

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN SENATE APRIL 7, 2011

**SENATE BILL**

**No. 376**

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**Introduced by Senator Fuller  
(Coauthor: Senator Correa)**

February 15, 2011

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An act to amend ~~Section 10131~~, Sections 10131, 10237, and 10238 of, and to add Section 10131.8 to, of the Business and Professions Code, and to amend Section 25102.5 of the Corporations Code, relating to real estate brokers.

LEGISLATIVE COUNSEL'S DIGEST

SB 376, as amended, Fuller. Real estate brokers.

**Existing**

(1) *Existing law* provides for the licensure and regulation of real estate brokers and defines "real estate broker" for its purposes to include a person who, among other things, ~~(1)~~ (A) solicits borrowers or lenders for, or negotiates loans, collects payment, or performs services for, borrowers, lenders, or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity, or ~~(2)~~ (B) sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or a business opportunity.

This bill would revise the definition of "real estate broker" to include, *in addition*, a person who performs those actions in connection with a chattel mobilehome loan, as specified. The bill would also provide that a licensed real estate broker who performs specified actions, and who makes, arranges, or services chattel ~~mobile home~~ *mobilehome* loans,

as specified, need only meet the licensure requirements of specified provisions of law.

*(2) Existing law, the Real Estate Law, the violation of which is a crime, provides that 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 so secured equivalent to a series transaction, shall comply with specified requirements, including, among other things, filing a notice regarding the transaction, on a specified form, with the Real Estate Commissioner, that each parcel of real property is located in this state, and that the notes, by their terms, are not subordinate to any subsequently created deed of trust. Under existing law, a transaction that satisfies those requirements is exempt from specified requirements regarding the qualification of securities prior to their sale.*

*This bill would also apply those requirements and exemptions to a transaction that involves the sale or offer to sell a series of notes pertaining to chattel loans secured directly by interests in one or more mobilehomes, or the sale of undivided interests so secured equivalent to a series transaction.*

*(3) Because this bill would expand the scope of a crime, the bill would create a state-mandated local program.*

*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: ~~no~~-yes.

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

- 1 SECTION 1. Section 10131 of the Business and Professions
- 2 Code is amended to read:
- 3 10131. A real estate broker within the meaning of this part is
- 4 a person who, for a compensation or in expectation of a
- 5 compensation, regardless of the form or time of payment, does or
- 6 negotiates to do one or more of the following acts for another or
- 7 others:

1 (a) Sells or offers to sell, buys or offers to buy, solicits  
2 prospective sellers or purchasers of, solicits or obtains listings of,  
3 or negotiates the purchase, sale or exchange of real property or a  
4 business opportunity.

5 (b) Leases or rents or offers to lease or rent, or places for rent,  
6 or solicits listings of places for rent, or solicits for prospective  
7 tenants, or negotiates the sale, purchase or exchanges of leases on  
8 real property, or on a business opportunity, or collects rents from  
9 real property, or improvements thereon, or from business  
10 opportunities.

11 (c) Assists or offers to assist in filing an application for the  
12 purchase or lease of, or in locating or entering upon, lands owned  
13 by the state or federal government.

14 (d) Solicits borrowers or lenders for or negotiates loans or  
15 collects payments or performs services for borrowers or lenders  
16 or note owners in connection with loans secured directly or  
17 collaterally by liens on real property, or chattel mobilehome loans  
18 if the mobilehome has been registered under Part 2 (commencing  
19 with Section 18000) of Division 13 of the Health and Safety Code,  
20 or on a business opportunity.

21 (e) Sells or offers to sell, buys or offers to buy, or exchanges or  
22 offers to exchange a real property sales contract, or a promissory  
23 note secured directly or collaterally by a lien on real property, or  
24 a chattel mobilehome loan secured by a mobilehome that has been  
25 registered under Part 2 (commencing with Section 18000) of  
26 Division 13 of the Health and Safety Code, or on a business  
27 opportunity, and performs services for the holders thereof.

28 SEC. 2. Section 10131.8 is added to the Business and  
29 Professions Code, to read:

30 10131.8. A person licensed as a real estate broker who acts  
31 pursuant to Section 10131.1, or subdivision (d) or (e) of Section  
32 10131, and who makes, arranges, or services chattel mobilehome  
33 loans, if the mobilehome has been registered under Part 2  
34 (commencing with Section 18000) of Division 13 of the Health  
35 and Safety Code, need only meet the requirements for licensure  
36 under this part.

