

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

- (a) Making any substantial misrepresentation.
- (b) Making any false promises of a character likely to influence, persuade, or induce.

(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

(d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

(f) Claiming, demanding, or receiving a fee, compensation, or commission under any exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination.

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission, or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.

(h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing the licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when the licensee prior to or coincident with election to exercise the option to purchase reveals in writing to the employer the full amount of licensee's profit and obtains the written consent of the employer approving the amount of the profit.

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

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

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

(1) The lender.

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

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

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

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

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

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

SEC. 7.5. Section 10176 of the Business and Professions Code is amended to read:

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

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade, or induce.

(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

(d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

(f) Claiming, demanding, or receiving a fee, compensation, or commission under any exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination.

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission, or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.

(h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing the licensee to sell,

buy, or exchange real estate or a business opportunity for compensation or commission, except when the licensee prior to or coincident with election to exercise the option to purchase reveals in writing to the employer the full amount of the licensee's profit and obtains the written consent of the employer approving the amount of the profit.

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

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

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

(1) The lender.

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

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

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

SEC. 8. Section 10177 of the Business and Professions Code is amended to read:

10177. The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or

her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning his or her designation or certification of special education, credential, trade organization membership, or business, or concerning a business opportunity or a land or subdivision, as defined in Chapter 1 (commencing with Section 11000) of Part 2, offered for sale.

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term “realtor” or a trade name or insignia of membership in a real estate organization of which the licensee is not a member.

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or has either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Has used his or her employment by a governmental agency in a capacity giving access to records, other than public records, in a manner that violates the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license.

(l) (1) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the ground, wholly or in part, of loss of value,

increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons having a characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those characteristics are defined in Sections 12926 and 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Corporations pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Article 6 (commencing with Section 10237).

(q) Violated or failed to comply with Chapter 2 (commencing with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code, related to mortgages.

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation.

This section shall become inoperative on July 1, 2012, and, as of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 10177 is added to the Business and Professions Code, to read:

10177. The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

(a) Procured, or attempted to procure, a real estate license or license renewal, for himself or herself or a salesperson, by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, license renewal, or reinstatement.

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning his or her designation or certification of special education, credential, trade organization membership, or business, or concerning a business opportunity or a land or subdivision, as defined in Chapter 1 (commencing with Section 11000) of Part 2, offered for sale.

(d) Willfully disregarded or violated the Real Estate Law (Part 1 (commencing with Section 10000)) or Chapter 1 (commencing with Section 11000) of Part 2 or the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(e) Willfully used the term "realtor" or a trade name or insignia of membership in a real estate organization of which the licensee is not a member.

(f) Acted or conducted himself or herself in a manner that would have warranted the denial of his or her application for a real estate license, or either had a license denied or had a license issued by another agency of this state, another state, or the federal government revoked or suspended for acts that, if done by a real estate licensee, would be grounds for the suspension or revocation of a California real estate license, if the action of denial, revocation, or suspension by the other agency or entity was taken only after giving the licensee or applicant fair notice of the charges, an opportunity for a hearing, and other due process protections comparable to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the

Government Code), and only upon an express finding of a violation of law by the agency or entity.

(g) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

(h) As a broker licensee, failed to exercise reasonable supervision over the activities of his or her salespersons, or, as the officer designated by a corporate broker licensee, failed to exercise reasonable supervision and control of the activities of the corporation for which a real estate license is required.

(i) Used his or her employment by a governmental agency in a capacity giving access to records, other than public records, in a manner that violates the confidential nature of the records.

(j) Engaged in any other conduct, whether of the same or a different character than specified in this section, that constitutes fraud or dishonest dealing.

(k) Violated any of the terms, conditions, restrictions, and limitations contained in an order granting a restricted license.

(l) (1) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons having a characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those characteristics are defined in Sections 12926 and 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

(m) Violated the Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) or regulations of the Commissioner of Corporations pertaining thereto.

(n) Violated the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or the regulations of the Commissioner of Corporations pertaining thereto.

(o) Failed to disclose to the buyer of real property, in a transaction in which the licensee is an agent for the buyer, the nature and extent of a licensee's direct or indirect ownership interest in that real property. The direct or indirect ownership interest in the property by a person related to the licensee by blood or marriage, by an entity in which the licensee has an ownership interest, or by any other person with whom the licensee has a special relationship shall be disclosed to the buyer.

