

AMENDED IN SENATE APRIL 28, 1998

AMENDED IN SENATE APRIL 16, 1998

AMENDED IN SENATE MARCH 17, 1998

SENATE BILL

No. 1554

Introduced by Senator Kopp

February 11, 1998

~~An act to amend Sections 10131, 10131.1, 10133.1, 10139.5, 10145, 10229, 10230, 10231, 10231.1, 10231.2, 10232, 10232.2, 10232.5, 10233, 10233.1, 10236.1, 10236.4, 10240, 10242, 10243, 10244.1, 10245, 10248, and 10471 of, and to add Sections 10229.1, 10236.6, and 10236.7 to, An act to amend Sections 10229, 10230, 10231, 10231.1, 10231.2, 10232.2, 10232.5, 10233, 10234.5, 10236.4, 10240, and 10471 of, and to add Sections 10236.6 and 10236.7 to, the Business and Professions Code, and to amend Section 17006 of the Financial Code, relating to real estate brokers, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1554, as amended, Kopp. Real estate brokers.

(1) Existing law provides for the licensure and regulation of real estate brokers and generally authorizes brokers to, among other things, negotiate or otherwise engage in specified transactions involving loans, real property sales contracts, and promissory notes secured directly or collaterally by liens on real property or on business opportunities. Existing law requires a real estate broker who is performing certain specified acts in negotiating a loan to be secured by a lien on real property or on a business

opportunity, or performing certain specified acts in negotiating the sale of a real property sales contract or promissory note secured directly or collaterally by a lien on real property, to provide the prospective lender or the prospective purchaser, as the case may be, with a disclosure statement, as specified. Existing law requires that the disclosure statement include the estimated fair market value of the securing property, and, if that estimate is based upon an appraisal, certain information regarding the appraisal and the appraiser.

This bill would ~~repeal the authority of brokers to negotiate or otherwise engage in activities involving loans, real property sales contracts, and promissory notes secured collaterally by liens on real property or on business opportunities. It would also~~ *instead* require that the disclosure statement include the estimated fair market value of the securing property as determined by an appraisal, as specified, and would require the real estate broker to provide a copy of that appraisal to the lender or purchaser. It would, however, authorize certain lenders or purchasers to waive this requirement, in which case the real estate broker would be required to provide the broker's written estimated fair market value of the securing property, including the objective data upon which the broker's estimate is based. This bill would also require the broker to provide a preliminary report and a title insurance policy covering the real property, and a copy of a written loan application, a credit report, and any supporting document prepared by or on the prospective borrower or the trustor or vendee, as applicable.

(2) Existing law requires any real estate licensee who undertakes to service a promissory note secured directly or collaterally by a lien on real property or a real property sales contract to have a written authorization from the borrower or lender or holder of the contract.

This bill would instead require the real estate licensee, in this regard, to (1) have a written authorization from the borrower, the lender, or the owner of the note or contract that is included within the terms of a written servicing agreement satisfying specified requirements, (2) provide the lender or the owner of the note or contract with specified accountings



of the note or contract, and (3) provide to the lender or the owner of the note or contract written notification of the recording of a notice of default, the recording of a notice of trustee's sale, the receipt of any payment together with a request for partial or total reconveyance of the real property, or the delinquency of any installment or other obligation over 30 days. This bill would also authorize the commissioner to conduct certain audits of brokers, would increase certain reporting requirements of brokers, *would make certain other changes to the disclosure requirements of brokers*, and would require brokers to comply with applicable qualification and registration provisions of the Corporate Securities Law of 1968, or to secure an exemption therefrom, prior to entering into certain real property securities transactions.

(3) Existing law prescribes certain requirements, known as "multilender" requirements, on real estate brokers with respect to the sale of or offer to sell a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property that is equivalent to a series transaction. These requirements include certain maximum "loan to value" percentages by property type.

This bill would increase the maximum "loan to value" percentages for certain single-family residentially zoned lots or parcels and would make ~~all~~ *certain* of the so-called "multilender" requirements applicable to ~~the sale of or offer to sell any note or notes by a real estate broker subject to specified provisions of law~~ *specified transactions that are not series transactions or equivalent to series transactions*. It would also make related changes in this regard.

(4) Existing law requires a real estate broker who negotiates certain real property loans to provide to the borrower a written statement containing specified information relating to that loan. Existing law provides an exception to that requirement for a real estate broker in certain federally regulated residential mortgage loan transactions.

This bill would make that exception applicable only to a real estate broker who, in that transaction, is either the creditor or



acting as an agent of the creditor, as defined under the federal Truth in Lending Act.

(5) Existing law establishes in the Real Estate Fund the Recovery Account, which is continuously appropriated for purposes of funding the Real Estate Recovery Program. The account is funded by crediting a specified percentage of any real estate license fee collected. Existing law provides that when an aggrieved person obtains a final judgment in a court of competent jurisdiction or an arbitration award against a defendant based upon the defendant's fraud, misrepresentation, or deceit, made with intent to defraud, or conversion of trust funds arising directly out of any transaction in which the defendant, a real estate licensee, performed acts for which his or her license was required, the aggrieved person may file an application with the Department of Real Estate for payment from the Recovery Account of the amount unpaid in the judgment which represents an actual and direct loss to the claimant in the transaction.

This bill would authorize payments from the Recovery Account with respect to any such transaction in which the defendant real estate licensee either performed acts for which his or her license was required or for which another license under the Real Estate Law was required ~~or performed other real estate-related acts for which no license under the Real Estate Law was required.~~

By expanding the scope of eligible claims that can be made against the Recovery Account, this bill would make an appropriation.

(6) Existing law makes it a crime to willfully violate any of the provisions governing real estate, including those governing real estate brokers. By adding these new requirements for real estate brokers, this bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

(7) Existing law, known as the Escrow Law, provides for the licensure and regulation of escrow agents, and provides for the exemption of certain persons from that law, including any ~~licensed real estate broker while performing acts, as an agent or party, in connection with a real estate transaction for which a real estate license is required~~ *person licensed to*



practice law in the state who is not actively engaged in conducting an escrow agency.

~~This bill would provide that the exemption for licensed real estate brokers does not apply with respect to the payment of funds to extinguish prior liens or encumbrances on real property~~ *instead exempt from the Escrow Law, any person licensed to practice law in the state who has a bona fide client relationship with a principal in a real estate transaction and who is not actively engaged in conducting an escrow agency.*

(8) 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: yes. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 ~~SECTION 1. Section 10131 of the Business and~~
- 2 ~~Professions Code is amended to read:~~
- 3 ~~10131. A real estate broker within the meaning of this~~
- 4 ~~part is a person who, for a compensation or in expectation~~
- 5 ~~of a compensation, regardless of the form or time of~~
- 6 ~~payment, does or negotiates to do one or more of the~~
- 7 ~~following acts for another or others:~~
- 8 ~~(a) Sells or offers to sell, buys or offers to buy, solicits~~
- 9 ~~prospective sellers or purchasers of, solicits or obtains~~
- 10 ~~listings of, or negotiates the purchase, sale or exchange of~~
- 11 ~~real property or a business opportunity.~~
- 12 ~~(b) Leases or rents or offers to lease or rent, or places~~
- 13 ~~for rent, or solicits listings of places for rent, or solicits for~~
- 14 ~~prospective tenants, or negotiates the sale, purchase or~~
- 15 ~~exchanges of leases on real property, or on a business~~
- 16 ~~opportunity, or collects rents from real property, or~~
- 17 ~~improvements thereon, or from business opportunities.~~
- 18 ~~(c) Assists or offers to assist in filing an application for~~
- 19 ~~the purchase or lease of, or in locating or entering upon,~~
- 20 ~~lands owned by the state or federal government.~~



1 ~~(d) Solicits borrowers or lenders for or negotiates loans~~
2 ~~or collects payments or performs services for borrowers~~
3 ~~or lenders or note owners in connection with loans~~
4 ~~secured directly by liens on real property or on a business~~
5 ~~opportunity.~~

6 ~~(e) Sells or offers to sell, buys or offers to buy, or~~
7 ~~exchanges or offers to exchange a real property sales~~
8 ~~contract, or a promissory note secured directly by a lien~~
9 ~~on real property or on a business opportunity, and~~
10 ~~performs services for the holders thereof.~~

11 ~~SEC. 2. Section 10131.1 of the Business and~~
12 ~~Professions Code is amended to read:~~

13 ~~10131.1. A real estate broker within the meaning of~~
14 ~~this part is also a person who engages as a principal in the~~
15 ~~business of buying from, selling to, or exchanging with the~~
16 ~~public, real property sales contracts or promissory notes~~
17 ~~secured directly by liens on real property, or who makes~~
18 ~~agreements with the public for the collection of payments~~
19 ~~or for the performance of services in connection with real~~
20 ~~property sales contracts or promissory notes secured~~
21 ~~directly by liens on real property.~~

22 ~~As used in this section, “in the business” means any of~~
23 ~~the following:~~

24 ~~(a) The acquisition for resale to the public, and not as~~
25 ~~an investment, of eight or more real property sales~~
26 ~~contracts or promissory notes secured directly by liens on~~
27 ~~real property during a calendar year.~~

28 ~~(b) The sale to or exchange with the public of eight or~~
29 ~~more real property sales contracts or promissory notes~~
30 ~~secured directly by liens on real property during a~~
31 ~~calendar year. However, no transaction negotiated~~
32 ~~through a real estate licensee shall be considered in~~
33 ~~determining whether a person is a real estate broker~~
34 ~~within the meaning of this section.~~

35 ~~As used in this section, “sale,” “resale,” and “exchange”~~
36 ~~include every disposition of any interest in a real property~~
37 ~~sales contract or promissory note secured directly by a~~
38 ~~lien on real property, except the original issuance of a~~
39 ~~promissory note by a borrower or a real property sales~~
40 ~~contract by a vendor, either of which is to be secured~~



1 ~~directly by a lien on real property owned by the borrower~~
2 ~~or vendor.~~

3 ~~SEC. 3. Section 10133.1 of the Business and~~
4 ~~Professions Code, as amended by Section 2 of Chapter~~
5 ~~1386 of the Statutes of 1989, is amended to read:~~

6 ~~10133.1. (a) Subdivisions (d) and (e) of Section~~
7 ~~10131, Section 10131.1, Article 5 (commencing with~~
8 ~~Section 10230), Article 6 (commencing with Section~~
9 ~~10237), and Article 7 (commencing with Section 10240)~~
10 ~~and Section 1695.13 of the Civil Code do not apply to any~~
11 ~~of the following:~~

12 ~~(1) Any person or employee thereof doing business~~
13 ~~under any law of this state, any other state, or of the~~
14 ~~United States relating to banks, trust companies, savings~~
15 ~~and loan associations, industrial loan companies, pension~~
16 ~~trusts, credit unions, or insurance companies.~~

17 ~~(2) Any nonprofit cooperative association organized~~
18 ~~under Chapter 1 (commencing with Section 54001) of~~
19 ~~Division 20 of the Food and Agricultural Code, in loaning~~
20 ~~or advancing money in connection with any activity~~
21 ~~mentioned therein.~~

22 ~~(3) Any corporation, association, syndicate, joint stock~~
23 ~~company, or partnership engaged exclusively in the~~
24 ~~business of marketing agricultural, horticultural,~~
25 ~~viticultural, dairy, livestock, poultry, or bee products on~~
26 ~~a cooperative nonprofit basis, in loaning or advancing~~
27 ~~money to the members thereof or in connection with any~~
28 ~~such business.~~

29 ~~(4) Any corporation securing money or credit from~~
30 ~~any federal intermediate credit bank organized and~~
31 ~~existing pursuant to the provisions of an act of Congress~~
32 ~~entitled the "Agricultural Credits Act of 1923," in loaning~~
33 ~~or advancing money or credit so secured.~~

34 ~~(5) Any person licensed to practice law in this state,~~
35 ~~not actively and principally engaged in the business of~~
36 ~~negotiating loans secured by real property, when that~~
37 ~~person renders services in the course of his or her practice~~
38 ~~as an attorney at law, and the disbursements of that~~
39 ~~person, whether paid by the borrower or other person,~~
40 ~~are not charges or costs and expenses regulated by or~~



1 subject to the limitations of Article 7 (commencing with
2 Section 10240), provided, the fees and disbursements
3 shall not be shared, directly or indirectly, with the person
4 negotiating the loan or the lender.