37 SEC. 3. Section 10237 of the Business and Professions Code,  
38 as added by Section 2 of Chapter 901 of the Statutes of 2003, is  
39 amended to read:

1 10237. Any transaction that involves the sale of or offer to sell  
 2 a series of notes secured directly by interests in one or more parcels  
 3 of real property *or pertaining to chattel loans secured by one or*  
 4 *more mobilehomes*, or the sale of undivided interests in a note  
 5 secured directly by one or more parcels of real property *or in a*  
 6 *note pertaining to a chattel loan secured directly by one or more*  
 7 *mobilehomes*, equivalent to a series transaction, shall comply with  
 8 all of the provisions of this article.

9 *SEC. 4. Section 10238 of the Business and Professions Code*  
 10 *is amended to read:*

11 10238. (a) A notice in the following form and containing the  
 12 following information shall be filed with the commissioner within  
 13 30 days after the first transaction and within 30 days of any material  
 14 change in the information required in the notice:

15  
 16 TO: Real Estate Commissioner  
 17 Mortgage Loan Section  
 18 2201 Broadway  
 19 Sacramento, CA 95818

20 This notice is filed pursuant to Section 10237 of the Business and Professions  
 21 Code.

22 ( ) Original Notice ( ) Amended Notice

- 23 1. Name of Broker conducting transaction under Section 10237:  
 24 \_\_\_\_\_
- 25 2. Broker license identification number: \_\_\_\_\_
- 26
- 27 3. List the month the fiscal year ends: \_\_\_\_\_
- 28
- 29 4. Broker's telephone number: \_\_\_\_\_
- 30
- 31 5. Firm name (if different from "1"):  
 32 \_\_\_\_\_
- 33
- 34 6. Street address (main location):  
 35 \_\_\_\_\_  
 36 # and Street City State ZIP Code
- 37
- 38 7. Mailing address (if different from "6"):  
 39 \_\_\_\_\_

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

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6

7 9. Total number of multilender notes arranged: \_\_\_\_\_

8  
9 10. Total number of interests sold to investors on the  
10 multilender's notes: \_\_\_\_\_

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

14 CHECK ONLY ONE OF THE FOLLOWING:

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

18 Amount of Multilender Payments Collected Last Fiscal Quarter: \_\_\_\_\_

19 Total Number of Investors Due Payments Last Fiscal Quarter: \_\_\_\_\_

20 ( ) The undersigned Broker is NOT (or does NOT expect to be) required to  
21 file reports of inspection of its trust account(s) with the Real Estate  
22 Commissioner pursuant to paragraph (3) of subdivision (k) of Section  
23 10238.

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

25 \_\_\_\_\_  
26 Date Type Name of Broker  
27  
28 Signature of Broker or of Designated Officer of  
29 Corporate Broker  
30  
31 Type Name of Person(s) Signing This Notice  
32

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

37  
38 (b) A broker or person who becomes the servicing agent for  
39 notes or interest sold pursuant to this article, upon which payments

1 due during any period of three consecutive months in the aggregate  
2 exceed one hundred twenty-five thousand dollars (\$125,000) or  
3 the number of persons entitled to the payments exceeds 120, shall  
4 file the notice required by subdivision (a) with the commissioner  
5 within 30 days after becoming the servicing agent.

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

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

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

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

1 after the expiration of the period for the filing of mechanic’s and  
2 materialmen’s liens.

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

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

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

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

30  
31 Transaction Identifier: \_\_\_\_\_

32 Name of Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

33 Check either one of the following, if true:

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

36  
37 ( ) My investment in the transaction does not exceed 10% of my adjusted  
38 gross income for federal income tax purposes for my last tax year or, in  
39 the alternative, as estimated for the current year.

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\_\_\_\_\_  
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~~ shall not be construed to 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

1 property *or mobilehome* senior thereto, shall not exceed the  
 2 following percentages of the current market value of each parcel  
 3 of the real property *or mobilehome*, as determined in writing by  
 4 the broker or appraiser pursuant to Section 10232.6, plus the  
 5 amount for which the payment of principal and interest in excess  
 6 of the percentage of current market value is insured for the benefit  
 7 of the holders of the notes or interests by an insurer admitted to  
 8 do business in this state by the Insurance Commissioner:

- 9
- 10 (A) Single-family residence, owner occupied ..... 80%
  - 11 (B) Single-family residence, not owner occupied ..... 75%
  - 12 (C) Commercial and income-producing properties ..... 65%
  - 13 (D) Single-family residentially zoned lot or parcel which has  
 14 installed offsite improvements including drainage, curbs,  
 15 gutters, sidewalks, paved roads, and utilities as mandated  
 16 by the political subdivision having jurisdiction over the lot  
 17 or parcel ..... 65%
  - 18 (E) Land that has been zoned for (and if required, approved for  
 19 subdivision as) commercial or residential development ..... 50%
  - 20 (F) Other real property *or other mobilehome*..... 35%