(p) Violated Article 6 (commencing with Section 10237).

(q) Violated or failed to comply with Chapter 2 (commencing with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code, related to mortgages.

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance or delay the renewal of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation. A decision by the commissioner to delay the renewal of a real estate license shall toll the expiration of that license until the results of any pending disciplinary actions against that licensee are final, or until the licensee voluntarily surrenders his, her, or its license, whichever is earlier.

This section shall become operative on July 1, 2012.

SEC. 10. Section 10236.7 is added to the Business and Professions Code, to read:

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

(b) The real estate broker shall submit a copy of the information described in subdivision (a) to any investor from whom the real estate broker obtains funds in connection with the transaction, either directly or through an agent or affiliate, within 10 days of receipt of those funds.

SEC. 11. Section 10237 of the Business and Professions Code, as added by Section 2 of Chapter 901 of the Statutes of 2003, is amended to read:

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

SEC. 12. Article 6 (commencing with Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, as added by Chapter 886 of the Statutes of 1961, is repealed.

SEC. 13. Section 10238 of the Business and Professions Code is amended to read:

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

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Sections 10237 and 10238 of the Business and Professions Code.

() Original Notice () Amended Notice

1. Name of Broker conducting transaction under Section 10237:

2. Broker license identification number: _____
3. List the month the fiscal year ends: _____
4. Broker’s telephone number: _____
5. Firm name (if different from “1”):

6. Street address (main location):

# and Street	City	State	ZIP Code
7. Mailing address (if different from “6”):

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

9. Total number of multilender notes arranged: _____
10. Total number of interests sold to investors on the multilender’s notes: _____

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

CHECK ONLY ONE OF THE FOLLOWING:

() The undersigned Broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (k) of Section 10238.
Amount of Multilender Payments Collected Last Fiscal Quarter: _____

Total Number of Investors Due Payments Last Fiscal Quarter: _____

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

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

Date	Type Name of Broker
	Signature of Broker or of Designated Officer of Corporate Broker
	Type Name of Person(s) Signing This Notice

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

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

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

(d) Each parcel of real property directly securing the notes or interests shall be located in this state, the note or notes shall not by their terms be subject to subordination to any subsequently created deed of trust upon the real property, and the note or notes shall not be promotional notes secured by liens on separate parcels of real property in one subdivision or in

contiguous subdivisions. For purposes of this subdivision, a promotional note means a promissory note secured by a trust deed, executed on unimproved real property or executed after construction of an improvement of the property but before the first purchase of the property as so improved, or executed as a means of financing the first purchase of the property as so improved, that is subordinate, or by its terms may become subordinate, to any other trust deed on the property. However, the term “promotional note” does not include either of the following:

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

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

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

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

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

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

Transaction Identifier: _____

Name of Purchaser: _____ Date: _____

Check either one of the following, if true:

- () My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.
- () My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year or, in the alternative, as estimated for the current year.

Signature

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

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

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

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

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

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

(h) (1) Except as provided in paragraph (2), the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, shall not exceed the following percentages of the current market value of each parcel of the real property, as determined in writing by the broker or appraiser pursuant to Section 10232.6, plus the amount for which the payment of principal and interest in excess of the percentage of current

market value is insured for the benefit of the holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:

- (A) Single-family residence, owner occupied 80%
- (B) Single-family residence, not owner occupied 75%
- (C) Commercial and income-producing properties 65%
- (D) Single-family residentially zoned lot or parcel which has installed offsite improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel 65%
- (E) Land that has been zoned for (and if required, approved for subdivision as) commercial or residential development 50%
- (F) Other real property 35%

(2) The percentage amounts specified in paragraph (1) may be exceeded when and to the extent that the broker determines that the encumbrance of the property in excess of these percentages is reasonable and prudent considering all relevant factors pertaining to the real property. However, in no event shall the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the property senior thereto, exceed 80 percent of the current fair market value of improved real property or 50 percent of the current fair market value of unimproved real property, except in the case of a single-family zoned lot or parcel as defined in paragraph (1), which shall not exceed 65 percent of the current fair market value of that lot or parcel, plus the amount insured as specified in paragraph (1). A written statement shall be prepared by the broker that sets forth the material considerations and facts that the broker relies upon for his or her determination, which shall be retained as a part of the broker’s record of the transaction. Either a copy of the statement or the information contained therein shall be included in the disclosures required pursuant to subdivision (l).