5 (6) Any person licensed as a personal property broker,
6 a consumer finance lender, or a commercial finance
7 lender when acting under the authority of that license.

8 (7) Any cemetery authority as defined by Section 7018
9 of the Health and Safety Code which is authorized to do
10 business in this state or its authorized agent.

11 (8) Any person authorized in writing by a savings
12 institution to act as an agent of that institution, as
13 authorized by Section 6520 of the Financial Code or
14 comparable authority of the Federal Home Loan Bank
15 Board by its regulations, when acting under the authority
16 of such written authorization.

17 (9) Any person who is licensed as a securities broker or
18 securities dealer under any law of this state, or of the
19 United States, or any employee, officer, or agent of that
20 person, if that person, employee, officer, or agent is acting
21 within the scope of authority granted by that license in
22 connection with a transaction involving the offer, sale,
23 purchase, or exchange of a security representing an
24 ownership interest in a pool of promissory notes secured
25 directly or indirectly by liens on real property, which
26 transaction is subject to any law of this state or the United
27 States regulating the offer or sale of securities.

28 (b) Persons described in paragraph (1), (2), or (3) are
29 exempt from the provisions of subdivisions (d) and (e) of
30 Section 10131 or Section 10131.1 with respect to the
31 collection of payments or performance of services for
32 lenders or on notes of owners in connection with loans
33 secured directly by liens on real property:

34 (1) The person makes collections on 10 or less of those
35 loans, or in amounts of forty thousand dollars (\$40,000) or
36 less in any calendar year.

37 (2) The person is a corporation licensed as an escrow
38 agent under Division 6 (commencing with Section 17000)
39 of the Financial Code and the payments are deposited
40 and maintained in the escrow agent's trust account.



1 ~~(3) An employee of a real estate broker who is acting~~
2 ~~as the agent of a person described in paragraph (4) of~~
3 ~~subdivision (b) of Section 10232.4.~~

4 ~~For purposes of this subdivision, performance of~~
5 ~~services does not include soliciting borrowers, lenders, or~~
6 ~~purchasers for, or negotiating, loans secured directly or~~
7 ~~collaterally by a lien on real property.~~

8 ~~SEC. 3.5. Section 10133.1 of the Business and~~
9 ~~Professions Code, as amended by Section 1 of Chapter 994~~
10 ~~of the Statutes of 1994, is amended to read:~~

11 ~~10133.1. (a) Subdivisions (d) and (e) of Section~~
12 ~~10131, Section 10131.1, Article 5 (commencing with~~
13 ~~Section 10230), Article 6 (commencing with Section~~
14 ~~10237), and Article 7 (commencing with Section 10240)~~
15 ~~and Section 1695.13 of the Civil Code do not apply to any~~
16 ~~of the following:~~

17 ~~(1) Any person or employee thereof doing business~~
18 ~~under any law of this state, any other state, or of the~~
19 ~~United States relating to banks, trust companies, savings~~
20 ~~and loan associations, industrial loan companies, pension~~
21 ~~trusts, credit unions, or insurance companies.~~

22 ~~(2) Any nonprofit cooperative association organized~~
23 ~~under Chapter 1 (commencing with Section 54001) of~~
24 ~~Division 20 of the Food and Agricultural Code, in loaning~~
25 ~~or advancing money in connection with any activity~~
26 ~~mentioned therein.~~

27 ~~(3) Any corporation, association, syndicate, joint stock~~
28 ~~company, or partnership engaged exclusively in the~~
29 ~~business of marketing agricultural, horticultural,~~
30 ~~viticultural, dairy, livestock, poultry, or bee products on~~
31 ~~a cooperative nonprofit basis, in loaning or advancing~~
32 ~~money to the members thereof or in connection with any~~
33 ~~such business.~~

34 ~~(4) Any corporation securing money or credit from~~
35 ~~any federal intermediate credit bank organized and~~
36 ~~existing pursuant to the provisions of an act of Congress~~
37 ~~entitled the "Agricultural Credits Act of 1923," in loaning~~
38 ~~or advancing money or credit so secured.~~

39 ~~(5) Any person licensed to practice law in this state,~~
40 ~~not actively and principally engaged in the business of~~



1 ~~negotiating loans secured by real property, when that~~
2 ~~person renders services in the course of his or her practice~~
3 ~~as an attorney at law, and the disbursements of that~~
4 ~~person, whether paid by the borrower or other person,~~
5 ~~are not charges or costs and expenses regulated by or~~
6 ~~subject to the limitations of Article 7 (commencing with~~
7 ~~Section 10240), provided, the fees and disbursements~~
8 ~~shall not be shared, directly or indirectly, with the person~~
9 ~~negotiating the loan or the lender.~~

10 ~~(6) Any person licensed as a personal property broker,~~
11 ~~a consumer finance lender, or a commercial finance~~
12 ~~lender when acting under the authority of that license.~~

13 ~~(7) Any cemetery authority as defined by Section 7018~~
14 ~~of the Health and Safety Code which is authorized to do~~
15 ~~business in this state or its authorized agent.~~

16 ~~(8) Any person authorized in writing by a savings~~
17 ~~institution to act as an agent of that institution, as~~
18 ~~authorized by Section 6520 of the Financial Code or~~
19 ~~comparable authority of the Federal Home Loan Bank~~
20 ~~Board by its regulations, when acting under the authority~~
21 ~~of such written authorization.~~

22 ~~(9) Any person who is licensed as a securities broker or~~
23 ~~securities dealer under any law of this state, or of the~~
24 ~~United States, or any employee, officer, or agent of that~~
25 ~~person, if that person, employee, officer, or agent is acting~~
26 ~~within the scope of authority granted by that license in~~
27 ~~connection with a transaction involving the offer, sale,~~
28 ~~purchase, or exchange of a security representing an~~
29 ~~ownership interest in a pool of promissory notes secured~~
30 ~~directly or indirectly by liens on real property, which~~
31 ~~transaction is subject to any law of this state or the United~~
32 ~~States regulating the offer or sale of securities.~~

33 ~~(10) Any person licensed as a residential mortgage~~
34 ~~lender or servicer when acting under the authority of that~~
35 ~~license.~~

36 ~~(b) Persons described in paragraph (1), (2), or (3) are~~
37 ~~exempt from the provisions of subdivisions (d) and (e) of~~
38 ~~Section 10131 or Section 10131.1 with respect to the~~
39 ~~collection of payments or performance of services for~~



1 lenders or on notes of owners in connection with loans
2 secured directly by liens on real property:

3 (1) The person makes collections on 10 or less of those
4 loans, or in amounts of forty thousand dollars (\$40,000) or
5 less in any calendar year.

6 (2) The person is a corporation licensed as an escrow
7 agent under Division 6 (commencing with Section 17000)
8 of the Financial Code and the payments are deposited
9 and maintained in the escrow agent's trust account.

10 (3) An employee of a real estate broker who is acting
11 as the agent of a person described in paragraph (4) of
12 subdivision (b) of Section 10232.4.

13 For purposes of this subdivision, performance of
14 services does not include soliciting borrowers, lenders, or
15 purchasers for, or negotiating, loans secured directly or
16 collaterally by a lien on real property.

17 SEC. 4. Section 10139.5 of the Business and
18 Professions Code is amended to read:

19 10139.5. The commissioner may order the imposition
20 of a fine not to exceed ten thousand dollars (\$10,000)
21 against any real estate broker who, following a license
22 disciplinary hearing held in accordance with this part, is
23 found to have violated Section 10137 by employing or
24 compensating a person not licensed as a real estate broker
25 or a real estate salesperson to solicit borrowers or lenders
26 for or negotiate loans secured directly by liens on real
27 property.

28 The commissioner may only levy a fine pursuant to this
29 section as part of and in conjunction with a license
30 disciplinary proceeding held as prescribed by Chapter 5
31 (commencing with Section 11500) of Part 1 of Division 3
32 of Title 2 of the Government Code.

33 Nothing in this section is intended to limit the authority
34 of the commissioner to accept a monetary penalty
35 pursuant to Section 10175.2.

36 The commissioner's order to levy a fine shall have the
37 same effect as a judgment in a civil action and the
38 commissioner may commence any action or remedy in
39 any appropriate court of this state to collect the fine as a
40 judgment, including recordation of the order as a



1 judgment in the official records of any county of this state.
2 The commissioner's authority to commence an action or
3 remedy to collect the fine shall not commence unless the
4 fine is not paid within 30 days of the order becoming final,
5 or if not paid within any other time period agreed to by
6 the commissioner and the broker. In addition, the
7 commissioner shall have the authority without further
8 hearing to order the suspension of the broker's license
9 until the fine is paid in full, including any interest
10 accruing thereon.

11 All fines collected pursuant to this section shall be
12 credited to the Real Estate Recovery Account in the Real
13 Estate Fund.

14 This section shall remain in effect only until January 1,
15 2000, and as of that date is repealed, unless a later enacted
16 statute, which is enacted before January 1, 2000, deletes
17 or extends that date.

18 SEC. 5. Section 10145 of the Business and Professions
19 Code is amended to read:

20 10145. (a) (1) A real estate broker who accepts
21 funds belonging to others in connection with a
22 transaction subject to this part shall deposit all those funds
23 that are not immediately placed into a neutral escrow
24 depository or into the hands of the broker's principal, into
25 a trust fund account maintained by the broker in a bank
26 or recognized depository in this state. All funds deposited
27 by the broker in a trust fund account shall be maintained
28 there until disbursed by the broker in accordance with
29 instructions from the person entitled to the funds.

