

AMENDED IN ASSEMBLY MAY 21, 2012  
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 ~~Sections 10131, 10237, and 10238 of, and to add Section 10131.8 to, Section 10166.01 of the Business and Professions Code, and to amend Section 25102.5 of the Corporations Code Sections 22013, 50003, and 50003.5 of the Financial Code, relating to real estate brokers mortgage loan originators.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 376, as amended, Fuller. ~~Real estate brokers. Mortgage loan originators.~~

*Existing law provides for the licensure and regulation of mortgage loan originators under the Real Estate Law, the California Finance Lenders Law, and the California Residential Mortgage Lending Act. Existing law defines a mortgage loan originator to mean an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain, as specified.*

*This bill would specify that a mortgage loan originator means an individual who performs those acts habitually or repeatedly and would also specify that a mortgage loan originator does not include an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for no more than 5*

*residential mortgage loans in a calendar year where the loans are made in connection with the sale of residential property and the loan proceeds are from the seller's own funds.*

~~(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, (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 (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 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: *yes-no*.

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

1     SECTION 1. Section 10166.01 of the Business and Professions

2     Code is amended to read:

3     10166.01. For purposes of this article, the following definitions  
4     shall apply:

5     (a) “SAFE Act” means the federal Secure and Fair Enforcement  
6     for Mortgage Licensing Act of 2008 (Public Law 110-289).

7     (b) (1) “Mortgage loan originator” means an individual who,  
8     *habitually or repeatedly*, takes a residential mortgage loan  
9     application or offers or negotiates terms of a residential mortgage  
10    loan for compensation or gain.

11    (2) Mortgage loan originator does not include any of the  
12    following:

13    (A) An individual who performs purely administrative or clerical  
14    tasks on behalf of a person meeting the definition of a mortgage  
15    loan originator, except as otherwise provided in subdivision (c) of  
16    Section 10166.03. The term “administrative or clerical tasks”  
17    means the receipt, collection, and distribution of information  
18    common for the processing or underwriting of a loan in the  
19    mortgage industry and communication with a consumer to obtain  
20    information necessary for the processing or underwriting of a  
21    residential mortgage loan.

22    (B) An individual that only performs real estate brokerage  
23    services, as defined in subdivision (a) or (b) of Section 10131,  
24    unless that person is compensated by a lender, other mortgage loan  
25    originator, or by any agent of any lender or other mortgage loan  
26    originator.

27    (C) An individual who solely renegotiates terms for existing  
28    mortgage loans held or serviced by his or her employer and who  
29    does not otherwise act as a mortgage loan originator, unless the  
30    United States Department of Housing and Urban Development or

1 a court of competent jurisdiction determines that the SAFE Act  
2 requires such an employee to be licensed as a mortgage loan  
3 originator under state laws implementing the SAFE Act.

4 (D) An individual that is solely involved in extensions of credit  
5 relating to timeshare plans, as that term is defined in Section  
6 101(53D) of Title 11 of the United States Code.

7 (E) An individual licensed or registered as a mortgage loan  
8 originator pursuant to the provisions of the Financial Code and the  
9 SAFE Act.

10 (F) *An individual who takes a residential mortgage loan*  
11 *application or offers or negotiates terms of a residential mortgage*  
12 *loan for no more than five residential mortgage loans in a calendar*  
13 *year where the loans are made in connection with the sale of*  
14 *residential property and the loan proceeds are from the seller's*  
15 *own funds. For purposes of this subparagraph, "own funds" has*  
16 *the same meaning as that term is defined in Section 10131.1.*

17 (c) "Nationwide Mortgage Licensing System and Registry"  
18 means a mortgage licensing system developed and maintained by  
19 the Conference of State Bank Supervisors and the American  
20 Association of Residential Mortgage Regulators for the licensing  
21 and registration of mortgage loan originators.

22 (d) "Residential mortgage loan" means any loan primarily for  
23 personal, family, or household use that is secured by a mortgage,  
24 deed of trust, or other equivalent consensual security interest on  
25 a dwelling, or residential real estate upon which is constructed or  
26 intended to be constructed a dwelling. "Dwelling" means a  
27 residential structure that contains one to four units, whether or not  
28 that structure is attached to real property. The term includes an  
29 individual condominium unit, cooperative unit, mobilehome, or  
30 trailer, if it is used as a residence.