(3) A copy of the appraisal or the broker’s evaluation, for each parcel of real property securing the notes or interests, shall be delivered to each purchaser. The broker shall advise purchasers of their right to receive a copy. For purposes of this paragraph, “appraisal” means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless the person so employed is qualified on the basis of special training, preparation, or experience.

(4) For construction or rehabilitation loans, the term “current market value” may be deemed to be the value of the completed project if the following safeguards are met:

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

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

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

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

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

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

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

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

(i) The documentation of the transaction shall require that (1) a default upon any interest or note is a default upon all interests or notes and (2) the holders of more than 50 percent of the recorded beneficial interests of the notes or interests may govern the actions to be taken on behalf of all holders in accordance with Section 2941.9 of the Civil Code in the event of default or foreclosure for matters that require direction or approval of the holders, including designation of the broker, servicing agent, or other person acting on their behalf, and the sale, encumbrance, or lease of real property owned by the holders resulting from foreclosure or receipt of a deed in lieu of foreclosure. The terms called for by this subdivision may be included in the deed of trust, in the assignment of interests, or in any other documentation as is necessary or appropriate to make them binding on the parties.

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

(2) All funds received by the broker from the purchasers or lenders shall be handled in accordance with Section 10145 for disbursement to the persons

thereto entitled upon recordation of the interests of the purchasers or lenders in the note and deed of trust. No provision of this article shall be construed as modifying or superseding applicable law regulating the escrow holder in any transaction or the handling of the escrow account.

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

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

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

(6) Within 30 days of the close of the period for which the report is made, or within any additional time as the commissioner may in writing allow in a particular case, the accountant shall forward to the broker or servicing agent, as the case may be, and to the commissioner, the report of the accountant, stating that the inspection was performed in accordance with this section, listing the sales and the payments examined, specifying the nature of the deficiencies, if any, noted by the accountant with respect to each sale or payment, together with any further information as the accountant may wish to include, such as corrective steps taken with respect to any deficiency so noted, or stating that no deficiencies were observed. If the broker meets the threshold criteria of Section 10232, the report of the

accountant shall be submitted as part of the quarterly reports required under Section 10232.25.

(k) The notes or interests shall be sold subject to a written agreement that obligates a licensed real estate broker, or a person exempted from the licensing requirement for real estate brokers under this chapter, to act as agent for the purchasers or lenders to service the note or notes and deed of trust, including the receipt and transmission of payments and the institution of foreclosure proceedings in the event of a default. A copy of this servicing agreement shall be delivered to each purchaser. The broker shall offer to the lenders or purchasers the services of the broker or one or more affiliates of the broker, or both, as servicing agent for each transaction conducted pursuant to this article. The agreement shall require all of the following:

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

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

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

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

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

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

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

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

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

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

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

(i) The aggregate sale price of the note.

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

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

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

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

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

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

(ii) The anticipated closing date.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 14. Article 6.5 (commencing with Section 10239) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, as added by Chapter 791 of the Statutes of 1963, is repealed.

SEC. 15. Section 10239.4 of the Business and Professions Code, as added by Section 2 of Chapter 901 of the Statutes of 2003, is repealed.

SEC. 16. Section 1808.51 is added to the Vehicle Code, to read:

1808.51. Notwithstanding Section 1808.5, the Department of Real Estate, as a department, individually, or through its staff, may obtain copies of

fullface engraved pictures or photographs of individuals directly from the Department of Motor Vehicles, for the purposes of enforcing the Real Estate Law (Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code) or the Subdivided Lands Law (Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code).

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

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

SEC. 18. Section 7.5 of this bill incorporates amendments to Section 10176 of the Business and Professions Code proposed by both this bill and SB 6. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2012, (2) each bill amends Section 10176 of the Business and Professions Code, and (3) this bill is enacted after SB 6, in which case Section 7 of this bill shall not become operative.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.