30 (2) Notwithstanding the provisions of paragraph (1),
31 a real estate broker collecting payments or performing
32 services for investors or note owners in connection with
33 loans secured by a first lien on real property may deposit
34 funds received in trust in an out-of-state depository
35 institution insured by the Federal Deposit Insurance
36 Corporation, if the investor or note owner is any one of
37 the following:

38 (A) The Federal National Mortgage Association, the
39 Government National Mortgage Association, the Federal



1 ~~Home Loan Mortgage Corporation, the Federal Housing~~
2 ~~Administration, and the Veteran's Administration.~~

3 ~~(B) A bank or subsidiary thereof, bank holding~~
4 ~~company or subsidiary thereof, trust company, savings~~
5 ~~bank or savings and loan association or subsidiary thereof,~~
6 ~~savings bank or savings association holding company or~~
7 ~~subsidiary thereof, credit union, industrial bank or~~
8 ~~industrial loan company, or insurance company doing~~
9 ~~business under the authority of, and in accordance with,~~
10 ~~the laws of this state, another state, or of the United States~~
11 ~~relating to banks, trust companies, savings banks or~~
12 ~~savings associations, credit unions, industrial banks or~~
13 ~~industrial loan companies, or insurance companies, as~~
14 ~~evidenced by a license, certificate, or charter issued by~~
15 ~~the United States or a state, district, territory, or~~
16 ~~commonwealth of the United States.~~

17 ~~(C) Trustees of a pension, profit-sharing, or welfare~~
18 ~~fund, if the pension, profit-sharing, or welfare fund has a~~
19 ~~net worth of not less than fifteen million dollars~~
20 ~~(\$15,000,000).~~

21 ~~(D) A corporation with outstanding securities~~
22 ~~registered under Section 12 of the Securities Exchange~~
23 ~~Act of 1934 or a wholly owned subsidiary of that~~
24 ~~corporation.~~

25 ~~(E) A syndication or other combination of any of the~~
26 ~~entities specified in subparagraph (A), (B), (C), or (D)~~
27 ~~that is organized to purchase the promissory note.~~

28 ~~(F) The California Housing Finance Agency or a local~~
29 ~~housing finance agency organized under the Health and~~
30 ~~Safety Code.~~

31 ~~(G) A licensed residential mortgage lender or servicer~~
32 ~~acting under the authority of that license.~~

33 ~~(H) A licensed real estate broker selling all or part of~~
34 ~~the loan, note, or contract to a lender or purchaser~~
35 ~~specified in subparagraphs (A) to (G), inclusive, of this~~
36 ~~subdivision.~~

37 ~~(3) A real estate broker who deposits funds held in~~
38 ~~trust in an out-of-state depository institution in~~
39 ~~accordance with the provisions of paragraph (2) shall~~
40 ~~make available, in this state, the books, records, and files~~



1 ~~pertaining to the trust accounts to the commissioner or~~
2 ~~the commissioner's representatives, or pay the~~
3 ~~reasonable expenses for travel and lodging incurred by~~
4 ~~the commissioner or the commissioner's representatives~~
5 ~~in order to conduct an examination at an out-of-state~~
6 ~~location.~~

7 ~~(b) A real estate broker acting as a principal pursuant~~
8 ~~to Section 10131.1 or Article 6 (commencing with Section~~
9 ~~10237) of this part shall place all funds received from~~
10 ~~others for the purchase of real property sales contracts or~~
11 ~~promissory notes secured directly by liens on real~~
12 ~~property in a neutral escrow depository unless delivery of~~
13 ~~the contract or note is made simultaneously with the~~
14 ~~receipt of the purchase funds.~~

15 ~~(c) A real estate sales person who accepts trust funds~~
16 ~~from others on behalf of the broker under whom he or she~~
17 ~~is licensed shall immediately deliver the funds to the~~
18 ~~broker or, if so directed by the broker, shall place the~~
19 ~~funds into the hands of the broker's principal, into a~~
20 ~~neutral escrow depository, or shall deposit the funds into~~
21 ~~the broker's trust fund account.~~

22 ~~(d) If not otherwise expressly prohibited by a~~
23 ~~provision of this part, a real estate broker may, at the~~
24 ~~request of the owner of trust funds or of the principals to~~
25 ~~a transaction or series of transactions from whom the~~
26 ~~broker has received trust funds, deposit the funds into an~~
27 ~~interest-bearing account in a bank, savings and loan~~
28 ~~association, credit union, or industrial loan company~~
29 ~~whose accounts are insured by the Federal Deposit~~
30 ~~Insurance Corporation, if all of the following~~
31 ~~requirements are met:~~

32 ~~(1) The account is in the name of the broker as trustee~~
33 ~~for the specified beneficiary or specified principal of a~~
34 ~~transaction or series of transactions.~~

35 ~~(2) All of the funds in the account are covered by~~
36 ~~insurance provided by an agency of the federal~~
37 ~~government.~~

38 ~~(3) The funds in the account are kept separate,~~
39 ~~distinct, and apart from funds belonging to the broker or~~



1 to any other person for whom the broker holds funds in
2 trust.

3 (4) The broker discloses to the person from whom the
4 trust funds are received and to a beneficiary whose
5 identity is known to the broker at the time of establishing
6 the account the nature of the account, how interest will
7 be calculated and paid under various circumstances,
8 whether service charges will be paid to the depository
9 and by whom, and possible notice requirements or
10 penalties for withdrawal of funds from the account.

11 (5) Interest earned on funds in the account may not
12 inure directly or indirectly to the benefit of the broker
13 nor to a person licensed to the broker.

14 (6) In an executory sale, lease, or loan transaction in
15 which the broker accepts funds in trust to be applied to
16 the purchase, lease, or loan, the parties to the contract
17 shall have specified in the contract or by collateral
18 written agreement the person to whom interest earned
19 on the funds is to be paid or credited.

20 (e) The broker shall have no obligation to place trust
21 funds into an interest-bearing account unless requested
22 to do so and unless all of the conditions in subdivision (d)
23 are met; nor, in any event, if he or she advises the party
24 making the request that the funds will not be placed in an
25 interest-bearing account.

26 (f) Nothing in subdivision (d) shall preclude the
27 commissioner from prescribing by regulation
28 circumstances in which and conditions under which a real
29 estate broker is authorized to deposit funds received in
30 trust into an interest-bearing trust fund account.

31 (g) The broker shall maintain a separate record of the
32 receipt and disposition of all funds described in
33 subdivisions (a) and (b), including any interest earned on
34 the funds.

35 (h) Upon request of the commissioner, a broker shall
36 furnish to the commissioner an authorization for
37 examination of financial records of those trust fund
38 accounts maintained in a financial institution, in
39 accordance with the procedures set forth in Section 7473
40 of the Government Code.



1 ~~(i) As used in this section “neutral escrow” means an~~
2 ~~escrow business conducted by a person licensed under~~
3 ~~Division 6 (commencing with Section 17000) of the~~
4 ~~Financial Code or by a person described in subdivision~~
5 ~~(a) of Section 17006 and subdivision (e) of Section 17006~~
6 ~~of that code.~~

7 ~~SEC. 6.~~

8 SECTION 1. Section 10229 of the Business and
9 Professions Code is amended to read:

10 10229. Any transaction that involves the sale of or
11 offer to sell a series of notes secured directly by an interest
12 in the same real property, or the sale of undivided
13 interests in a note secured directly by real property
14 equivalent to a series transaction, shall comply with all of
15 the following, except as provided in paragraph (4) of
16 subdivision (i), the terms “sale” and “offer to sell,” as used
17 in this section, shall have the same meaning as set forth
18 in Section 25017 of the Corporations Code and include the
19 acts of negotiating and arranging the transaction:

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

25

26 TO: Real Estate Commissioner
27 Mortgage Loan Section
28 2201 Broadway
29 Sacramento, CA 95818
30

31 This notice is filed pursuant to Section 10229 of the Business and
32 Professions Code.

33

34 () Original Notice () Amended Notice

35

36 1. Name of Broker conducting transaction under Section 10229:

37

38

39



1 2. Firm name (if different from “1”):
 2
 3 _____
 4

5 3. Street address (main location):
 6
 7 _____
 8 # and Street City State ZIP Code
 9

10 4. Mailing address (if different from “3”):
 11
 12 _____
 13

14 5. Servicing Agent: Identify the person or persons who will act
 15 as the servicing agent in transactions pursuant to Section
 16 10229 (including the undersigned Broker if such is the case):
 17
 18 _____
 19 _____
 20

21 6. Inspection of trust account (before answering this question,
 22 review the provisions of paragraph (3) of subdivision (j) of
 23 Section 10229).
 24

25 CHECK ONLY ONE OF THE FOLLOWING:

26
 27 () The undersigned Broker is (or expects to be) required to file
 28 reports of inspection of its trust account(s) with the Real Estate
 29 Commissioner pursuant to paragraph (3) of subdivision (j) of
 30 Section 10229.
 31

32 () The undersigned Broker is NOT (or does NOT expect to be)
 33 required to file reports of inspection of its trust account(s) with
 34 the Real Estate Commissioner pursuant to paragraph (3) of
 35 subdivision (j) of Section 10229.
 36



1 7. Signature. The contents of this notice are true and correct.

2
3
4
5
6
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11
12

Date	Type Name of Broker
Signature of Broker or of Designated Officer of Corporate Broker	
Type Name of Persons Signing This Notice	

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

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(b) All advertising employed for transactions under this section shall (1) show the name of the broker and (2) comply with Section 260.302 of Title 10 of the California Code of Regulations, Section 10235 of the Business and Professions Code, and Section 2848 of Title 10 of the California Code of Regulations. Brokers and their agents are cautioned that a reference to a prospective investor that a transaction is conducted under this section may be deemed misleading or deceptive if this representation may reasonably be construed by the investor as an implication of merit or approval of the transaction.

(c) The real property directly securing the notes or interests is located in this state, the note or notes are not by their terms subject to subordination to any subsequently created deed of trust upon the real property, and the note or notes are not promotional notes secured by liens on separate parcels of real property in one subdivision or in contiguous subdivisions. For purposes of this subdivision, a promotional note means a promissory note secured by a trust deed executed on unimproved real property or executed after construction of an improvement of the property but before the first purchase of the property as so improved, or executed as



1 a means of financing the first purchase of the property as
2 so improved, and which is subordinate or which by its
3 terms may become subordinate to any other trust deed on
4 the property. However, the term “promotional note”
5 does not include either of the following:

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

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

21 (d) (1) The notes or interests are sold by or through
22 a real estate broker, as principal or agent. At the time the
23 interests are originally sold or assigned, neither the
24 broker nor an affiliate of the broker shall have an interest
25 as owner, lessor, or developer of the property securing
26 the loan, or any contractual right to acquire, lease, or
27 develop the property securing the loan. This provision
28 shall not prohibit a broker from conducting the following
29 transactions if, in either case, the disclosure statement
30 furnished by the broker pursuant to subdivision (k)
31 discloses the interest of the broker or affiliate in the
32 transaction and the circumstances under which the
33 broker or affiliate acquired the interest:

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

39 (B) A transaction in which the broker or an affiliate of
40 the broker is reselling from inventory property acquired



1 by the broker pursuant to a foreclosure under, or sale
2 pursuant to, a deed of trust securing a note for which the
3 broker is the servicing agent or which the broker sold to
4 the holder or holders.

5 (2) For the purposes of this subdivision, the following
6 definitions apply:

7 (A) "Broker" means a person licensed as a broker
8 under any of the provisions of this part.

9 (B) "Affiliate" means a person controlled by,
10 controlling, or under common control with, the broker.