31 (e) "Unique identifier" means a number or other identifier  
32 assigned by protocols established by the Nationwide Mortgage  
33 Licensing System and Registry.

34 (f) "Loan processor or underwriter" means an individual who  
35 performs clerical or support duties as an employee at the direction  
36 of, and subject to the supervision and instruction of, a mortgage  
37 loan originator.

38 *SEC. 2. Section 22013 of the Financial Code is amended to*  
39 *read:*

1 22013. (a) “Mortgage loan originator” means an individual  
2 who, *habitually or repeatedly and* for compensation or gain, or in  
3 the expectation of compensation or gain, takes a residential  
4 mortgage loan application or offers or negotiates terms of a  
5 residential mortgage loan.

6 (b) Mortgage loan originator does not include any of the  
7 following:

8 (1) An individual who performs purely administrative or clerical  
9 tasks on behalf of a person meeting the definition of a mortgage  
10 loan originator, except as provided in subdivision (c) of Section  
11 22014. The term “administrative or clerical tasks” means the  
12 receipt, collection, and distribution of information common for  
13 the processing or underwriting of a loan in the mortgage industry  
14 and communication with a consumer to obtain information  
15 necessary for the processing or underwriting of a residential  
16 mortgage loan, to the extent that the communication does not  
17 include offering or negotiating loan rates or terms, or counseling  
18 consumers about residential mortgage loan rates or terms.

19 (2) An individual who solely renegotiates terms for existing  
20 mortgage loans held or serviced by his or her employer and who  
21 does not otherwise act as a mortgage loan originator, unless the  
22 United States Department of Housing and Urban Development or  
23 a court of competent jurisdiction determines that the SAFE Act  
24 requires such an employee to be licensed as a mortgage loan  
25 originator under state laws implementing the SAFE Act.

26 (3) An individual that is solely involved in extensions of credit  
27 relating to timeshare plans, as that term is defined in Section  
28 101(53D) of Title 11 of the United States Code.

29 (4) An individual licensed as a mortgage loan originator pursuant  
30 to the provisions of Article 2.1 (commencing with Section  
31 10166.01) of Chapter 3 of Part 1 of Division 4 of the Business and  
32 Professions Code and the SAFE Act.

33 (5) *An individual who takes a residential mortgage loan*  
34 *application or offers or negotiates terms of a residential mortgage*  
35 *loan for no more than five residential mortgage loans in a calendar*  
36 *year where the loans are made in connection with the sale of*  
37 *residential property and the loan proceeds are from the seller’s*  
38 *own funds. For purposes of this subparagraph, “own funds” has*  
39 *the same meaning as that term is defined in Section 50003.*

1 (c) “Registered mortgage loan originator” means any individual  
2 who is all of the following:

3 (1) Meets the definition of mortgage loan originator.

4 (2) Is an employee of a depository institution, a subsidiary that  
5 is owned and controlled by a depository institution and regulated  
6 by a federal banking agency, or an institution regulated by the  
7 Farm Credit Administration.

8 (3) Is registered with, and maintains a unique identifier through,  
9 the Nationwide Mortgage Licensing System and Registry.

10 (d) “Loan processor or underwriter” means an individual who  
11 performs clerical or support duties as an employee at the direction  
12 of, and subject to the supervision and instruction of, a mortgage  
13 loan originator licensed by the state or a registered mortgage loan  
14 originator.

15 *SEC. 3. Section 50003 of the Financial Code is amended to*  
16 *read:*

17 50003. (a) “Annual audit” means a certified audit of the  
18 licensee’s books, records, and systems of internal control performed  
19 by an independent certified public accountant in accordance with  
20 generally accepted accounting principles and generally accepted  
21 auditing standards.

22 (b) “Borrower” means the loan applicant.

23 (c) “Buy” includes exchange, offer to buy, or solicitation to  
24 buy.

25 (d) “Commissioner” means the Commissioner of Corporations.

