

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 620

Introduced by Assembly Member Leno

February 19, 2003

An act to amend Section 10229 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 620, as amended, Leno. Real estate.

Existing law, the Real Estate Law, requires the licensure of a person by the Real Estate Commissioner to engage in the business of, act in the capacity of, or advertise or assume to act as, a real estate broker or a real estate salesman within this state. Existing law requires a real estate broker to file certain information with the commissioner relative to the conducting of a transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, otherwise known as a multilender transaction, as specified. Existing law prohibits the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon real property senior to them, from exceeding certain percentages of the current market value of the real property.

This bill would define the term “current market value” for purposes of construction or rehabilitation loans as the value of the completed project if certain conditions are met.

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

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

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

10229. Any transaction that involves 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 equivalent to a series transaction, shall
comply with all of the following:

(a) (1) A notice in the following form and containing the
following information shall be filed with the commissioner within
30 days after the first transaction and within 30 days of any
material change in the information required in the notice:

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

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

() Original Notice () Amended Notice

1. Name of Broker conducting transaction under Section 10229:

- 1 2. Broker license identification number: _____
- 2
- 3 3. List the month the fiscal year ends: _____
- 4
- 5 4. Broker's telephone number: _____
- 6
- 7 5. Firm name (if different from "1"):
- 8 _____
- 9
- 10
- 11 6. Street address (main location):
- 12 _____
- 13
- 14 # and Street City State ZIP Code
- 15
- 16 7. Mailing address (if different from "6"):
- 17 _____
- 18
- 19
- 20 8. Servicing Agent: Identify by name, address, and telephone number
- 21 the person or entity who will act as the servicing agent in
- 22 transactions pursuant to Section 10229 (including the undersigned
- 23 Broker if that is the case):
- 24 _____
- 25 _____
- 26
- 27
- 28 9. Total number of multilender notes arranged: _____
- 29
- 30 10. Total number of interests sold to investors on the
- 31 multilender's notes: _____
- 32
- 33 11. Inspection of trust account (before answering this question, review
- 34 the provisions of paragraph (3) of subdivision (j) of Section
- 35 10229).
- 36
- 37 CHECK ONLY ONE OF THE FOLLOWING:
- 38



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

Amount of Multilender Payments Collected Last Fiscal Quarter: _____

Total Number of Investors Due Payments Last Fiscal Quarter: _____

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

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

Date

Type Name of Broker

Signature of Broker or of Designated Officer of
Corporate Broker

Type Name of Person(s) Signing This Notice

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

(2) A broker or person who becomes the servicing agent for notes or interest sold pursuant to this section, upon which payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars (\$125,000) or the number of persons entitled to the payments exceeds 120, shall file the notice required by paragraph (1) with the commissioner within 30 days after becoming the servicing agent.

(b) All advertising employed for transactions under this section shall (1) show the name of the broker and (2) comply with Section 10235 of the Business and Professions Code and Sections 260.302 and 2848 of Title 10 of the California Code of Regulations. Brokers and their agents are cautioned that a reference to a prospective investor that a transaction is conducted under this 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 a means of financing the first purchase of the property as so improved, that is subordinate, or by its terms may become subordinate, to any other trust deed on the property. However, the term “promotional note” does not include either of the following:

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

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

(d) The notes or interests are sold by or through a real estate broker, as principal or agent. At the time the interests are originally sold or assigned, neither the broker nor an affiliate of the broker shall have an interest as owner, lessor, or developer of the property

1 securing the loan, or any contractual right to acquire, lease, or
2 develop the property securing the loan. This provision does not
3 prohibit a broker from conducting the following transactions if, in
4 either case, the disclosure statement furnished by the broker
5 pursuant to subdivision (k) discloses the interest of the broker or
6 affiliate in the transaction and the circumstances under which the
7 broker or affiliate acquired the interest:

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

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

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

23
24 Transaction Identifier: _____

25
26 Name of Purchaser: _____ Date: _____

27
28 Check either one of the following, if true:

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

31
32 () My investment in the transaction does not exceed 10% of my adjusted
33 gross income for federal income tax purposes for my last tax year or,
34 in the alternative, as estimated for the current year.

35
36 _____
37 Signature

38
39 (2) The number of offerees shall not be considered for the
40 purposes of this section.

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

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

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

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

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

39



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 zoned lot or parcel which has	
5		installed offsite improvements including drainage, curbs,	
6		gutters, sidewalks, paved roads, and utilities as mandated	
7		by the political subdivision having jurisdiction over the lot	
8		or parcel	65%
9	(E)	Land that has been zoned for (and if required, approved for	
10		subdivision as) commercial or residential development . . .	50%
11	(F)	Other real property	35%

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

32 (3) A copy of the appraisal or the broker's evaluation shall be
33 delivered to each purchaser. The broker shall advise purchasers of
34 their right to receive a copy. For purposes of this paragraph,
35 "appraisal" means a written estimate of value based upon the
36 assembling, analyzing, and reconciling of facts and value
37 indicators for the real property in question. A broker shall not
38 purport to make an appraisal unless the person so employed is
39 qualified on the basis of special training, preparation, or
40 experience.

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

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

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

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

~~(G)~~

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

~~(D)~~

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

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

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

1 may be included in the deed of trust, in the assignment of interests,
2 or in any other documentation as is necessary or appropriate to
3 make them binding on the parties.