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

16
17 Transaction Identifier: _____

18
19 Name of Purchaser: _____ Date: _____

20
21 Check either one of the following, if true.

22
23 () My investment in the transaction does not exceed 10% of my
24 net worth, exclusive of home, furnishings, and automobiles.

25
26 () My investment in the transaction does not exceed 10% of my
27 adjusted gross income for federal income tax purposes for my
28 last tax year, or in the alternative, as estimated for the current
29 year.

30 _____
31 Signature

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

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

38 (4) A retirement plan, trust, business trust,
39 corporation, or other entity that is wholly owned by an
40 individual, and the individual's spouse, or the individual's



1 dependents, or any combination thereof, shall not be
2 counted separately from the individual but the
3 investments of these entities shall be aggregated with
4 those of the individual for the purposes of the statement
5 required by paragraph (1). If the investments of any
6 entities are required to be aggregated under this
7 subdivision, the adjusted gross income or net worth of
8 these entities may also be aggregated with the net worth,
9 or both, income of the individual.

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

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

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

40



- 1 (A) Single-family residence, owner-occupied 80%
- 2 (B) Single-family residence, not owner-occupied 75%
- 3 (C) Commercial and income-producing properties 65%
- 4 (D) Single-family residentially zone lot or parcel which
- 5 has installed off-site improvements including
- 6 drainage, curbs, gutters, sidewalks, paved roads, and
- 7 utilities as mandated by the political subdivision
- 8 having jurisdiction over the lot or parcel 65%
- 9 (E) Land which has been zoned for (and if required,
- 10 approved for subdivision as) commercial or
- 11 residential development 50%
- 12 (F) Other real property 35%

13

14 (2) The percentage amounts specified in paragraph

15 (1) shall not apply to a transaction where the lender or

16 purchaser is any one of the lenders listed in subdivision

17 (b) of Section 22340 of the Financial Code, and the

18 percentages may otherwise be exceeded when and to the

19 extent that the broker determines that the encumbrance

20 of the property in excess of these percentages is

21 reasonable and prudent considering all relevant factors

22 pertaining to the real property. However, in no event

23 shall the aggregate principal amount of the notes or

24 interests sold, together with the unpaid principal amount

25 of any encumbrances upon the property senior thereto,

26 exceed 80 percent of the current fair market value of

27 improved real property or 50 percent of the current fair

28 market value of unimproved real property, except in the

29 case of a single-family zoned lot or parcel as defined in

30 paragraph (1), which shall not exceed 65 percent of the

31 current fair market value of that lot or parcel, plus the

32 amount insured as specified in paragraph (1). A written

33 statement shall be prepared by the broker that sets forth

34 the material considerations and facts that the broker

35 relies upon for his or her determination which shall be

36 retained as a part of the broker's record of the transaction.

37 Either a copy of the statement or the information

38 contained therein shall be included in the disclosures

39 required pursuant to subdivision (k).



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

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

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

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



1 provision of this section shall be construed as modifying
2 or superseding applicable law regulating the escrow
3 holder in any transaction or the handling of the escrow
4 account.

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

10 (4) If required by paragraph (3) of subdivision (j), the
11 review by the independent certified public accountant
12 shall include a sample of transactions as reflected in the
13 records of the trust account required pursuant to
14 paragraph (1) of subdivision (j), and the bank statements
15 and supporting documents. These documents shall be
16 reviewed for compliance with this section with respect to
17 the handling and distribution of funds. The sample shall
18 be selected at random by the accountant from all these
19 transactions and shall consist of the following: (A) three
20 sales made or 5 percent of the sales made pursuant to this
21 section during the period for which the examination is
22 conducted, whichever is greater, and (B) 10 payments
23 processed or 2 percent of payments processed under this
24 exemption during the period for which the examination
25 is conducted, whichever is greater. The transaction that
26 constitutes a “sale,” for purposes of this subdivision, is the
27 series of transactions by which a series of notes of a maker,
28 or the interests in the note of a maker, are sold or issued
29 to their various purchasers under this section, including
30 all receipts and disbursements in that process of funds
31 received from the purchasers or lenders. The transaction
32 that constitutes a “payment,” for the purposes of this
33 subdivision, is the receipt of a payment from the person
34 obligated on the note, or from some other person on
35 behalf of the person so obligated, including the broker or
36 servicing agent, and the distribution of that payment to
37 the persons entitled thereto. If such a payment involves
38 an advance paid by the broker or servicing agent as the
39 result of a dishonored check, the inspection shall identify
40 the source of funds from which the payment was made or,



1 in the alternative, the steps that are reasonably necessary
2 to determine that there was not a disbursement of trust
3 funds. The specific provisions of this section, compliance
4 with which is to be inspected by the accountant, are the
5 following: paragraphs (1), (2), and (3) of subdivision (i)
6 and paragraphs (1) and (2) of subdivision (j).

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

24 (j) The notes or interests shall be sold subject to a
25 written agreement that obligates a licensed real estate
26 broker, or a person exempted from the licensing
27 requirement for real estate brokers under Chapter 3
28 (commencing with Section 10130) of Part 1 of Division 4,
29 to act as agent for the purchasers or lenders to service the
30 note or notes and deed of trust, including the receipt and
31 transmission of payments and the institution of
32 foreclosure proceedings in the event of a default. A copy
33 of this servicing agreement shall be delivered to each
34 purchaser. The broker shall offer to the lenders or
35 purchasers the services of the broker or one or more
36 affiliates of the broker, or both, as servicing agent for each
37 transaction conducted pursuant to this section. The
38 agreement shall require all of the following:

39 (1) (A) That payments received on the note or notes
40 be immediately deposited to a trust account maintained



1 in accordance with the provisions of law and rules for
2 trust accounts of licensed real estate brokers contained in
3 Section 10145 of this code and Article 15 (commencing
4 with Section 2830) of Chapter 6 of Title 10 of the
5 California Code of Regulations and in accordance with
6 this section.

7 (B) That these payments shall not be commingled
8 with the assets of the servicing agent or used for any
9 transaction other than the transaction for which the funds
10 are received.

11 (2) That payments received on the note or notes shall
12 be transmitted to the purchasers or lenders pro rata
13 according to their respective interests within 25 days
14 after receipt thereof by the agent. If the source for the
15 payment is not the maker of the note, the agent shall
16 inform the purchasers or lenders of the source for
17 payment. A broker or servicing agent who transmits to
18 the purchaser or lenders the broker's or servicing agent's
19 own funds to cover payments due from the borrower but
20 unpaid as a result of a dishonored check may recover the
21 amount of the advances from the trust fund when the past
22 due payment is received. However, nothing contained in
23 this section shall authorize the broker, servicing agent, or
24 any other person to issue, or to engage in any practice
25 constituting, any guarantee, or to engage in the practice
26 of advancing payments on behalf of the borrower.

27 (3) If the broker, directly or through an affiliate, is the
28 servicing agent for notes or interests sold pursuant to this
29 section upon which the payments due during any period
30 of three consecutive months in the aggregate exceed one
31 hundred twenty-five thousand dollars (\$125,000) or the
32 number of persons entitled to the payments exceeds 120,
33 the trust account or accounts of that broker or affiliate
34 shall be inspected at no less than three-month intervals
35 during which the volume is maintained, by an
36 independent certified public accountant. Within 30 days
37 after the close of the period for which the review is made,
38 the report of the accountant shall be forwarded as
39 provided in paragraph (5) of subdivision (i). If the broker
40 is required to file an annual report pursuant to subdivision



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

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

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

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

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

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

24 (1) The disclosure form shall include a description of
25 the terms upon which the note and deed of trust are being
26 sold, including the terms of the undivided interests being
27 offered therein, including 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
31 the principal balance plus accrued but unpaid interest.

32 (iii) The effective rate of return to the purchasers if
33 the note is 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,
37 each cost payable by the seller in connection with the sale
38 and a description of, and the estimated amount of, each
39 cost payable by the purchasers in connection with the
40 sale.



- 1 (B) In the case of the origination of a note:
2 (i) The name and address of the escrowholder for the
3 transaction.
4 (ii) The anticipated closing date.
5 (iii) A description of, and the estimated amount of,
6 each cost payable by the borrower in connection with the
7 loan and a description of, and the estimated amount of,
8 each cost payable by the lenders in connection with the
9 loan.
- 10 (2) A copy of the written statement or information
11 contained therein, as required under paragraph (2) of
12 subdivision (g) shall be included in the disclosure form.
- 13 (3) Any interest of the broker or affiliate in the
14 transaction as described in subdivision (d) shall be
15 included with the disclosure form.
- 16 (4) When the particular circumstances of a transaction
17 make information not specified in the disclosure form
18 material, or essential to make the information provided
19 in the form not misleading, and the other information is
20 known to the broker, the other information shall also be
21 provided by the broker.
- 22 (l) The broker or servicing agent shall furnish any
23 purchaser of a note or interest, upon request, with the
24 names and addresses of the purchasers of the other notes
25 or interests in the loan.
- 26 (m) No agreement in connection with a transaction
27 covered by this section shall grant to the real estate
28 broker, the servicing agent, or any affiliate of the broker
29 or agent the option or election to acquire the interests of
30 the purchasers or lenders or to acquire the real property
31 securing the interests. This subdivision shall not prohibit
32 the broker or affiliate from acquiring the interests with
33 the consent of the purchasers or lenders whose interests
34 are being purchased, or the property with the consent of
35 the purchasers or lenders, if the consent is given at the
36 time of the acquisition.
- 37 (n) Each broker who conducts transactions under this
38 section and meets the criteria of paragraph (3) of
39 subdivision (j) shall file with the commissioner an annual
40 report of a review of its trust account. The report shall be



1 prepared and filed in accordance with subdivision (a) of
2 Section 10232.2 and the rules and procedures thereunder
3 of the commissioner. That report shall cover the broker's
4 transactions under this section and if the broker also
5 meets the threshold criteria set forth in Section 10232, the
6 broker's transactions subject to that section shall be
7 included as well.

8 (o) Each broker conducting transactions pursuant to
9 this section and who meets the criteria of paragraph (3)
10 of subdivision (j) shall file with the commissioner a report
11 of the transactions which is prepared in accordance with
12 subdivision (c) of Section 10232.2. If the broker also meets
13 the threshold criteria of Section 10232, the report shall
14 include the transactions subject to that section as well.
15 This report shall be confidential pursuant to subdivision
16 (f) of Section 10232.2.

17 (p) The jurisdiction of the Commissioner of
18 Corporations under the Corporate Securities Law of 1968
19 shall be neither limited nor expanded by the provisions
20 of the section. Nothing in this section shall be construed
21 to supersede or restrict the application of the Corporate
22 Securities Law of 1968. A transaction under this section
23 shall not be construed to be a transaction involving the
24 issuance of securities subject to authorization by the Real
25 Estate Commissioner under subdivision (e) of Section
26 25100 of the Corporations Code.

27 (q) Nothing in this section shall be construed to
28 change the agency relationships between the parties
29 where they exist or to limit in any manner the fiduciary
30 duty of brokers to borrowers, lenders, and purchasers of
31 notes or interests, in transactions subject to this section.