26 (e) “Control” means the possession, directly or indirectly, of  
27 the power to direct, or cause the direction of, the management and  
28 policies of a licensee under this division, whether through voting  
29 or through the ownership of voting power of an entity that  
30 possesses voting power of the licensee, or otherwise. Control is  
31 presumed to exist if a person, directly or indirectly, owns, controls,  
32 or holds 10 percent or more of the voting power of a licensee or  
33 of an entity that owns, controls, or holds, with power to vote, 10  
34 percent or more of the voting power of a licensee. No person shall  
35 be deemed to control a licensee solely by reason of his or her status  
36 as an officer or director of the licensee.

37 (f) “Depository institution” has the same meaning as in Section  
38 3 of the Federal Deposit Insurance Act, and includes any credit  
39 union.

1 (g) “Engage in the business” means the dissemination to the  
2 public, or any part of the public, by means of written, printed, or  
3 electronic communication or any communication by means of  
4 recorded telephone messages or spoken on radio, television, or  
5 similar communications media, of any information relating to the  
6 making of residential mortgage loans, the servicing of residential  
7 mortgage loans, or both. “Engage in the business” also means,  
8 without limitation, making residential mortgage loans or servicing  
9 residential mortgage loans, or both.

10 (h) “Federal banking agencies” means the Board of Governors  
11 of the Federal Reserve System, the Comptroller of the Currency,  
12 the Director of the Office of Thrift Supervision, the National Credit  
13 Union Administration, and the Federal Deposit Insurance  
14 Corporation.

15 (i) “In this state” includes any activity of a person relating to  
16 making or servicing a residential mortgage loan that originates  
17 from this state and is directed to persons outside this state, or that  
18 originates from outside this state and is directed to persons inside  
19 this state, or that originates inside this state and is directed to  
20 persons inside this state, or that leads to the formation of a contract  
21 and the offer or acceptance thereof is directed to a person in this  
22 state (whether from inside or outside this state and whether the  
23 offer was made inside or outside the state).

24 (j) “Institutional investor” means the following:

25 (1) The United States or any state, district, territory, or  
26 commonwealth thereof, or any city, county, city and county, public  
27 district, public authority, public corporation, public entity, or  
28 political subdivision of a state, district, territory, or commonwealth  
29 of the United States, or any agency or other instrumentality of any  
30 one or more of the foregoing, including, by way of example, the  
31 Federal National Mortgage Association and the Federal Home  
32 Loan Mortgage Corporation.

33 (2) Any bank, trust company, savings bank or savings and loan  
34 association, credit union, industrial bank or industrial loan  
35 company, personal property broker, consumer finance lender,  
36 commercial finance lender, or insurance company, or subsidiary  
37 or affiliate of one of the preceding entities, doing business under  
38 the authority of or in accordance with a license, certificate, or  
39 charter issued by the United States or any state, district, territory,  
40 or commonwealth of the United States.

1 (3) Trustees of pension, profit-sharing, or welfare funds, if the  
2 pension, profit-sharing, or welfare fund has a net worth of not less  
3 than fifteen million dollars (\$15,000,000), except pension,  
4 profit-sharing, or welfare funds of a licensee or its affiliate,  
5 self-employed individual retirement plans, or individual retirement  
6 accounts.

7 (4) A corporation or other entity with outstanding securities  
8 registered under Section 12 of the federal Securities Exchange Act  
9 of 1934 or a wholly owned subsidiary of that corporation or entity,  
10 provided that the purchaser represents either of the following:

11 (A) That it is purchasing for its own account for investment and  
12 not with a view to, or for sale in connection with, any distribution  
13 of a promissory note.

14 (B) That it is purchasing for resale pursuant to an exemption  
15 under Rule 144A (17 C.F.R. 230.144A) of the Securities and  
16 Exchange Commission.

17 (5) An investment company registered under the Investment  
18 Company Act of 1940; or a wholly owned and controlled subsidiary  
19 of that company, provided that the purchaser makes either of the  
20 representations provided in paragraph (4).

21 (6) A residential mortgage lender or servicer licensed to make  
22 residential mortgage loans under this law or an affiliate or  
23 subsidiary of that person.

