

AMENDED IN SENATE APRIL 7, 2015

**SENATE BILL**

**No. 647**

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**Introduced by Senator Morrell**

February 27, 2015

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An act to amend Sections 10232.3, 10232.45, and 10238 of the Business and Professions Code, and to amend Section 25102.2 of the Corporations Code, relating to real estate investments.

LEGISLATIVE COUNSEL'S DIGEST

SB 647, as amended, Morrell. Real estate investments: securities: qualification exemption.

(1) Existing law, the Real Estate Law, requires any transaction that involves the sale of, or an offer to sell, a note secured directly by an interest in one or more parcels of real property, or the sale of an undivided interest in a note secured directly by one or more parcels of real property, to comply with specified requirements. Existing law limits the allowable percentage of the current market value of a property, as specified, to be the aggregate principal amount of the note or interest sold. Existing law requires a broker to make reasonable efforts to ensure the offer or sale of notes or interest in notes secured by a lien on real property or a business opportunity meet certain criteria, including, among others, the investment in the notes is suitable and appropriate for the purchaser. To meet this requirement, a broker may obtain a completed investor questionnaire from each person to whom the broker offers or sells the notes and deeds of trust.

~~This bill would provide that these requirements do not apply to the sale of an undivided interest in a note secured directly by one or more parcels of real property. The bill would modify the allowable percentage of the current market value that can be sold, as specified. The bill would~~

require the investor questionnaire to be completed within a specific time before the sale, modify the requirement for subsequent questionnaires, and remove the necessity of a broker obtaining an annually updated completed investor questionnaire from each person to whom the broker sold notes and deeds of trust. The bill would update the address of the Real Estate Commissioner on a required notice.

(2) Existing law, the Corporate Securities Law of 1968, provides that it is unlawful to offer or sell any security in this state unless the offer and sale of the security has been qualified with the Commissioner of Business Oversight, or the security or transaction is exempt from qualification. That law also provides that all offers and sales of a security are subject to antifraud provisions, which ~~requires~~ *require* information provided to offerees and purchasers to be true and to not omit any material facts necessary to prevent the statements made from being misleading. That law requires an issuer engaged in the business of purchasing, selling, financing, or brokering real estate, that relies on specified transactions exemptions or a securities exemption from qualification for an offering that involves the offer or sale of securities to a person who is not an accredited investor to provide additional information to the Commissioner of Business Oversight regarding the nature of the proposed offering on a form prescribed by the commissioner.

This bill would remove from these requirements to provide additional information to the commissioner, an offering of securities that relies on an exemption for a security that is a promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

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

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

1 SECTION 1. Section 10232.3 of the Business and Professions  
2 Code is amended to read:  
3 10232.3. (a) Any transaction that involves the sale of or offer  
4 to sell a note secured directly by an interest in one or more parcels  
5 of real property *or the sale of an undivided interest in a note*  
6 *secured directly by one or more parcels of real property* shall  
7 adhere to all of the following:

1 (1) Except as provided in paragraph (2), the aggregate principal  
 2 amount of the note *or interest* sold, together with the unpaid  
 3 principal amount of any encumbrances upon the real property  
 4 senior thereto, shall not exceed the following percentages of the  
 5 current market value of each parcel of the real property, as  
 6 determined in writing by the broker or appraiser pursuant to Section  
 7 10232.6, plus the amount for which the payment of principal and  
 8 interest in excess of the percentage of current market value is  
 9 insured for the benefit of the holders of the note *or interest* by an  
 10 insurer admitted to do business in this state by the Insurance  
 11 Commissioner:

- 12
- 13 (A) Single-family residence, owner occupied..... 80%
- 14 (B) Single-family residence, not owner occupied..... 75%
- 15 (C) Commercial properties and income-producing properties not 65%
- 16 described in (B) or (E).....
- 17 (D) Single-family residentially zoned lot or parcel which has installed
- 18 offsite improvements including drainage, curbs, gutters, sidewalks,
- 19 paved roads, and utilities as mandated by the political subdivision
- 20 having jurisdiction over the lot or parcel..... 65%
- 21 (E) Land that produces income from crops, timber, or minerals..... 60%
- 22 (F) Land that is not income producing but has been zoned for (and if
- 23 required, approved for subdivision as) commercial or residential
- 24 development..... 50%
- 25 (G) Other real property..... 35%
- 26