21

22 (2) The percentage amounts specified in paragraph (1) may be  
 23 exceeded when and to the extent that the broker determines that  
 24 the encumbrance of the property in excess of these percentages is  
 25 reasonable and prudent considering all relevant factors pertaining  
 26 to the real property *or mobilehome*. However, in no event shall  
 27 the aggregate principal amount of the notes or interests sold,  
 28 together with the unpaid principal amount of any encumbrances  
 29 upon the property *or mobilehome* senior thereto, exceed 80 percent  
 30 of the current fair market value of improved real property *or*  
 31 *mobilehome* or 50 percent of the current fair market value of  
 32 unimproved real property, except in the case of a single-family  
 33 zoned lot or parcel as defined in paragraph (1), which shall not  
 34 exceed 65 percent of the current fair market value of that lot or  
 35 parcel, plus the amount insured as specified in paragraph (1). A  
 36 written statement shall be prepared by the broker that sets forth  
 37 the material considerations and facts that the broker relies upon  
 38 for his or her determination, which shall be retained as a part of  
 39 the broker’s record of the transaction. Either a copy of the statement

1 or the information contained therein shall be included in the  
2 disclosures required pursuant to subdivision (l).

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

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

16 (A) An independent neutral third-party escrowholder is used  
17 for all deposits and disbursements.

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

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

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

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

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

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

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

10 (i) The documentation of the transaction shall require that (1)  
11 a default upon any interest or note is a default upon all interests  
12 or notes and (2) the holders of more than 50 percent of the recorded  
13 beneficial interests of the notes or interests may govern the actions  
14 to be taken on behalf of all holders in accordance with Section  
15 2941.9 of the Civil Code in the event of default or foreclosure for  
16 matters that require direction or approval of the holders, including  
17 designation of the broker, servicing agent, or other person acting  
18 on their behalf, and the sale, encumbrance, or lease of real property  
19 *or a mobilehome* owned by the holders resulting from foreclosure  
20 or receipt of a deed in lieu of foreclosure. The terms called for by  
21 this subdivision may be included in the deed of trust, in the  
22 assignment of interests, or in any other documentation as is  
23 necessary or appropriate to make them binding on the parties.

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

30 (2) All funds received by the broker from the purchasers or  
31 lenders shall be handled in accordance with Section 10145 for  
32 disbursement to the persons thereto entitled upon recordation of  
33 the interests of the purchasers or lenders in the note and deed of  
34 trust. No provision of this article shall be construed as modifying  
35 or superseding applicable law regulating the escrowholder in any  
36 transaction or the handling of the escrow account.

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

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

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

34 (6) Within 30 days of the close of the period for which the report  
35 is made, or within any additional time as the commissioner may  
36 in writing allow in a particular case, the accountant shall forward  
37 to the broker or servicing agent, as the case may be, and to the  
38 commissioner, the report of the accountant, stating that the  
39 inspection was performed in accordance with this section, listing  
40 the sales and the payments examined, specifying the nature of the

1 deficiencies, if any, noted by the accountant with respect to each  
2 sale or payment, together with any further information as the  
3 accountant may wish to include, such as corrective steps taken  
4 with respect to any deficiency so noted, or stating that no  
5 deficiencies were observed. If the broker meets the threshold  
6 criteria of Section 10232, the report of the accountant shall be  
7 submitted as part of the quarterly reports required under Section  
8 10232.25.

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

21 (1) (A) That payments received on the note or notes be  
22 deposited immediately to a trust account maintained in accordance  
23 with this section and with the provisions for trust accounts of  
24 licensed real estate brokers contained in Section 10145 and Article  
25 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of  
26 the California Code of Regulations.

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

31 (2) That payments received on the note or notes shall be  
32 transmitted to the purchasers or lenders pro rata according to their  
33 respective interests within 25 days after receipt thereof by the  
34 agent. If the source for the payment is not the maker of the note,  
35 the agent shall inform the purchasers or lenders of the source for  
36 payment. A broker or servicing agent who transmits to the  
37 purchaser or lenders the broker's or servicing agent's own funds  
38 to cover payments due from the borrower but unpaid as a result  
39 of a dishonored check may recover the amount of the advances  
40 from the trust fund when the past due payment is received.

1 However, this article does not authorize the broker, servicing agent,  
2 or any other person to issue, or to engage in any practice  
3 constituting, any guarantee or to engage in the practice of  
4 advancing payments on behalf of the borrower.