24 (7) Any person who is licensed as a securities broker or  
25 securities dealer under any law of this state, or of the United States,  
26 or any employee, officer or agent of that person, if that person is  
27 acting within the scope of authority granted by that license or an  
28 affiliate or subsidiary controlled by that broker or dealer, in  
29 connection with a transaction involving the offer, sale, purchase,  
30 or exchange of one or more promissory notes secured directly or  
31 indirectly by liens on real property or a security representing an  
32 ownership interest in a pool of promissory notes secured directly  
33 or indirectly by liens on real property, and the offer and sale of  
34 those securities is qualified under the California Corporate  
35 Securities Law of 1968 or registered under federal securities laws,  
36 or exempt from qualification or registration.

37 (8) A licensed real estate broker selling the loan to an  
38 institutional investor specified in paragraphs (1) to (7), inclusive,  
39 or paragraph (9) or (10).

1 (9) A business development company as defined in Section  
2 2(a)(48) of the Investment Company Act of 1940 or a Small  
3 Business Investment Company licensed by the United States Small  
4 Business Administration under Section 301(c) or (d) of the Small  
5 Business Investment Act of 1958.

6 (10) A syndication or other combination of any of the foregoing  
7 entities that is organized to purchase a promissory note.

8 (11) A trust or other business entity established by an  
9 institutional investor for the purpose of issuing or facilitating the  
10 issuance of securities representing undivided interests in, or rights  
11 to receive payments from or to receive payments primarily from,  
12 a pool of financial assets held by the trust or business entity,  
13 provided that all of the following apply:

14 (A) The business entity is not a sole proprietorship.

15 (B) The pool of assets consists of one or more of the following:

16 (i) Interest-bearing obligations.

17 (ii) Other contractual obligations representing the right to receive  
18 payments from the assets.

19 (iii) Surety bonds, insurance policies, letters of credit, or other  
20 instruments providing credit enhancement for the assets.

21 (C) The securities will be either one of the following:

22 (i) Rated as “investment grade” by Standard and Poor’s  
23 Corporation or Moody’s Investors Service, Inc. “Investment grade”  
24 means that the securities will be rated by Standard and Poor’s  
25 Corporation as AAA, AA, A, or BBB or by Moody’s Investors  
26 Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings  
27 with “+” or “—” designation or other variations that occur within  
28 those ratings.

29 (ii) Sold to an institutional investor.

30 (D) The offer and sale of the securities is qualified under the  
31 California Corporate Securities Law of 1968 or registered under  
32 federal securities laws, or exempt from qualification or registration.

33 (k) “Institutional lender” means the following:

34 (1) The United States or any state, district, territory, or  
35 commonwealth thereof, or any city, county, city and county, public  
36 district, public authority, public corporation, public entity, or  
37 political subdivision of a state, district, territory, or commonwealth  
38 of the United States, or any agency or other instrumentality of any  
39 one or more of the foregoing, including, by way of example, the

1 Federal National Mortgage Association and the Federal Home  
2 Loan Mortgage Corporation.

3 (2) Any bank, trust company, savings bank or savings and loan  
4 association, credit union, industrial loan company, or insurance  
5 company, or service or investment company that is wholly owned  
6 and controlled by one of the preceding entities, doing business  
7 under the authority of and in accordance with a license, certificate,  
8 or charter issued by the United States or any state, district, territory,  
9 or commonwealth of the United States.

10 (3) Any corporation with outstanding securities registered under  
11 Section 12 of the Securities Exchange Act of 1934 or any wholly  
12 owned subsidiary of that corporation.

13 (4) A residential mortgage lender or servicer licensed to make  
14 residential mortgage loans under this law.

15 (l) “Law” means the California Residential Mortgage Lending  
16 Act.

17 (m) “Lender” means a person that (1) is an approved lender for  
18 the Federal Housing Administration, Veterans Administration,  
19 Farmers Home Administration, Government National Mortgage  
20 Association, Federal National Mortgage Association, or Federal  
21 Home Loan Mortgage Corporation, (2) directly makes residential  
22 mortgage loans, and (3) makes the credit decision in the loan  
23 transactions.

24 (n) “Licensee” means, depending on the context, a person  
25 licensed under Chapter 2 (commencing with Section 50120),  
26 Chapter 3 (commencing with Section 50130), or Chapter 3.5  
27 (commencing with Section 50140).