27 (2) The percentage amounts specified in paragraph (1) may be  
 28 exceeded when and to the extent that the broker determines that  
 29 the encumbrance of the property in excess of these percentages is  
 30 reasonable and prudent considering all relevant factors pertaining  
 31 to the real property. However, in no event shall the aggregate  
 32 principal amount of the note *or interest* sold, together with the  
 33 unpaid principal amount of any encumbrances upon the property  
 34 senior thereto, exceed 80 percent of the current fair market value  
 35 of improved real property or 50 percent of the current fair market  
 36 value of unimproved real property, except in the case of a  
 37 single-family zoned lot or parcel as defined in paragraph (1), which  
 38 shall not exceed 65 percent of the current fair market value of that  
 39 lot or parcel, plus the amount insured as specified in paragraph  
 40 (1). A written statement shall be prepared by the broker that sets

1 forth the material considerations and facts that the broker relies  
2 upon for his or her determination, which shall be retained as a part  
3 of the broker's record of the transaction. Either a copy of the  
4 statement or the information contained therein shall be included  
5 in the disclosures required pursuant to Section 10232.5.

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

15 (4) For construction or rehabilitation loans, where the amount  
16 withheld for construction or rehabilitation at the start of the project  
17 exceeds one hundred thousand dollars (\$100,000), the term "current  
18 market value" may be deemed to be the value of the completed  
19 project if all of the following safeguards are met:

20 (A) An independent neutral third-party escrow holder is used  
21 for all deposits and disbursements relating to the construction or  
22 rehabilitation of the secured property.

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

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

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

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

1 (F) The documentation includes a detailed description of the  
2 actions that may be taken in the event of a failure to complete the  
3 project, whether that failure is due to default, insufficiency of  
4 funds, or other causes.

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

7 (5) For construction or rehabilitation loans, where the amount  
8 withheld for construction or rehabilitation at the start of the project  
9 is one hundred thousand dollars (\$100,000) or less, the term  
10 “current market value” may be deemed to be the value of the  
11 completed project if all of the following safeguards are met:

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

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

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

20 (D) The documentation includes a detailed description of the  
21 actions that may be taken in the event of a failure to complete the  
22 project, whether that failure is due to default, insufficiency of  
23 funds, or other causes.

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

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

32 (b) The note *or interest* shall not be sold, unless the purchaser  
33 meets one or both of the qualifications of income or net worth set  
34 forth below and signs a statement, which shall be retained by the  
35 broker for four years, conforming to the following:

36  
37 “Transaction Identifier: \_\_\_\_\_

38 Name of Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

39 Check either one of the following, if true:

40 ( ) My investment in the transaction does not exceed 10% of my net worth,

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

5 \_\_\_\_\_  
 6 Signature”  
 7

8 SEC. 2. Section 10232.45 of the Business and Professions  
 9 Code is amended to read:

10 10232.45. (a) Any broker subject to the provisions of Section  
 11 10232.3 or Article 6 (commencing with Section 10237) shall make  
 12 reasonable efforts to ensure all of the following with respect to the  
 13 offer or sale of notes *or interest in notes* to be secured by a lien  
 14 on real property or a business opportunity:

15 (1) All persons to whom notes *or interests* are sold can be  
 16 reasonably assumed to have the capacity to understand the  
 17 fundamental aspects of the investment, by reason of their  
 18 educational, business, or financial experience.

19 (2) All persons to whom notes *or interests* are sold can bear the  
 20 economic risk of the investment.

21 (3) The investment in the notes *or interests* is suitable and  
 22 appropriate for the purchaser, given the purchaser’s investment  
 23 objectives, portfolio structure, and financial situation.