32 ~~SEC. 7. Section 10229.1 is added to the Business and~~
33 ~~Professions Code, to read:~~

34 ~~10229.1. The requirements of Section 10229 shall~~
35 ~~apply to the sale of or offer to sell any note or notes subject~~
36 ~~to the provisions of this article.~~

37 ~~SEC. 8.~~

38 ~~SEC. 2. Section 10230 of the Business and Professions~~
39 ~~Code is amended to read:~~



1 10230. (a) The provisions of this article, except for
2 Section 10236.7, do not apply to the negotiation of a loan
3 by or on behalf of a real estate broker in connection with
4 a qualifying sale or exchange of real property in which the
5 broker acted as the agent of one or more of the parties to
6 the sale or exchange, nor to the sale or exchange by or on
7 behalf of the broker of a promissory note created for the
8 purpose of financing a qualifying real property sale or
9 exchange transaction in which the broker acted as the
10 agent of one or more of the parties to the qualifying real
11 property sale or exchange regardless of the time of the
12 sale or exchange of the promissory note. For the purposes
13 of this subdivision, a “qualifying” sale or exchange of real
14 property is one that is subject to the requirements of
15 Article 3 (commencing with Section 2956) of Chapter 2
16 of Title 14 of Part 4 of Division 3 of the Civil Code.

17 (b) The provisions of this article, except for
18 paragraphs (1) and (2) of subdivision (g) of Section
19 10229, do apply to the sale or exchange of a promissory
20 note regardless of the time of that sale or exchange, when
21 that sale or exchange is arranged by a real estate broker
22 who is other than the real estate broker who acted as the
23 agent of one or more of the parties to the qualifying real
24 property sale or exchange within which the promissory
25 note was created.

26 (c) Subdivision (a) shall not apply to the negotiation
27 of loans nor to sales or exchanges of promissory notes in
28 connection with the financing of a real property sale or
29 exchange transaction in which the broker had a direct or
30 indirect monetary interest as a party.

31 ~~SEC. 9.~~

32 *SEC. 3.* Section 10231 of the Business and Professions
33 Code is amended to read:

34 10231. Except as authorized by permit issued
35 ~~pursuant to the provisions of Article 6 (commencing with~~
36 ~~Section 10237) or pursuant to the applicable provisions of~~
37 the Corporate Securities Law of 1968 (Section 25000 and
38 following of the Corporations Code), no person in doing
39 any of the acts set forth in subdivision (d) of Section
40 10131, subdivision (e) of Section 10131, and Section



1 10131.1 shall accept any purchase or loan funds or other
2 consideration from a prospective purchaser or lender, or
3 directly or indirectly cause such funds or other
4 consideration to be deposited in an escrow except as to a
5 specific loan or a specific real property sales contract or
6 promissory note secured directly *or collaterally* by a lien
7 on real property on which loan, contract or note the
8 person has a bona fide authorization to negotiate or to sell
9 or which has been bought and completely paid for by the
10 licensee, or has an unconditional written contract which
11 obligates him to purchase a specific real property sales
12 contract or promissory note secured directly *or*
13 *collaterally* by a deed of trust.

14 ~~SEC. 10.~~

15 *SEC. 4.* Section 10231.1 of the Business and
16 Professions Code is amended to read:

17 10231.1. No person in doing any of the acts set forth in
18 subdivision (d) of Section 10131, subdivision (e) of
19 Section 10131, and Section 10131.1 shall, as agent or
20 principal, retain funds payable according to the terms of
21 a promissory note or real property sales contract secured
22 directly *or collaterally* by a lien on real property, for a
23 period longer than 25 days, except pursuant to a written
24 agreement with the purchaser or lender.

25 ~~SEC. 11.~~

26 *SEC. 5.* Section 10231.2 of the Business and
27 Professions Code is amended to read:

28 10231.2. (a) A real estate broker who, through
29 express or implied representations that the broker or
30 salespersons acting on the broker's behalf are engaging in
31 acts for which a real estate license is required by
32 subdivision (d) or (e) of Section 10131, proposes to solicit
33 and accept funds, or to cause the solicitation and
34 acceptance of funds, to be applied to a purchase or loan
35 transaction in which the broker will directly or indirectly
36 obtain the use or benefit of the funds other than for
37 commissions, fees and costs and expenses as provided by
38 law for the broker's services as an agent, shall, prior to the
39 making of any representation, solicitation, or
40 presentation of the statement described in subdivision



1 (b), submit the following to the Department of Real
2 Estate:

3 (1) A true copy of the statement described in
4 subdivision (b) complete except for the signature of the
5 prospective lender or purchaser.

6 (2) A statement that the submittal is being made to the
7 department pursuant to Section 10231.2.

8 (b) A broker making a solicitation pursuant to
9 subdivision (a) shall deliver, or cause to be delivered, to
10 the person solicited, the applicable completed statement
11 described in Section 10232.5 not less than 24 hours before
12 the earlier of the acceptance of any funds from that
13 person by or on behalf of the broker or the execution of
14 any instrument obligating the person to make the loan or
15 purchase. The statement shall be signed by the
16 prospective lender or purchaser and by the real estate
17 broker or, on the broker's behalf, by a real estate
18 salesperson licensed to the broker. When so executed, an
19 exact copy shall be given to the prospective lender or
20 purchaser, and the broker shall retain a true copy of the
21 executed statement for a period of four years.

22 (c) None of the provisions of subdivision (a) or (b)
23 shall apply in the case of an offering of a security
24 authorized pursuant to the provisions of Article 6
25 (commencing with Section 10237) or pursuant to
26 applicable provisions of the Corporate Securities Law of
27 1968 (Section 25000 and following of the Corporations
28 Code).

29 (d) In the case of a solicitation by a corporate real
30 estate broker, the provisions of subdivisions (a) and (b)
31 shall apply if the funds solicited are intended for the
32 direct or indirect use or benefit of an officer or director
33 of the corporation or of a person with a 10 percent or
34 greater ownership interest in the corporation.

35 (e) The limitations set forth in subdivision (d) of
36 Section 10229 shall apply to transactions covered under
37 this section.

38 ~~SEC. 12. Section 10232 of the Business and Professions~~
39 ~~Code is amended to read:~~



1 ~~10232. (a) Except as otherwise expressly provided,~~
2 ~~the provisions of Sections 10232.2 and 10232.25 are~~
3 ~~applicable to every real estate broker who intends or~~
4 ~~reasonably expects in a successive 12 months to do any of~~
5 ~~the following:~~

6 ~~(1) Negotiate a combination of 10 or more of the~~
7 ~~following transactions pursuant to subdivision (d) or (e)~~
8 ~~of Section 10131 or Section 10131.1 in an aggregate~~
9 ~~amount of more than one million dollars (\$1,000,000):~~

10 ~~(A) Loans secured directly by liens on real property or~~
11 ~~on business opportunities as agent for another or others.~~

12 ~~(B) Sales or exchanges of real property sales contracts~~
13 ~~or promissory notes secured directly by liens on real~~
14 ~~property or on business opportunities as agent for another~~
15 ~~or others.~~

16 ~~(C) Sales or exchanges of real property sales contracts~~
17 ~~or promissory notes secured directly by liens on real~~
18 ~~property as the owner of those notes or contracts.~~

19 ~~(2) Make collections of payments in an aggregate~~
20 ~~amount of two hundred fifty thousand dollars (\$250,000)~~
21 ~~or more on behalf of owners of promissory notes secured~~
22 ~~directly by liens on real property, owners of real property~~
23 ~~sales contracts, or both.~~

24 ~~(3) Make collections of payments in an aggregate~~
25 ~~amount of two hundred fifty thousand dollars (\$250,000)~~
26 ~~or more on behalf of obligors of promissory notes secured~~
27 ~~directly by liens on real property, lenders of real property~~
28 ~~sales contracts, or both.~~

29 ~~Persons under common management, direction or~~
30 ~~control in conducting the activities enumerated above~~
31 ~~shall be considered as one person for the purpose of~~
32 ~~applying the above criteria.~~

33 ~~(b) The negotiation of a combination of two or more~~
34 ~~new loans and sales or exchanges of existing promissory~~
35 ~~notes and real property sales contracts of an aggregate~~
36 ~~amount of more than two hundred fifty thousand dollars~~
37 ~~(\$250,000) in any three successive months or a~~
38 ~~combination of five or more new loans and sales or~~
39 ~~exchanges of existing promissory notes and real property~~
40 ~~sales contracts of an aggregate amount of more than five~~



1 ~~hundred thousand dollars (\$500,000) in any successive six~~
2 ~~months shall create a rebuttable presumption that the~~
3 ~~broker intends to negotiate new loans and sales and~~
4 ~~exchanges of an aggregate amount that will meet the~~
5 ~~criteria of subdivision (a).~~

6 ~~(e) In determining the applicability of Sections~~
7 ~~10232.2 and 10232.25, loans or sales negotiated by a broker,~~
8 ~~or for which a broker collects payments or provides other~~
9 ~~servicing for the owner of the note or contract, shall not~~
10 ~~be counted in determining whether the broker meets the~~
11 ~~criteria of subdivisions (a) and (b) if any of the following~~
12 ~~apply:~~

13 ~~(1) The lender or purchaser is any of the following:~~

14 ~~(A) The Federal National Mortgage Association, the~~
15 ~~Government National Mortgage Association, the Federal~~
16 ~~Home Loan Mortgage Corporation, the Federal Housing~~
17 ~~Administration, and the Veterans' Administration.~~

18 ~~(B) A bank or subsidiary thereof, bank holding~~
19 ~~company or subsidiary thereof, trust company, savings~~
20 ~~bank or savings and loan association or subsidiary thereof,~~
21 ~~savings bank or savings association holding company or~~
22 ~~subsidiary thereof, credit union, industrial bank or~~
23 ~~industrial loan company, commercial finance lender,~~
24 ~~personal property broker, consumer finance lender, or~~
25 ~~insurer doing business under the authority of, and in~~
26 ~~accordance with, the laws of this state, any other state, or~~
27 ~~of the United States relating to banks, trust companies,~~
28 ~~savings banks or savings associations, credit unions,~~
29 ~~industrial banks or industrial loan companies, commercial~~
30 ~~finance lenders, or insurers, as evidenced by a license,~~
31 ~~certificate, or charter issued by the United States or a~~
32 ~~state, district, territory, or commonwealth of the United~~
33 ~~States.~~

34 ~~(C) Trustees of a pension, profit-sharing, or welfare~~
35 ~~fund, if the pension, profit-sharing, or welfare fund has a~~
36 ~~net worth of not less than fifteen million dollars~~
37 ~~(\$15,000,000).~~

38 ~~(D) A corporation with outstanding securities~~
39 ~~registered under Section 12 of the Securities Exchange~~



1 ~~Act of 1934 or a wholly owned subsidiary of that~~
2 ~~corporation.~~

3 ~~(E) A syndication or other combination of any of the~~
4 ~~entities specified in subparagraph (A), (B), (C), or (D)~~
5 ~~that is organized to purchase the promissory note.~~

6 ~~(F) The California Housing Finance Agency or a local~~
7 ~~housing finance agency organized under the Health and~~
8 ~~Safety Code.~~