28 (o) “Makes or making residential mortgage loans” or “mortgage  
29 lending” means processing, underwriting, or as a lender using or  
30 advancing one’s own funds, or making a commitment to advance  
31 one’s own funds, to a loan applicant for a residential mortgage  
32 loan.

33 (p) “Mortgage loan,” “residential mortgage loan,” or “home  
34 mortgage loan” means a federally related mortgage loan as defined  
35 in Section 3500.2 of Title 24 of the Code of Federal Regulations,  
36 or a loan made to finance construction of a one-to-four family  
37 dwelling.

38 (q) “Mortgage servicer” or “residential mortgage loan servicer”  
39 means a person that (1) is an approved servicer for the Federal  
40 Housing Administration, Veterans Administration, Farmers Home

1 Administration, Government National Mortgage Association,  
2 Federal National Mortgage Association, or Federal Home Loan  
3 Mortgage Corporation, and (2) directly services or offers to service  
4 mortgage loans.

5 (r) “Nationwide Mortgage Licensing System and Registry”  
6 means a mortgage licensing system developed and maintained by  
7 the Conference of State Bank Supervisors and the American  
8 Association of Residential Mortgage Regulators for the licensing  
9 and registration of licensed mortgage loan originators.

10 (s) “Net worth” has the meaning set forth in Section 50201.

11 (t) “Own funds” means (1) cash, corporate capital, or warehouse  
12 credit lines at commercial banks, savings banks, savings and loan  
13 associations, industrial loan companies, or other sources that are  
14 liability items on a ~~lender’s~~ *person’s* financial statements, whether  
15 secured or unsecured, or (2) a ~~lender’s affiliate’s~~ cash, corporate  
16 capital, or warehouse credit lines at commercial banks or other  
17 sources that are liability items on the ~~affiliate’s~~ financial statements  
18 *of an affiliate of the person*, whether secured or unsecured. “Own  
19 funds” does not include funds provided by a third party to fund a  
20 loan on condition that the third party will subsequently purchase  
21 or accept an assignment of that loan.

22 (u) “Person” means a natural person, a sole proprietorship, a  
23 corporation, a partnership, a limited liability company, an  
24 association, a trust, a joint venture, an unincorporated organization,  
25 a joint stock company, a government or a political subdivision of  
26 a government, and any other entity.

27 (v) “Residential real property” or “residential real estate” means  
28 real property located in this state that is improved by a one-to-four  
29 family dwelling.

30 (w) “SAFE Act” means the federal Secure and Fair Enforcement  
31 for Mortgage Licensing Act of 2008 (Public Law 110-289).

32 (x) “Service” or “servicing” means receiving more than three  
33 installment payments of principal, interest, or other amounts placed  
34 in escrow, pursuant to the terms of a mortgage loan and performing  
35 services by a licensee relating to that receipt or the enforcement  
36 of its receipt, on behalf of the holder of the note evidencing that  
37 loan.

38 (y) “Sell” includes exchange, offer to sell, or solicitation to sell.

1 (z) “Unique identifier” means a number or other identifier  
2 assigned by protocols established by the Nationwide Mortgage  
3 Licensing System and Registry.

4 (aa) For purposes of Sections 50142, 50143, and 50145,  
5 “nontraditional mortgage product” means any mortgage product  
6 other than a 30-year fixed rate mortgage.

7 *SEC. 4. Section 50003.5 of the Financial Code is amended to*  
8 *read:*

9 50003.5. (a) “Mortgage loan originator” means an individual  
10 who, *habitually or repeatedly and* for compensation or gain, or in  
11 the expectation of compensation or gain, takes a residential  
12 mortgage loan application or offers or negotiates terms of a  
13 residential mortgage loan.

14 (b) Mortgage loan originator does not include any of the  
15 following:

16 (1) An individual who performs purely administrative or clerical  
17 tasks on behalf of a person meeting the definition of a mortgage  
18 loan originator, except as provided in subdivision (c) of Section  
19 50003.6. The term “administrative or clerical tasks” means the  
20 receipt, collection, and distribution of information common for  
21 the processing or underwriting of a loan in the mortgage industry  
22 and communication with a consumer to obtain information  
23 necessary for the processing or underwriting of a residential  
24 mortgage loan, to the extent that the communication does not  
25 include offering or negotiating loan rates or terms, or counseling  
26 consumers about residential mortgage loan rates or terms.