24 (b) A broker shall make this determination on the basis of  
 25 information he or she obtains from the purchaser. Relevant  
 26 information for this purpose includes, at least, the age, investment  
 27 objective, investment experience, income, net worth, financial  
 28 situation, and other investments of the prospective purchaser, as  
 29 well as any other pertinent factors the commissioner shall establish  
 30 through regulation.

31 (c) A broker shall maintain records of the information used to  
 32 determine that an investment is suitable and appropriate for each  
 33 purchaser and shall retain these records for at least four years.

34 (d) A broker that complies with all of the following shall be  
 35 deemed to have complied with subdivision (a):

36 (1) Obtains from each person to whom notes and deeds of trust  
 37 *or interests therein* are offered or sold, at least two business days  
 38 and not more than one year prior to completing each sale, a  
 39 completed investor questionnaire in a form approved by the  
 40 commissioner. After obtaining an initial questionnaire, any

1 subsequent questionnaire from the same person need only reflect  
2 any ~~material changes~~ *updates* from the immediately preceding  
3 questionnaire obtained by the broker.

4 (2) Uses the responses in that questionnaire as an aid in  
5 complying with subdivision (a).

6 (e) Nothing in this section shall be construed to require a broker  
7 to utilize an investor questionnaire to ensure compliance with  
8 subdivision (a). Reliance of a broker on an investor questionnaire  
9 in a form approved by the commissioner shall not prohibit that  
10 broker from utilizing additional information to ensure compliance  
11 with subdivision (a).

12 SEC. 3. Section 10238 of the Business and Professions Code  
13 is amended to read:

14 10238. (a) A notice in the following form and containing the  
15 following information shall be filed with the commissioner within  
16 30 days after the first transaction and within 30 days of any material  
17 change in the information required in the notice:

18  
19 TO: Real Estate Commissioner  
20 Mortgage Loan Section  
21 1651 Exposition Boulevard  
22 Sacramento, CA 95818

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

25 ( ) Original Notice ( ) Amended Notice

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

- 1  
2 7. Mailing address (if different from "6"):  
3 \_\_\_\_\_  
4  
5 8. Servicing agent: Identify by name, address, and telephone number the  
6 person or entity who will act as the servicing agent in transactions pursuant  
7 to Section 10237 (including the undersigned Broker if that is the case):  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10  
11 9. Total number of multilender notes arranged: \_\_\_\_\_  
12  
13 10. Total number of interests sold to investors on the  
14 multilender's notes: \_\_\_\_\_  
15  
16 ~~10.~~  
17 11. Inspection of trust account (before answering this question, review the  
18 provisions of paragraph (3) of subdivision (k) of Section 10238).  
19 CHECK ONLY ONE OF THE FOLLOWING:  
20 ( ) The undersigned Broker is (or expects to be) required to file reports of  
21 inspection of its trust account(s) with the Real Estate Commissioner  
22 pursuant to paragraph (3) of subdivision (k) of Section 10238.  
23 Amount of Multilender Payments Collected Last Fiscal Quarter: \_\_\_\_\_  
24  
25 Total Number of Investors Due Payments Last Fiscal Quarter: \_\_\_\_\_  
26  
27 ( ) The undersigned Broker is NOT (or does NOT expect to be) required to  
28 file reports of inspection of its trust account(s) with the Real Estate  
29 Commissioner pursuant to paragraph (3) of subdivision (k) of Section  
30 10238.  
31  
32 ~~11.~~  
33 12. Signature. The contents of this notice are true and correct.  
34 \_\_\_\_\_  
35 Date Type Name of Broker  
36 \_\_\_\_\_  
37 Signature of Broker or of Designated Officer of  
38 Corporate Broker  
39 \_\_\_\_\_  
40 Type Name of Person(s) Signing This Notice

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

5

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

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

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

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

38 (2) A note secured by a first trust deed on real property in a  
39 subdivision that evidences a bona fide loan made in connection

1 with the financing of the usual cost of the development in a  
 2 residential, commercial, or industrial building or buildings on the  
 3 property under a written agreement providing for the disbursement  
 4 of the loan funds as costs are incurred or in relation to the progress  
 5 of the work and providing for title insurance ensuring the priority  
 6 of the security as against mechanic’s and materialmen’s liens or  
 7 for the final disbursement of at least 10 percent of the loan funds  
 8 after the expiration of the period for the filing of mechanic’s and  
 9 materialmen’s liens.