9 ~~(G) A licensed residential mortgage lender or servicer~~
10 ~~acting under the authority of that license.~~

11 ~~(H) An institutional investor that issues~~
12 ~~mortgage-backed securities, as specified in paragraph~~
13 ~~(11) of subdivision (i) of Section 50003 of the Financial~~
14 ~~Code.~~

15 ~~(I) A licensed real estate broker selling all or part of~~
16 ~~the loan, the note, or the contract to a lender or purchaser~~
17 ~~specified in subparagraphs (A) to (H), inclusive, of this~~
18 ~~subdivision.~~

19 ~~(2) The loan or sale is negotiated, or the loan or~~
20 ~~contract is being serviced for the owner, under authority~~
21 ~~of a permit issued pursuant to the provisions of Article 6~~
22 ~~(commencing with Section 10237) or applicable~~
23 ~~provisions of the Corporate Securities Law of 1968~~
24 ~~(Section 25000 et seq. of the Corporations Code).~~

25 ~~(3) The transaction is subject to the requirements of~~
26 ~~Article 3 (commencing with Section 2956) of Chapter 2~~
27 ~~of Title 14 of Part 4 of the Civil Code.~~

28 ~~(d) If two or more real estate brokers who are not~~
29 ~~under common management, direction, or control,~~
30 ~~cooperate in the negotiation of a loan or the sale or~~
31 ~~exchange of a promissory note or real property sales~~
32 ~~contract and share in the compensation for their services,~~
33 ~~the dollar amount of the transaction shall be allocated~~
34 ~~according to the ratio that the compensation received by~~
35 ~~each broker bears to the total compensation received by~~
36 ~~all brokers for their services in negotiating the loan or sale~~
37 ~~or exchange.~~

38 ~~(e) A real estate broker who on the effective date of~~
39 ~~this section satisfies the criteria of subdivision (a) or (b)~~
40 ~~shall, within 30 days thereafter, notify the Department of~~



1 ~~Real Estate in writing of that fact. A broker who first~~
2 ~~meets any of the criteria of subdivision (a) or (b) after~~
3 ~~January 1, 1982, shall notify the department in writing~~
4 ~~within 30 days after that determination is made.~~

5 ~~SEC. 13.~~

6 *SEC. 6.* Section 10232.2 of the Business and
7 Professions Code is amended to read:

8 10232.2. A real estate broker who meets the criteria of
9 subdivision (a) of Section 10232 shall annually file the
10 report referred to in subdivision (a) and quarterly file the
11 report referred to in subdivision (c) with the
12 Department of Real Estate within 90 days after the end
13 of the broker's fiscal year for the annual report and within
14 30 days after the end of the applicable quarter for the
15 quarterly report, or within any additional time as the Real
16 Estate Commissioner may allow for filing for good cause:

17 (a) The report of a review by a licensed California
18 independent public accountant of trust fund financial
19 statements, conducted in accordance with generally
20 accepted accounting practices, which shall include
21 within its scope the following information for the fiscal
22 year relative to the business activities of the broker
23 described in subdivisions (d) and (e) of Section 10131:

24 (1) The receipt and disposition of all funds of others to
25 be applied to the making of loans and the purchasing of
26 promissory notes or real property sales contracts.

27 (2) The receipt and disposition of all funds of others in
28 connection with the servicing by the broker of the
29 accounts of owners of promissory notes and real property
30 sales contracts including installment payments and loan
31 or contract payoffs by obligors.

32 (3) A statement as of the end of the fiscal year which
33 shall include an itemized trust fund accounting of the
34 broker and confirmation that the trust funds are on
35 deposit in an account or accounts maintained by the
36 broker in a financial institution.

37 (b) A broker who meets the criteria of Section 10232,
38 but who, in carrying on the activities described in
39 subdivisions (d) and (e) of Section 10131, has not during
40 a fiscal year, accepted for the benefit of a person to whom



1 the broker is a trustee, any payment or remittance in a
2 form convertible to cash by the broker, need not comply
3 with the provisions of subdivision (a). In lieu thereof, the
4 broker shall submit to the commissioner within 30 days
5 after the end of the broker's fiscal year or, within such
6 additional time as the commissioner may allow for a filing
7 for good cause, a notarized statement under penalty of
8 perjury on a form provided by the department attesting
9 to the fact that the broker did not receive any trust funds
10 in cash or convertible to cash during the fiscal year.

11 (c) A report of all of the following aspects of the
12 business conducted by the broker while engaging in
13 activities described in subdivisions (d) and (e) of Section
14 10131 and in Section 10131.1:

15 (1) Number and aggregate dollar amount of loan, trust
16 deed sales and real property sales contract transactions
17 negotiated.

18 (2) Number and aggregate dollar amount of
19 promissory notes and contracts serviced by the broker or
20 an affiliate of the broker.

21 (3) Number and aggregate dollar amount of late
22 payment charges, prepayment penalties and other fees or
23 charges collected and retained by the broker under
24 servicing agreements with beneficiaries and obligees.

25 (4) Default and foreclosure experience in connection
26 with promissory notes and contracts subject to servicing
27 agreements between the broker and beneficiaries or
28 obligees.

29 (5) Commissions received by the broker for services
30 performed as agent in negotiating loans and sales of
31 promissory notes and real property sales contracts.

32 (6) Aggregate costs and expenses as referred to in
33 Section 10241 paid by borrowers to the broker.

34 (d) The commissioner shall adopt regulations
35 prescribing the form and content of the report referred
36 to in subdivision (c) with appropriate categories to afford
37 a better understanding of the business conducted by the
38 broker.

39 (e) If the broker fails to file either of the reports
40 required under subdivisions (a) and (c) within the time



1 permitted herein, the commissioner may cause an
2 examination and report to be made and may charge the
3 broker one and one-half times the cost of making the
4 examination and report.

5 (f) The reports referred to in subdivisions (a) and (c)
6 are exempted from any requirement of public disclosure
7 by paragraph (2) of subdivision (d) of Section 6254 of the
8 Government Code. The commissioner shall annually
9 make and file as a public record, a composite of the annual
10 reports and any comments thereon which are deemed to
11 be in the public interest.

12 ~~SEC. 14.~~

13 *SEC. 7.* Section 10232.5 of the Business and
14 Professions Code is amended to read:

15 10232.5. (a) If the real estate broker is performing
16 acts described in subdivision (d) of Section 10131 in
17 negotiating a loan to be secured by a lien on real property
18 or on a business opportunity, the statement required to
19 be given to the prospective lender shall include, but shall
20 not necessarily be limited to, the following information:

21 (1) Address or other means of identification of the real
22 property that is to be the security for the borrower's
23 obligation.

24 (2) Estimated fair market value of the securing
25 property as determined by an appraisal arranged by the
26 broker in accordance with Section 10232.6, a copy of
27 which shall be provided to the lender. However, a lender
28 that is described in subdivision (b) of Section 10232.4 may
29 waive the requirement of an independent appraisal in
30 writing, on a case-by-case basis, in which case, the real
31 estate broker shall provide the broker's written estimated
32 fair market value of the securing property, which shall
33 include the objective data upon which the broker's
34 estimate is based.

35 (3) Age, size, type of construction and a description of
36 improvements to the property if contained in the
37 appraisal or as represented to the broker by the
38 prospective borrower.

39 (4) Identity, occupation, employment, income, and
40 credit data about the prospective borrower or borrowers



1 as represented to the broker by the prospective borrower
2 or borrowers.

3 (5) Terms of the promissory note to be given to the
4 lender.

5 (6) Pertinent information concerning all
6 encumbrances which constitute liens against the securing
7 property and, to the extent of actual knowledge of the
8 broker, pertinent information about other loans that the
9 borrower expects or anticipates will result in a lien being
10 recorded against the property securing the promissory
11 note to be created in favor of the prospective lender.

12 As used in this paragraph, actual knowledge with
13 respect to any anticipated or expected loan, means
14 knowledge gained by the broker through arranging that
15 other loan or receipt of written notification of that other
16 loan. In this regard, the broker shall also provide a
17 preliminary report and title insurance policy covering
18 the securing property, and a copy of a written loan
19 application, a credit report, and any supporting
20 document prepared by or on the prospective borrower.

21 (7) Provisions for servicing of the loan, if any,
22 including disposition of the late charge and prepayment
23 penalty fees paid by the borrower.

24 (8) Detailed information concerning any proposed
25 arrangement under which the prospective lender along
26 with persons not otherwise associated with him or her will
27 be joint beneficiaries or obligees.

28 (9) If the solicitation is subject to the provisions of
29 Section 10231.2, a detailed statement of the intended use
30 and disposition of the funds being solicited including an
31 explanation of the nature and extent of the benefits to be
32 directly or indirectly derived by the broker.

33 (b) If the real estate broker is performing acts
34 described in subdivision (e) of Section 10131 or in Section
35 10131.1 in negotiating the sale of a real property sales
36 contract or promissory note secured directly by a lien on
37 real property, the statement required to be given to the
38 prospective purchaser by Section 10232.4 shall include,
39 but shall not necessarily be limited to, the following
40 information:



1 (1) Address or other means of identification of the real
2 property that is the security for the trustor's or vendee's
3 obligation.

4 (2) Estimated fair market value of the real property as
5 determined by an appraisal arranged for by the broker in
6 accordance with Section 10232.6, a copy of which shall be
7 provided to the prospective purchaser. However, a
8 purchaser that is described in subdivision (b) of Section
9 10232.4 may waive the requirement of an independent
10 appraisal in writing, on a case-by-case basis, in which case,
11 the real estate broker shall provide the broker's written
12 estimated fair market value of the securing property,
13 which shall include the objective data upon which the
14 broker's estimate is based.

15 (3) Age, size, type of construction and a description of
16 improvements to the real property if known by the
17 broker.

18 (4) Information available to the broker relative to the
19 ability of the trustor or vendee to meet his or her
20 contractual obligations under the note or contract
21 including the trustor's or vendee's payment history under
22 the note or contract.

23 (5) Terms of the contract or note including the
24 principal balance owing.

25 (6) Provisions for servicing of the note or contract, if
26 any, including disposition of late charge, prepayment
27 penalty or other fees or charges paid by the trustor or
28 vendee.

29 (7) Detailed information concerning any proposed
30 arrangement under which the prospective purchaser
31 along with persons not otherwise associated with him or
32 her will be joint beneficiaries or obligees. In this regard,
33 the broker shall also provide a preliminary report and a
34 title insurance policy covering the real property and, if
35 available from the seller of the note or contract or from
36 the original lender, a copy of a written loan application,
37 a credit report, and any supporting document prepared
38 by or on the trustor or vendee.



1 (8) A statement as to whether the dealer is acting as a
2 principal or as an agent in the transaction with the
3 prospective purchaser.

4 ~~SEC. 15.~~

5 *SEC. 8.* Section 10233 of the Business and Professions
6 Code is amended to read:

7 10233. Any real estate licensee who undertakes to
8 service a promissory note secured directly *or collaterally*
9 by a lien on real property or a real property sales contract
10 shall comply with each of the following requirements:

11 (a) The licensee shall have a written authorization
12 from the borrower, the lender, or the owner of the note
13 or contract, that is included within the terms of a written
14 servicing agreement that satisfies the requirements of
15 subdivision (j) of Section 10229.