27 (2) An individual who solely renegotiates terms for existing  
28 mortgage loans held or serviced by his or her employer and who  
29 does not otherwise act as a mortgage loan originator, unless the  
30 United States Department of Housing and Urban Development or  
31 a court of competent jurisdiction determines that the SAFE Act  
32 requires that employee to be licensed as a mortgage loan originator  
33 under state laws implementing the SAFE Act.

34 (3) An individual that is solely involved in extensions of credit  
35 relating to timeshare plans, as that term is defined in Section  
36 101(53D) of Title 11 of the United States Code.

37 (4) An individual licensed as a mortgage loan originator pursuant  
38 to Article 2.1 (commencing with Section 10166.01) of Chapter 3  
39 of Part 1 of Division 4 of the Business and Professions Code and  
40 the SAFE Act.

1 (5) *An individual who takes a residential mortgage loan*  
2 *application or offers or negotiates terms of a residential mortgage*  
3 *loan for no more than five residential mortgage loans in a calendar*  
4 *year where the loans are made in connection with the sale of*  
5 *residential property and the loan proceeds are from the seller's*  
6 *own funds.*

7 (c) “Registered mortgage loan originator” means any individual  
8 who is all of the following:

9 (1) Meets the definition of mortgage loan originator.

10 (2) Is an employee of a depository institution, a subsidiary that  
11 is owned and controlled by a depository institution and regulated  
12 by a federal banking agency, or an institution regulated by the  
13 Farm Credit Administration.

14 (3) Is registered with, and maintains a unique identifier through,  
15 the Nationwide Mortgage Licensing System and Registry.

16 (d) “Loan processor or underwriter” means an individual who  
17 performs clerical or support duties as an employee at the direction  
18 of, and subject to the supervision and instruction of, a mortgage  
19 loan originator licensed by the state or a registered mortgage loan  
20 originator.

21 ~~SECTION 1. Section 10131 of the Business and Professions~~  
22 ~~Code is amended to read:~~

23 ~~10131. A real estate broker within the meaning of this part is~~  
24 ~~a person who, for a compensation or in expectation of a~~  
25 ~~compensation, regardless of the form or time of payment, does or~~  
26 ~~negotiates to do one or more of the following acts for another or~~  
27 ~~others:~~

28 ~~(a) Sells or offers to sell, buys or offers to buy, solicits~~  
29 ~~prospective sellers or purchasers of, solicits or obtains listings of,~~  
30 ~~or negotiates the purchase, sale or exchange of real property or a~~  
31 ~~business opportunity.~~

32 ~~(b) Leases or rents or offers to lease or rent, or places for rent,~~  
33 ~~or solicits listings of places for rent, or solicits for prospective~~  
34 ~~tenants, or negotiates the sale, purchase or exchanges of leases on~~  
35 ~~real property, or on a business opportunity, or collects rents from~~  
36 ~~real property, or improvements thereon, or from business~~  
37 ~~opportunities.~~

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

1 ~~(d) Solicits borrowers or lenders for or negotiates loans or~~  
2 ~~collects payments or performs services for borrowers or lenders~~  
3 ~~or note owners in connection with loans secured directly or~~  
4 ~~collaterally by liens on real property, or chattel mobilehome loans~~  
5 ~~if the mobilehome has been registered under Part 2 (commencing~~  
6 ~~with Section 18000) of Division 13 of the Health and Safety Code,~~  
7 ~~or on a business opportunity.~~

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

15 ~~SEC. 2. Section 10131.8 is added to the Business and~~  
16 ~~Professions Code, to read:~~

17 ~~10131.8. A person licensed as a real estate broker who acts~~  
18 ~~pursuant to Section 10131.1, or subdivision (d) or (e) of Section~~  
19 ~~10131, and who makes, arranges, or services chattel mobilehome~~  
20 ~~loans, if the mobilehome has been registered under Part 2~~  
21 ~~(commencing with Section 18000) of Division 13 of the Health~~  
22 ~~and Safety Code, need only meet the requirements for licensure~~  
23 ~~under this part.~~