5 (3) If the broker or person who is or becomes the servicing agent  
6 for notes or interests sold pursuant to this article upon which the  
7 payments due during any period of three consecutive months in  
8 the aggregate exceed one hundred twenty-five thousand dollars  
9 (\$125,000) or the number of persons entitled to the payments  
10 exceeds 120, the trust account or accounts of that broker or affiliate  
11 shall be inspected by an independent certified public accountant  
12 at no less than three-month intervals during the time the volume  
13 is maintained. Within 30 days after the close of the period for  
14 which the review is made, the report of the accountant shall be  
15 forwarded as provided in paragraph (6) of subdivision (j). If the  
16 broker is required to file an annual report pursuant to subdivision  
17 (o) or pursuant to Section 10232.2, the quarterly report pursuant  
18 to this subdivision need not be filed for the last quarter of the year  
19 for which the annual report is made. For the purposes of this  
20 subdivision, an affiliate of a broker is any person controlled by,  
21 controlling, or under common control with the broker.

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

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

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

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

34 (I) The broker shall disclose in writing to each purchaser or  
35 lender the material facts concerning the transaction on a disclosure  
36 form adopted or approved by the commissioner pursuant to Section  
37 10232.5, subject to the following:

38 (1) The disclosure form shall include a description of the terms  
39 upon which the note and deed of trust are being sold, including

- 1 the terms of the undivided interests being offered therein, including  
2 the following:
- 3 (A) In the case of the sale of an existing note:
    - 4 (i) The aggregate sale price of the note.
    - 5 (ii) The percent of the premium over or discount from the  
6 principal balance plus accrued but unpaid interest.
    - 7 (iii) The effective rate of return to the purchasers if the note is  
8 paid according to its terms.
    - 9 (iv) The name and address of the escrowholder for the  
10 transaction.
    - 11 (v) A description of, and the estimated amount of, each cost  
12 payable by the seller in connection with the sale and a description  
13 of, and the estimated amount of, each cost payable by the  
14 purchasers in connection with the sale.
  - 15 (B) In the case of the origination of a note:
    - 16 (i) The name and address of the escrowholder for the transaction.
    - 17 (ii) The anticipated closing date.
    - 18 (iii) A description of, and the estimated amount of, each cost  
19 payable by the borrower in connection with the loan and a  
20 description of, and the estimated amount of, each cost payable by  
21 the lenders in connection with the loan.
  - 22 (C) In the case of a transaction involving a note or interest  
23 secured by more than one parcel of real property *or mobilehome*,  
24 in addition to the requirements of subparagraphs (A) and (B):
    - 25 (i) The address, description, and estimated fair market value of  
26 each property securing the loan.
    - 27 (ii) The amount of the available equity in each property securing  
28 the loan after the loan amount to be apportioned to each property  
29 is assigned.
    - 30 (iii) The loan to value percentage for each property after the  
31 loan amount to be apportioned to each property is assigned pursuant  
32 to subdivision (h).
  - 33 (2) A copy of the written statement or information contained  
34 therein, as required by paragraph (2) of subdivision (h), shall be  
35 included in the disclosure form.
  - 36 (3) Any interest of the broker or affiliate in the transaction, as  
37 described in subdivision (e), shall be included with the disclosure  
38 form.
  - 39 (4) When the particular circumstances of a transaction make  
40 information not specified in the disclosure form material or

1 essential to keep the information provided in the form from being  
2 misleading, and the other information is known to the broker, the  
3 other information shall also be provided by the broker.

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

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

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

21 (o) Each broker who conducts transactions under this article,  
22 or broker or person who becomes the servicing agent for notes or  
23 interest sold pursuant to this article, who meets the criteria of  
24 paragraph (3) of subdivision (k) shall file with the commissioner  
25 an annual report of a review of its trust account. The report shall  
26 be prepared and filed in accordance with subdivision (a) of Section  
27 10232.2 and the rules and procedures thereunder of the  
28 commissioner. That report shall cover the broker's transactions  
29 under this article and, if the broker also meets the threshold criteria  
30 set forth in Section 10232, the broker's transactions subject to that  
31 section shall be included as well.

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

1     *SEC. 5. Section 25102.5 of the Corporations Code is amended*  
2 *to read:*

3     25102.5. There shall be exempted from Section 25110 a  
4 transaction that is the sale of a series of notes secured directly by  
5 an interest in the same real property *or mobilehome*, or the sale of  
6 undivided interests in a note secured directly by real property *or*  
7 *one or more mobilehomes* equivalent to a series transaction, that  
8 complies with all of the provisions of Article 6 (commencing with  
9 Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business  
10 and Professions Code. For purposes of this section, a real estate  
11 broker licensed by the Real Estate Commissioner of this state who  
12 engages in the offer and sale of notes secured directly by real  
13 property *or mobilehomes* of various makers, which are a series of  
14 notes or notes in which undivided interests are offered and sold,  
15 shall be deemed to be the issuer of these notes and undivided  
16 interests if the notes of the various makers are offered and sold  
17 pursuant to a plan or arrangement that is common to the various  
18 makers with respect to documentation and loan standards and that  
19 include provisions for servicing these notes on behalf of purchasers.

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

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