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

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

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

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

35  
 36 Transaction Identifier: \_\_\_\_\_

37 Name of Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

38 Check either one of the following, if true:

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

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

\_\_\_\_\_  
Signature

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

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

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

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

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

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

1 *interest of each purchaser shall be recorded pursuant to*  
2 *subdivisions (a) to (c), inclusive, of Section 10234.*

3 (h) (1) Except as provided in paragraph (2), the aggregate  
4 principal amount of the notes *or interests* sold, together with the  
5 unpaid principal amount of any encumbrances upon the real  
6 property senior thereto, shall not exceed the following percentages  
7 of the current market value of each parcel of the real property, as  
8 determined in writing by the broker or appraiser pursuant to Section  
9 10232.6, plus the amount for which the payment of principal and  
10 interest in excess of the percentage of current market value is  
11 insured for the benefit of the holders of the notes *or interests* by  
12 an insurer admitted to do business in this state by the Insurance  
13 Commissioner:

- 14
- 15 (A) Single-family residence, owner occupied ..... 80%
- 16 (B) Single-family residence, not owner occupied ..... 75%
- 17 (C) Commercial properties and income-producing properties ..... 65%
- 18 (D) Single-family residentially zoned lot or parcel not described in
- 19 (B) or (E) which has installed offsite improvements including
- 20 drainage, curbs, gutters, sidewalks, paved roads, and utilities as
- 21 mandated by the political subdivision having jurisdiction over
- 22 the lot or parcel ..... 65%
- 23 (E) Land that produces income from crops, timber, or minerals..... 60%
- 24 (F) Land that is not income producing but has been zoned for (and
- 25 if required, approved for subdivision as) commercial or
- 26 residential development ..... 50%
- 27 (G) Other real property ..... 35%
- 28

29 (2) The percentage amounts specified in paragraph (1) may be  
30 exceeded when and to the extent that the broker determines that  
31 the encumbrance of the property in excess of these percentages is  
32 reasonable and prudent considering all relevant factors pertaining  
33 to the real property. However, in no event shall the aggregate  
34 principal amount of the notes *or interests* sold, together with the  
35 unpaid principal amount of any encumbrances upon the property  
36 senior thereto, exceed 80 percent of the current fair market value  
37 of improved real property or 50 percent of the current fair market  
38 value of unimproved real property, except in the case of a  
39 single-family zoned lot or parcel as defined in paragraph (1), which  
40 shall not exceed 65 percent of the current fair market value of that

1 lot or parcel, plus the amount insured as specified in paragraph  
2 (1). A written statement shall be prepared by the broker that sets  
3 forth the material considerations and facts that the broker relies  
4 upon for his or her determination, which shall be retained as a part  
5 of the broker's record of the transaction. Either a copy of the  
6 statement or the information contained therein shall be included  
7 in the disclosures required pursuant to subdivision (l).

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

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

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

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

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

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

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

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

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

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

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

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

35 (2) All funds received by the broker from the purchasers or  
36 lenders shall be handled in accordance with Section 10145 for  
37 disbursement to the persons thereto entitled upon recordation of  
38 the interests of the purchasers or lenders in the note and deed of  
39 trust. No provision of this article shall be construed as modifying

1 or superseding applicable law regulating the escrow holder in any  
2 transaction or the handling of the escrow account.