24 ~~SEC. 3. Section 10237 of the Business and Professions Code,~~  
25 ~~as added by Section 2 of Chapter 901 of the Statutes of 2003, is~~  
26 ~~amended to read:~~

27 ~~10237. Any transaction that involves the sale of or offer to sell~~  
28 ~~a series of notes secured directly by interests in one or more parcels~~  
29 ~~of real property or pertaining to chattel loans secured by one or~~  
30 ~~more mobilehomes, or the sale of undivided interests in a note~~  
31 ~~secured directly by one or more parcels of real property or in a~~  
32 ~~note pertaining to a chattel loan secured directly by one or more~~  
33 ~~mobilehomes, equivalent to a series transaction, shall comply with~~  
34 ~~all of the provisions of this article.~~

35 ~~SEC. 4. Section 10238 of the Business and Professions Code~~  
36 ~~is amended to read:~~

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

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

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

7 ( ) Original Notice ( ) Amended Notice

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

10 2. Broker license identification number: \_\_\_\_\_

11  
 12 3. List the month the fiscal year ends: \_\_\_\_\_

13  
 14 4. Broker's telephone number: \_\_\_\_\_

15  
 16 5. Firm name (if different from "1"):  
 17 \_\_\_\_\_

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

22  
 23 7. Mailing address (if different from "6"):  
 24 \_\_\_\_\_

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

30  
 31 9. Total number of multilender notes arranged: \_\_\_\_\_

32  
 33 10. Total number of interests sold to investors on the  
 34 multilender's notes: \_\_\_\_\_

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

38 CHECK ONLY ONE OF THE FOLLOWING:

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

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

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

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

10 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

18  
19 ~~NOTE: AN AMENDED NOTICE MUST BE FILED BY THE~~  
20 ~~BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE~~  
21 ~~IN THE INFORMATION REQUIRED TO BE SET FORTH~~  
22 ~~HEREIN.~~

23  
24 ~~(b) A broker or person who becomes the servicing agent for~~  
25 ~~notes or interest sold pursuant to this article, upon which payments~~  
26 ~~due during any period of three consecutive months in the aggregate~~  
27 ~~exceed one hundred twenty-five thousand dollars (\$125,000) or~~  
28 ~~the number of persons entitled to the payments exceeds 120, shall~~  
29 ~~file the notice required by subdivision (a) with the commissioner~~  
30 ~~within 30 days after becoming the servicing agent.~~

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

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

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

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

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

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

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

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

16  
17 Transaction Identifier: \_\_\_\_\_

18 Name of Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

19 Check either one of the following, if true:

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

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

26 \_\_\_\_\_  
27 Signature

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

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

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

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

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

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

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

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

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

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

6  
7 ~~(2) The percentage amounts specified in paragraph (1) may be~~  
8 ~~exceeded when and to the extent that the broker determines that~~  
9 ~~the encumbrance of the property in excess of these percentages is~~  
10 ~~reasonable and prudent considering all relevant factors pertaining~~  
11 ~~to the real property or mobilehome. However, in no event shall~~  
12 ~~the aggregate principal amount of the notes or interests sold,~~  
13 ~~together with the unpaid principal amount of any encumbrances~~  
14 ~~upon the property or mobilehome senior thereto, exceed 80 percent~~  
15 ~~of the current fair market value of improved real property or~~  
16 ~~mobilehome or 50 percent of the current fair market value of~~  
17 ~~unimproved real property, except in the case of a single-family~~  
18 ~~zoned lot or parcel as defined in paragraph (1), which shall not~~  
19 ~~exceed 65 percent of the current fair market value of that lot or~~  
20 ~~parcel, plus the amount insured as specified in paragraph (1). A~~  
21 ~~written statement shall be prepared by the broker that sets forth~~  
22 ~~the material considerations and facts that the broker relies upon~~  
23 ~~for his or her determination, which shall be retained as a part of~~  
24 ~~the broker’s record of the transaction. Either a copy of the statement~~  
25 ~~or the information contained therein shall be included in the~~  
26 ~~disclosures required pursuant to subdivision (l).~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20    ~~(6) Within 30 days of the close of the period for which the report~~  
21    ~~is made, or within any additional time as the commissioner may~~  
22    ~~in writing allow in a particular case, the accountant shall forward~~  
23    ~~to the broker or servicing agent, as the case may be, and to the~~  
24    ~~commissioner, the report of the accountant, stating that the~~  
25    ~~inspection was performed in accordance with this section, listing~~  
26    ~~the sales and the payments examined, specifying the nature of the~~  
27    ~~deficiencies, if any, noted by the accountant with respect to each~~  
28    ~~sale or payment, together with any further information as the~~  
29    ~~accountant may wish to include, such as corrective steps taken~~  
30    ~~with respect to any deficiency so noted, or stating that no~~  
31    ~~deficiencies were observed. If the broker meets the threshold~~  
32    ~~criteria of Section 10232, the report of the accountant shall be~~  
33    ~~submitted as part of the quarterly reports required under Section~~  
34    ~~10232.25.~~