16 (b) The licensee shall provide the lender or the owner
17 of the note or contract with at least the following
18 accountings:

19 (1) An accounting of the unpaid principal balance at
20 the beginning of each year.

21 (2) An accounting of the unpaid principal balance at
22 the end of each year.

23 (3) An accounting of collections and disbursements
24 received and made during each year.

25 (4) Each accounting required under this subdivision
26 shall identify the person who holds the original note or
27 contract and the deed of trust evidencing and securing
28 the debt or obligation for which the accounting has been
29 provided.

30 (c) The licensee shall provide to the lender or the
31 owner of the note or contract written notification within
32 15 days of the occurrence of any of the following events:

33 (1) The recording of a notice of default.

34 (2) The recording of a notice of trustee's sale.

35 (3) The receipt of any payment, together with a
36 request for partial or total reconveyance of the real
37 property, in which case the notice shall also indicate any
38 further transfer or delivery instructions.

39 (4) The delinquency of any installment or other
40 obligation under the note or contract for over 30 days.



1 ~~SEC. 16. Section 10233.1 of the Business and~~
2 ~~Professions Code is amended to read:~~

3 ~~10233.1. If a real estate broker in servicing a real~~
4 ~~property sales contract or a promissory note secured~~
5 ~~directly by a lien on real property for the mortgagee,~~
6 ~~beneficiary, or owner of the note or contract, causes funds~~
7 ~~other than funds received from the obligor of the note or~~
8 ~~contract to be applied toward a payment to protect the~~
9 ~~security of the note or contract being serviced, including~~
10 ~~the payment of debt service on an obligation secured by~~
11 ~~the same real property having priority over the mortgage~~
12 ~~or deed of trust securing the promissory note that the~~
13 ~~broker is servicing, the broker shall, not later than 10 days~~
14 ~~after making any such payment, give written notice to~~
15 ~~the mortgagee, beneficiary, or owner of the date and~~
16 ~~amount of payment, the name of the person to whom~~
17 ~~payment was made, the source of funds, and the reason~~
18 ~~for making the payment.~~

19 ~~SEC. 17. Section 10236.1 of the Business and~~
20 ~~Professions Code is amended to read:~~

21 ~~10236.1. No real estate licensee shall advertise to give~~
22 ~~or to offer to give to a prospective purchaser, borrower~~
23 ~~or lender any premium, gift or any other object of value~~
24 ~~as an inducement for making a loan, or purchasing a~~
25 ~~promissory note secured directly by a lien on real~~
26 ~~property or a real property sales contract.~~

27 ~~SEC. 18.~~

28 *SEC. 9. Section 10234.5 of the Business and*
29 *Professions Code is amended to read:*

30 10234.5. In addition to the requirements of Section
31 10234, in the placing of any loan, a broker shall deliver *or*
32 *cause to be delivered* conformed copies of any deed of
33 trust to both the investor or lender and the borrower
34 within a reasonable amount of time from the date of
35 recording.

36 *SEC. 10. Section 10236.4 of the Business and*
37 *Professions Code is amended to read:*

38 10236.4. (a) In compliance with Section 10235.5,
39 every licensed real estate broker shall also display his or
40 her license number on all advertisements where there is



1 a solicitation for borrowers or potential investors. In
2 addition, the broker shall disclose in any such
3 advertisement the license information telephone
4 number established by the department.

5 ~~(b) The real estate broker shall additionally disclose~~
6 ~~both the license number and license information~~
7 ~~telephone number in any and all disclosure statements~~
8 ~~required to be provided under this article.~~

9 *(b) The disclosures required by Sections 10232.4 and*
10 *10240 shall include the licensee's license number and the*
11 *department's license information telephone number.*

12 (c) This section shall become operative July 1, 1998.

13 ~~SEC. 19.~~

14 *SEC. 11.* Section 10236.6 is added to the Business and
15 Professions Code, to read:

16 10236.6. (a) The commissioner, in his or her
17 discretion, may audit any broker who conducts
18 transactions subject to the provisions of this article. The
19 audit shall be conducted after reasonable notice to the
20 broker and shall include an examination of both of the
21 following:

22 (1) Trust accounts under the control of the broker or
23 in any manner affiliated with the broker.

24 (2) Nontrust accounts under the control of the broker
25 or in any manner affiliated with the broker to which funds
26 from trust accounts have been deposited other than for
27 the payment of commissions, fees, costs, or expenses due
28 to or incurred by the broker. The authority to audit these
29 nontrust accounts shall be limited to instances where
30 either an annual review or audit conducted by an
31 independent certified public accountant or a
32 departmental audit revealed unauthorized transfers of
33 money to those accounts.

34 (b) The costs of any audit under this section shall be
35 borne by the broker.

36 ~~SEC. 20.~~

37 *SEC. 12.* Section 10236.7 is added to the Business and
38 Professions Code, to read:

39 10236.7. No real estate broker shall, without first
40 complying with the applicable qualification and



1 registration provisions of the Corporate Securities Law of
2 1968, or securing an exemption therefrom, enter into an
3 agreement made in connection with the arranging of a
4 loan evidenced by a promissory note secured directly *or*
5 *collaterally* by a lien on real property or made in
6 connection with the sale of a promissory note secured
7 directly *or collaterally* by a lien on real property or a real
8 property sales contract wherein the broker expressly or
9 impliedly agrees to do any of the following:

10 (a) Guarantee the note or contract against loss at any
11 time.

12 (b) Guarantee that payments of principal or interest
13 will be paid in conformity with the terms of the note or
14 contract.

15 (c) Assume any payments necessary to protect the
16 security of the note or contract.

17 (d) Accept, from time to time, partial payments for
18 funding the loan or purchasing the note or contract.

19 (e) Guarantee a specific yield or return on the note or
20 contract.

21 (f) Pay with his or her own funds any interest or
22 premium for a period prior to actual purchase and
23 delivery of the note or contract.

24 (g) Repurchase the note or contract.

25 ~~SEC. 21.~~

26 *SEC. 13.* Section 10240 of the Business and Professions
27 Code is amended to read:

28 10240. (a) Every real estate broker, upon acting
29 within the meaning of subdivision (d) of Section 10131,
30 who negotiates a loan to be secured directly *or collaterally*
31 by a lien on real property shall, within three business days
32 after receipt of a completed written loan application or
33 before the borrower becomes obligated on the note,
34 whichever is earlier, cause to be delivered to the
35 borrower a statement in writing, containing all the
36 information required by Section 10241. It shall be
37 personally signed by the borrower and by the real estate
38 broker negotiating the loan or by a real estate licensee
39 acting for the broker in negotiating the loan. When so
40 executed, an exact copy thereof shall be delivered to the



1 borrower at the time of its execution. The real estate
2 broker negotiating the loan shall retain on file for a period
3 of three years a true and correct copy of the statement as
4 signed by the borrower.

5 No real estate licensee shall permit the statement to be
6 signed by a borrower if any information required by
7 Section 10241 is omitted.

8 (b) For the purposes of applying the provisions of this
9 article, a real estate broker is acting within the meaning
10 of subdivision (d) of Section 10131 if he or she solicits
11 borrowers, or causes borrowers to be solicited, through
12 express or implied representations that the broker will act
13 as an agent in arranging a loan, but in fact makes the loan
14 to the borrower from funds belonging to the broker.

15 (c) In a federally regulated residential mortgage loan
16 transaction in which the principal loan amount exceeds
17 the principal loan levels set forth in Section 10245, a real
18 estate broker who is either the creditor or acting as an
19 agent of the creditor, as defined under the Truth in
20 Lending Act (15 U.S.C.A. 16 et seq.), satisfies the
21 requirements of this section if the borrower receives (1)
22 a “good faith estimate” that satisfies the requirements of
23 the Real Estate Settlement Procedures Act of 1974 (12
24 U.S.C.A. 2601 et seq.), and that sets forth the broker’s real
25 estate license number and a clear and conspicuous
26 statement on the face of the document stating that the
27 “good faith estimate” does not constitute a loan
28 commitment, (2) all applicable disclosures required by
29 the Truth in Lending Act (15 U.S.C.A. 1601 et seq.), and
30 (3) if the loan contains a balloon payment provision, the
31 disclosure described in subdivision (h) of Section 10241,
32 the balloon disclosure required for that loan by Fannie
33 Mae or Freddie Mac, or an alternative disclosure
34 determined by the commissioner to satisfy the
35 requirements of the Truth in Lending Act.

36 ~~SEC. 22. Section 10242 of the Business and Professions~~
37 ~~Code is amended to read:~~

38 ~~10242. The maximum amount of expenses, charges~~
39 ~~and interest to be paid by a borrower with respect to any~~
40 ~~loan subject to this article shall be as follows:~~



1 ~~(a) The maximum amount of all costs and expenses~~
2 ~~referred to in subdivision (a) of Section 10241, exclusive~~
3 ~~of actual title charges and recording fees, shall not exceed~~
4 ~~5 percent of the principal amount of the loan or three~~
5 ~~hundred ninety dollars (\$390), whichever is greater but~~
6 ~~in no event to exceed seven hundred dollars (\$700);~~
7 ~~provided that in no event shall said maximum amount~~
8 ~~exceed actual costs and expenses paid, incurred or~~
9 ~~reasonably earned.~~

10 ~~(b) The maximum amount of the charges referred to~~
11 ~~in subdivision (b) of Section 10241 shall not exceed the~~
12 ~~following amounts:~~

13 ~~(1) In the case of a loan secured directly, in whole or~~
14 ~~in part by a first trust deed, 5 percent of the principal~~
15 ~~amount of the loan where the term of the loan is a period~~
16 ~~of less than three years and 10 percent where the term is~~
17 ~~a period of three years or more.~~

18 ~~(2) In the case of a loan secured directly by a trust deed~~
19 ~~other than a first trust deed, 5 percent of the principal~~
20 ~~amount of the loan where the term of the loan is a period~~
21 ~~of less than two years, 10 percent where the term is a~~
22 ~~period of two years but less than three years, and 15~~
23 ~~percent where the term is a period of three years or more.~~

24 ~~(3) With respect to a further advance on a note, the~~
25 ~~charges shall not exceed the charges for an original loan~~
26 ~~in the same amount as the further advance and made for~~
27 ~~a term equal to the remaining term of the note on which~~
28 ~~the further advance is being made, including any~~
29 ~~extension thereof.~~

30 ~~(e) No interest may be charged with respect to any~~
31 ~~period prior to the date that the proceeds of the loan are~~
32 ~~made available to the borrower or are deposited in~~
33 ~~escrow.~~

34 ~~SEC. 23. Section 10243 of the Business and Professions~~
35 ~~Code is amended to read:~~

36 ~~10243. If the loan is not consummated due to the~~
37 ~~failure of the borrower to disclose the outstanding liens of~~
38 ~~record or the correct current vested title which is~~
39 ~~material to the loan upon the real property as provided~~
40 ~~by subdivision (c) of Section 10241, the borrower shall be~~