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

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

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

1 (6) Within 30 days of the close of the period for which the report  
2 is made, or within any additional time as the commissioner may  
3 in writing allow in a particular case, the accountant shall forward  
4 to the broker or servicing agent, as the case may be, and to the  
5 commissioner, the report of the accountant, stating that the  
6 inspection was performed in accordance with this section, listing  
7 the sales and the payments examined, specifying the nature of the  
8 deficiencies, if any, noted by the accountant with respect to each  
9 sale or payment, together with any further information as the  
10 accountant may wish to include, such as corrective steps taken  
11 with respect to any deficiency so noted, or stating that no  
12 deficiencies were observed. If the broker meets the threshold  
13 criteria of Section 10232, the report of the accountant shall be  
14 submitted as part of the quarterly reports required under Section  
15 10232.25.

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

28 (1) (A) That payments received on the note or notes be  
29 deposited immediately to a trust account maintained in accordance  
30 with this section and with the provisions for trust accounts of  
31 licensed real estate brokers contained in Section 10145 and Article  
32 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of  
33 the California Code of Regulations.

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

38 (2) That payments received on the note or notes shall be  
39 transmitted to the purchasers or lenders pro rata according to their  
40 respective interests within 25 days after receipt thereof by the

1 agent. If the source for the payment is not the maker of the note,  
2 the agent shall inform the purchasers or lenders in writing of the  
3 source for payment. A broker or servicing agent who transmits to  
4 the purchaser or lenders the broker's or servicing agent's own  
5 funds to cover payments due from the borrower but unpaid as a  
6 result of a dishonored check may recover the amount of the  
7 advances from the trust fund when the past due payment is  
8 received. However, this article does not authorize the broker,  
9 servicing agent, or any other person to issue, or to engage in any  
10 practice constituting, any guarantee or to engage in the practice of  
11 advancing payments on behalf of the borrower.

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

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

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

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

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

1 (l) The broker shall disclose in writing to each purchaser or  
2 lender the material facts concerning the transaction on a disclosure  
3 form adopted or approved by the commissioner pursuant to Section  
4 10232.5, subject to the following:

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

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

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

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

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

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

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

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

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

24 (ii) The anticipated closing date.

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

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

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

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

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

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

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

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

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

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

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

30 (o) Each broker who conducts transactions under this article,  
31 or broker or person who becomes the servicing agent for *notes or*  
32 *interests* sold pursuant to this article, who meets the criteria of  
33 paragraph (3) of subdivision (k) shall file with the commissioner  
34 an annual report of a review of its trust account. The report shall  
35 be prepared and filed in accordance with subdivision (a) of Section  
36 10232.2 and the rules and procedures thereunder of the  
37 commissioner. That report shall cover the broker's transactions  
38 under this article and, if the broker also meets the threshold criteria  
39 set forth in Section 10232, the broker's transactions subject to that  
40 section shall be included as well.

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

10 SEC. 4. Section 25102.2 of the Corporations Code is amended  
11 to read:

12 25102.2. The commissioner shall require any issuer that is  
13 engaged in the business of purchasing, selling, financing, or  
14 brokering real estate, and that relies upon an exemption authorized  
15 by subdivision (e), (f), (h), or (n) of Section 25102, for an offering  
16 which involves the offer or sale of securities to any person who is  
17 not an accredited investor, as defined in Regulation D of the  
18 Securities and Exchange Commission (17 C.F.R. 230.501 et seq.),  
19 in a transaction that is not registered pursuant to the Securities Act  
20 of 1933, to provide additional information regarding the nature of  
21 the proposed offering on a form prescribed by the commissioner.  
22 This information shall include the names of the issuer's officers  
23 and directors in the case of a corporation, managers in the case of  
24 a manager-managed limited liability company, members in the  
25 case of a member-managed limited liability company, general  
26 partner in the case of a limited partnership, or persons performing  
27 similar ~~functions,~~ *functions* in the case of other types of issuers,  
28 the offering disclosure documents provided to prospective  
29 purchasers, a list of all state and federal licenses required to further  
30 the purposes of the investment, and the names of all licensed  
31 persons that will undertake those activities.

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