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

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

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

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

35 (5) For the purposes of this subdivision, the transaction that
36 constitutes a “sale” is the series of transactions by which a series
37 of notes of a maker, or the interests in the note of a maker, are sold
38 or issued to their various purchasers under this section, including
39 all receipts and disbursements in that process of funds received
40 from the purchasers or lenders. The transaction that constitutes a



1 “payment,” for the purposes of this subdivision, is the receipt of
2 a payment from the person obligated on the note or from some
3 other person on behalf of the person so obligated, including the
4 broker or servicing agent, and the distribution of that payment to
5 the persons entitled thereto. If a payment involves an advance paid
6 by the broker or servicing agent as the result of a dishonored check,
7 the inspection shall identify the source of funds from which the
8 payment was made or, in the alternative, the steps that are
9 reasonably necessary to determine that there was not a
10 disbursement of trust funds. The accountant shall inspect for
11 compliance with the following specific provisions of this section:
12 paragraphs (1), (2), and (3) of subdivision (i) and paragraphs (1)
13 and (2) of subdivision (j).

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

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

1 transaction conducted pursuant to this section. The agreement
2 shall require all of the following:

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

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

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

27 (3) If the broker or person who is or becomes the servicing
28 agent for notes or interests sold pursuant to this section upon which
29 the payments due during any period of three consecutive months
30 in the aggregate exceed one hundred twenty-five thousand dollars
31 (\$125,000) or the number of persons entitled to the payments
32 exceeds 120, the trust account or accounts of that broker or affiliate
33 shall be inspected by an independent certified public accountant at
34 no less than three-month intervals during the time the volume is
35 maintained. Within 30 days after the close of the period for which
36 the review is made, the report of the accountant shall be forwarded
37 as provided in paragraph (5) of subdivision (i). If the broker is
38 required to file an annual report pursuant to subdivision (n) or
39 Section 10232.2, the quarterly report pursuant to this subdivision
40 need not be filed for the last quarter of the year for which the annual

1 report is made. For the purposes of this subdivision, an affiliate of
2 a broker is any person controlled by, controlling, or under common
3 control with the broker.

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

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

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

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

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

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

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

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

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

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

30 (iv) The name and address of the escrowholder for the
31 transaction.

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

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

37 (i) The name and address of the escrowholder for the
38 transaction.

39 (ii) The anticipated closing date.

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

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

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

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

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

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

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

39 (o) Each broker conducting transactions pursuant to this
40 section, or broker or person who becomes the servicing agent for

1 notes or interest sold pursuant to this section, who meets the
2 criteria of paragraph (3) of subdivision (j) shall file with the
3 commissioner a report of the transactions that is prepared in
4 accordance with subdivision (c) of Section 10232.2. If the broker
5 also meets the threshold criteria of Section 10232, the report shall
6 include the transactions subject to that section as well. This report
7 shall be confidential pursuant to subdivision (f) of Section
8 10232.2.

9 (p) The jurisdiction of the Commissioner of Corporations
10 under the Corporate Securities Law of 1968 shall be neither
11 limited nor expanded by this section. Nothing in this section shall
12 be construed to supersede or restrict the application of the
13 Corporate Securities Law of 1968. A transaction under this section
14 shall not be construed to be a transaction involving the issuance of
15 securities subject to authorization by the Real Estate
16 Commissioner under subdivision (e) of Section 25100 of the
17 Corporations Code.

18 (q) Nothing in this section shall be construed to change the
19 agency relationships between the parties where they exist or limit
20 in any manner the fiduciary duty of brokers to borrowers, lenders,
21 and purchasers of notes or interests in transactions subject to this
22 section.

23 (r) For the purposes of this section, the following definitions
24 shall apply:

25 (1) “Broker” means a person licensed as a broker under this
26 part.

27 (2) “Affiliate” means a person controlled by, controlling, or
28 under common control with, the broker.

29 (3) “Servicing agent” means the real estate broker or person
30 exempted from the licensing requirements for real estate brokers
31 under Chapter 3 (commencing with Section 10130) of Part 1 of
32 Division 4, to act as agent for the purchasers or lenders to service
33 the notes and deeds of trust, including the handling of the receipt
34 and transmission of payments and the institution of foreclosure
35 proceedings in the event of a default.

36 (4) Except as provided in paragraph (4) of subdivision (i), the
37 terms “sale” and “offer to sell,” shall have the same meaning as
38 set forth in Section 25017 of the Corporations Code and include
39 the acts of negotiating and arranging the transaction.



1 (s) (1) If any person other than a real estate broker makes or
2 keeps any of the books, accounts, or other records maintained in
3 connection with a transaction described in this section, the
4 provisions of this section and of any regulation or order issued
5 under this section shall apply to the person with respect to the
6 performance of those services and with respect to those books,
7 accounts, and other records to the same extent as if the person were
8 the broker.

9 (2) If any person other than an affiliate of a broker makes or
10 keeps any of the books, accounts, or other records maintained in
11 connection with a transaction described in this section, or in the
12 case of an affiliate other than a parent or subsidiary of the broker,
13 the provisions of this section and of any regulation or order issued
14 under this section shall apply to the person with respect to those
15 books, accounts, and other records to the same extent as if the
16 person were the affiliate.