1 ~~liable for the costs and expenses provided in subdivision~~
2 ~~(a) of Section 10241 which have been paid or incurred,~~
3 ~~and shall be liable for the payment of one-half of the~~
4 ~~charges provided in subdivision (b) of Section 10241. An~~
5 ~~exclusive agreement authorizing or employing a licensee~~
6 ~~to negotiate a loan secured directly by a lien on real~~
7 ~~property shall be limited to a term of not more than 45~~
8 ~~days.~~

9 ~~If the loan is not consummated and the broker is~~
10 ~~entitled to any charges, costs or expenses authorized by~~
11 ~~this article, he or she may not record a lien or~~
12 ~~encumbrance against the borrower's property except~~
13 ~~subsequent to the filing of a legal action pursuant to the~~
14 ~~Code of Civil Procedure to recover said charges, costs or~~
15 ~~expenses. However, nothing contained herein shall~~
16 ~~prohibit a broker from recording a lien pursuant to a~~
17 ~~voluntary lien agreement in conjunction with a~~
18 ~~stipulation to dismiss an actual or proposed complaint for~~
19 ~~damages entitling the broker to such charges, costs or~~
20 ~~expenses after written notice to the borrower that the~~
21 ~~broker proposes or has initiated a complaint for damages~~
22 ~~pursuant to the Code of Civil Procedure.~~

23 ~~SEC. 24. Section 10244.1 of the Business and~~
24 ~~Professions Code is amended to read:~~

25 ~~10244.1. Notwithstanding the provisions of Section~~
26 ~~10244, on a loan secured directly by a lien on real property~~
27 ~~comprising an owner-occupied dwelling, for a term of six~~
28 ~~years or less, no installment, whether providing for~~
29 ~~payment of principal and interest or interest only, shall be~~
30 ~~greater than twice the amount of the smallest installment.~~
31 ~~This section does not apply to a note given back to the~~
32 ~~seller by the purchaser on account for the purchase price~~
33 ~~or any collateral loans secured solely by such a note. As~~
34 ~~used in this section, "owner-occupied dwelling" means a~~
35 ~~single dwelling unit in a condominium or cooperative or~~
36 ~~a residential building of less than three separate dwelling~~
37 ~~units, one of which will be owned and occupied by a~~
38 ~~signatory to the mortgage or deed of trust secured by such~~
39 ~~dwelling within 90 days of the execution of the mortgage~~
40 ~~or deed of trust.~~



1 ~~SEC. 25. Section 10245 of the Business and Professions~~
2 ~~Code is amended to read:~~

3 ~~10245. The provisions of this article, exclusive of the~~
4 ~~provisions of Sections 10240, 10242.5, and 10242.6, do not~~
5 ~~apply to any bona fide loan secured directly by a first trust~~
6 ~~deed, the principal of which is thirty thousand dollars~~
7 ~~(\$30,000) or more, or to any bona fide loan secured~~
8 ~~directly by any lien junior thereto, the principal of which~~
9 ~~is twenty thousand dollars (\$20,000) or more.~~

10 ~~SEC. 26. Section 10248 of the Business and Professions~~
11 ~~Code is amended to read:~~

12 ~~10248. Every person who, for compensation to be~~
13 ~~received directly or indirectly, sells, offers to sell,~~
14 ~~purchases for resale or offers to purchase for resale, or~~
15 ~~who negotiates or arranges for the purchase, sale or~~
16 ~~exchange of a promissory note secured directly by a lien~~
17 ~~on real property, may receive only the maximum total~~
18 ~~charges provided for in Section 10242.~~

19 ~~SEC. 27.~~

20 ~~SEC. 14. Section 10471 of the Business and Professions~~
21 ~~Code is amended to read:~~

22 ~~10471. (a) When an aggrieved person obtains (1) a~~
23 ~~final judgment in a court of competent jurisdiction,~~
24 ~~including, but not limited to, a criminal restitution order~~
25 ~~issued pursuant to subdivision (f) of Section 1202.4 of the~~
26 ~~Penal Code or Section 3663 of Title 18 of the United States~~
27 ~~Code, or (2) an arbitration award that includes findings~~
28 ~~of fact and conclusions of law rendered in accordance~~
29 ~~with the rules established by the American Arbitration~~
30 ~~Association or another recognized arbitration body, and~~
31 ~~in accordance with Sections 1281 to 1294.2, inclusive, of~~
32 ~~the Code of Civil Procedure where applicable, and where~~
33 ~~the arbitration award has been confirmed and reduced to~~
34 ~~judgment pursuant to Section 1287.4 of the Code of Civil~~
35 ~~Procedure, against a defendant based upon the~~
36 ~~defendant's fraud, misrepresentation, or deceit, made~~
37 ~~with intent to defraud, or conversion of trust funds arising~~
38 ~~directly out of any transaction not in violation of Section~~
39 ~~10137 or 10138 in which the defendant, while licensed~~
40 ~~under this part, either performed acts for which that~~



1 license or another license under this part was required—~~or~~
2 ~~performed other real estate related acts for which no~~
3 ~~license under this part was required~~, the aggrieved
4 person may, upon the judgment becoming final, file an
5 application with the Department of Real Estate for
6 payment from the Recovery Account, within the
7 limitations specified in Section 10474, of the amount
8 unpaid on the judgment that represents an actual and
9 direct loss to the claimant in the transaction.

10 (b) The application shall be delivered in person or by
11 certified mail to an office of the department not later than
12 one year after the judgment has become final.

13 (c) The application shall be made on a form prescribed
14 by the department, verified by the claimant, and shall
15 include the following:

16 (1) The name and address of the claimant.

17 (2) If the claimant is represented by an attorney, the
18 name, business address, and telephone number of the
19 attorney.

20 (3) The identification of the judgment, the amount of
21 the claim and an explanation of its computation.

22 (4) A detailed narrative statement of the facts in
23 explanation of the allegations of the complaint upon
24 which the underlying judgment is based.

25 (5) (A) Except as provided in subparagraph (B), a
26 statement by the claimant, signed under penalty of
27 perjury, that the complaint upon which the underlying
28 judgment is based was prosecuted conscientiously and in
29 good faith. As used in this section, “conscientiously and in
30 good faith” means that no party potentially liable to the
31 claimant in the underlying transaction was intentionally
32 and without good cause omitted from the complaint, that
33 no party named in the complaint who otherwise
34 reasonably appeared capable of responding in damages
35 was dismissed from the complaint intentionally and
36 without good cause, and that the claimant employed no
37 other procedural means contrary to the diligent
38 prosecution of the complaint in order to seek to qualify for
39 the Recovery Account.



1 (B) For the purpose of an application based on a
2 criminal restitution order, all of the following statements
3 by the claimant:

4 (i) The claimant has not intentionally and without
5 good cause failed to pursue any person potentially liable
6 to the claimant in the underlying transaction other than
7 a defendant who is the subject of a criminal restitution
8 order.

9 (ii) The claimant has not intentionally and without
10 good cause failed to pursue in a civil action for damages
11 all persons potentially liable to the claimant in the
12 underlying transaction who otherwise reasonably
13 appeared capable of responding in damages other than a
14 defendant who is the subject of a criminal restitution
15 order.

16 (iii) The claimant employed no other procedural
17 means contrary to the diligent prosecution of the
18 complaint in order to seek to qualify for the Recovery
19 Account.

20 (6) The name and address of the judgment debtor or,
21 if not known, the names and addresses of persons who
22 may know the judgment debtor's present whereabouts.

23 (7) The following representations and information
24 from the claimant:

25 (A) That he or she is not a spouse of the judgment
26 debtor nor a personal representative of the spouse.

27 (B) That he or she has complied with all of the
28 requirements of this chapter.

29 (C) That the judgment underlying the claim meets
30 the requirements of subdivision (a).

31 (D) A description of searches and inquiries conducted
32 by or on behalf of the claimant with respect to the
33 judgment debtor's assets liable to be sold or applied to
34 satisfaction of the judgment, an itemized valuation of the
35 assets discovered, and the results of actions by the
36 claimant to have the assets applied to satisfaction of the
37 judgment.

38 (E) That he or she has diligently pursued collection
39 efforts against other judgment debtors and all other



1 persons liable to the claimant in the transaction that is the
2 basis for the underlying judgment.

3 (F) That the underlying judgment and debt have not
4 been discharged in bankruptcy, or, in the case of a
5 bankruptcy proceeding that is open at the time of the
6 filing of the application, that the judgment and debt have
7 been declared to be nondischargeable.

8 (G) That the application was mailed or delivered to
9 the department no later than one year after the
10 underlying judgment became final.

11 (d) The application form shall include detailed
12 instructions with respect to documentary evidence,
13 pleadings, court rulings, the products of discovery in the
14 underlying litigation, and a notice to the applicant of his
15 or her obligation to protect the underlying judgment
16 from discharge in bankruptcy, to be appended to the
17 application.

18 (e) An application for payment from the Recovery
19 Account that is based on a criminal restitution order shall
20 comply with all of the requirements of this chapter. For
21 the purpose of an application based on a criminal
22 restitution order, the following terms have the following
23 meanings:

24 (1) “Judgment” means the criminal restitution order.

25 (2) “Complaint” means the facts of the underlying
26 transaction upon which the criminal restitution order is
27 based.

28 (3) “Judgment debtor” means any defendant who is
29 the subject of the criminal restitution order.

30 ~~SEC. 28.~~

31 *SEC. 15.* Section 17006 of the Financial Code is
32 amended to read:

33 17006. (a) This division does not apply to:

34 (1) Any person doing business under any law of this
35 state or the United States relating to banks, trust
36 companies, building and loan or savings and loan
37 associations, or insurance companies.

38 (2) Any person licensed to practice law in California
39 who *has a bona fide client relationship with a principal in*



1 *a real estate transaction and who* is not actively engaged
2 in conducting an escrow agency.

3 (3) Any person whose principal business is that of
4 preparing abstracts or making searches of title that are
5 used as a basis for the issuance of a policy of title insurance
6 by a company doing business under any law of this state
7 relating to insurance companies.

8 (4) Any broker licensed by the Real Estate
9 Commissioner while performing acts in the course of or
10 incidental to a real estate loan transaction, ~~except for the~~
11 ~~payment of funds to extinguish prior liens or~~
12 ~~encumbrances on real property~~, in which the broker is an
13 agent or a party to the transaction and in which the
14 broker is performing an act for which a real estate license
15 is required.

16 (b) The exemptions provided for in paragraphs (2)
17 and (4) of subdivision (a) are personal to the persons
18 listed, and those persons shall not delegate any duties
19 other than duties performed under the direct supervision
20 of those persons. Notwithstanding the provisions of this
21 subdivision, the exemptions provided for in paragraphs
22 (2) and (4) of subdivision (a) are not available for any
23 arrangement entered into for the purpose of performing
24 escrows for more than one business.

25 ~~SEC. 29.~~

26 *SEC. 16.* No reimbursement is required by this act
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution because the only costs that may be incurred
29 by a local agency or school district will be incurred
30 because this act creates a new crime or infraction,
31 eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section
33 17556 of the Government Code, or changes the definition
34 of a crime within the meaning of Section 6 of Article
35 XIII B of the California Constitution.

36 Notwithstanding Section 17580 of the Government
37 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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