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

1 proceedings in the event of a default. A copy of this servicing  
2 agreement shall be delivered to each purchaser. The broker shall  
3 offer to the lenders or purchasers the services of the broker or one  
4 or more affiliates of the broker, or both, as servicing agent for each  
5 transaction conducted pursuant to this article. The agreement shall  
6 require all of the following:

7 (1) (A) That payments received on the note or notes be  
8 deposited immediately to a trust account maintained in accordance  
9 with this section and with the provisions for trust accounts of  
10 licensed real estate brokers contained in Section 10145 and Article  
11 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of  
12 the California Code of Regulations.

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

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

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

1 forwarded as provided in paragraph (6) of subdivision (j). If the  
2 broker is required to file an annual report pursuant to subdivision  
3 (o) or pursuant to Section 10232.2, the quarterly report pursuant  
4 to this subdivision need not be filed for the last quarter of the year  
5 for which the annual report is made. For the purposes of this  
6 subdivision, an affiliate of a broker is any person controlled by,  
7 controlling, or under common control with the broker.

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

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

16 (A) ~~Any notice of trustee sale filed on behalf of the purchasers~~  
17 ~~or lenders:~~

18 (B) ~~Any request for reconveyance of the deed of trust received~~  
19 ~~on behalf of the purchasers or lenders:~~

20 (t) ~~The broker shall disclose in writing to each purchaser or~~  
21 ~~lender the material facts concerning the transaction on a disclosure~~  
22 ~~form adopted or approved by the commissioner pursuant to Section~~  
23 ~~10232.5, subject to the following:~~

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

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

29 (i) ~~The aggregate sale price of the note.~~

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

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

34 (iv) ~~The name and address of the escrowholder for the~~  
35 ~~transaction.~~

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

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

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

1 subdivision shall not prohibit the broker or affiliate from acquiring  
2 the interests, with the consent of the purchasers or lenders whose  
3 interests are being purchased, or the property or mobilehome, with  
4 the consent of the purchasers or lenders, if the consent is given at  
5 the time of the acquisition.

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

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

26 ~~SEC. 5. Section 25102.5 of the Corporations Code is amended~~  
27 ~~to read:~~

28 ~~25102.5. There shall be exempted from Section 25110 a~~  
29 ~~transaction that is the sale of a series of notes secured directly by~~  
30 ~~an interest in the same real property or mobilehome, or the sale of~~  
31 ~~undivided interests in a note secured directly by real property or~~  
32 ~~one or more mobilehomes equivalent to a series transaction, that~~  
33 ~~complies with all of the provisions of Article 6 (commencing with~~  
34 ~~Section 10237) of Chapter 3 of Part 1 of Division 4 of the Business~~  
35 ~~and Professions Code. For purposes of this section, a real estate~~  
36 ~~broker licensed by the Real Estate Commissioner of this state who~~  
37 ~~engages in the offer and sale of notes secured directly by real~~  
38 ~~property or mobilehomes of various makers, which are a series of~~  
39 ~~notes or notes in which undivided interests are offered and sold,~~  
40 ~~shall be deemed to be the issuer of these notes and undivided~~

1 interests if the notes of the various makers are offered and sold  
2 pursuant to a plan or arrangement that is common to the various  
3 makers with respect to documentation and loan standards and that  
4 include provisions for servicing these notes on behalf of purchasers.

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