

AMENDED IN SENATE JUNE 9, 2003  
AMENDED IN ASSEMBLY APRIL 28, 2003  
AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 620**

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**Introduced by Assembly Member Leno**

February 19, 2003

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An act to amend *Section 10233 of, to add Article 6 (commencing with Section 10237) to Chapter 3 of Part 1 of Division 4 of, and to repeal Section 10229 of, the Business and Professions Code, and to amend Section 25102.5 of the Corporations 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 *revise the provisions pertaining to a multilender transaction. The bill would also* 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:*

1 ~~SECTION 1.—Section 10229 of the Business and Professions~~  
2 ~~SECTION 1. Section 10229 of the Business and Professions~~  
3 ~~Code is repealed.~~

4 ~~10229.—Any transaction that involves the sale of or offer to sell~~  
5 ~~a series of notes secured directly by an interest in the same real~~  
6 ~~property, or the sale of undivided interests in a note secured~~  
7 ~~directly by real property equivalent to a series transaction, shall~~  
8 ~~comply with all of the following:~~

9 ~~(a) (1) A notice in the following form and containing the~~  
10 ~~following information shall be filed with the commissioner within~~  
11 ~~30 days after the first transaction and within 30 days of any~~  
12 ~~material change in the information required in the notice:~~

13  
14 ~~FO: Real Estate Commissioner~~  
15 ~~— Mortgage Loan Section~~  
16 ~~— 2201 Broadway~~  
17 ~~— Sacramento, CA 95818~~  
18

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

21  
22 ~~( ) Original Notice~~ \_\_\_\_\_ ~~( ) Amended Notice~~

23  
24 ~~1. Name of Broker conducting transaction under Section 10229:~~  
25  
26 \_\_\_\_\_  
27



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



1 ~~(-) The undersigned Broker is (or expects to be) required to file reports~~  
 2 ~~of inspection of its trust account(s) with the Real Estate~~  
 3 ~~Commissioner pursuant to paragraph (3) of subdivision (j) of Section~~  
 4 ~~10229.~~

5  
 6 Amount of Multilender Payments Collected Last Fiscal Quarter: \_\_\_\_\_  
 7

8 Total Number of Investors Due Payments Last Fiscal Quarter: \_\_\_\_\_  
 9

10 ~~(-) The undersigned Broker is NOT (or does NOT expect to be) required to~~  
 11 ~~file reports of inspection of its trust account(s) with the Real Estate~~  
 12 ~~Commissioner pursuant to paragraph (3) of subdivision (j) of Section~~  
 13 ~~10229.~~

14  
 15 ~~12. Signature. The contents of this notice are true and correct.~~

16  
 17 \_\_\_\_\_  
 18 \_\_\_\_\_

18 ~~Date~~ ~~Type Name of Broker~~

19  
 20 \_\_\_\_\_  
 21 \_\_\_\_\_  
 22 \_\_\_\_\_

21 ~~Signature of Broker or of Designated Officer of~~  
 22 ~~Corporate Broker~~

23  
 24 \_\_\_\_\_  
 25 \_\_\_\_\_

25 ~~Type Name of Person(s) Signing This Notice~~

26  
 27 ~~NOTE: AN AMENDED NOTICE MUST BE FILED BY THE~~  
 28 ~~BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE~~  
 29 ~~IN THE INFORMATION REQUIRED TO BE SET FORTH~~  
 30 ~~HEREIN.~~

31  
 32 ~~(2) A broker or person who becomes the servicing agent for~~  
 33 ~~notes or interest sold pursuant to this section, upon which~~  
 34 ~~payments due during any period of three consecutive months in the~~  
 35 ~~aggregate exceed one hundred twenty five thousand dollars~~  
 36 ~~(\$125,000) or the number of persons entitled to the payments~~  
 37 ~~exceeds 120, shall file the notice required by paragraph (1) with~~  
 38 ~~the commissioner within 30 days after becoming the servicing~~  
 39 ~~agent.~~



1 ~~(b) All advertising employed for transactions under this section~~  
2 ~~shall (1) show the name of the broker and (2) comply with Section~~  
3 ~~10235 of the Business and Professions Code and Sections 260.302~~  
4 ~~and 2848 of Title 10 of the California Code of Regulations.~~  
5 ~~Brokers and their agents are cautioned that a reference to a~~  
6 ~~prospective investor that a transaction is conducted under this~~  
7 ~~section may be deemed misleading or deceptive if this~~  
8 ~~representation may reasonably be construed by the investor as an~~  
9 ~~implication of merit or approval of the transaction.~~

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

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

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

37 ~~(d) The notes or interests are sold by or through a real estate~~  
38 ~~broker, as principal or agent. At the time the interests are originally~~  
39 ~~sold or assigned, neither the broker nor an affiliate of the broker~~  
40 ~~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 (e) 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%

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.~~



1 ~~(h) The documentation of the transaction shall require that (1)~~  
2 ~~a default upon any interest or note is a default upon all interests or~~  
3 ~~notes and (2) the holders of more than 50 percent of the record~~  
4 ~~beneficial interests of the notes or interests may govern the actions~~  
5 ~~to be taken on behalf of all holders in accordance with Section~~  
6 ~~2941.9 of the Civil Code in the event of default or foreclosure for~~  
7 ~~matters that require direction or approval of the holders, including~~  
8 ~~designation of the broker, servicing agent, or other person acting~~  
9 ~~on their behalf, and the sale, encumbrance, or lease of real property~~  
10 ~~owned by the holders resulting from foreclosure or receipt of a~~  
11 ~~deed in lieu of foreclosure. The terms called for by this subdivision~~  
12 ~~may be included in the deed of trust, in the assignment of interests,~~  
13 ~~or in any other documentation as is necessary or appropriate to~~  
14 ~~make them binding on the parties.~~

15 ~~(i) (1) The broker shall not accept any purchase or loan funds~~  
16 ~~or other consideration from a prospective lender or purchaser, or~~  
17 ~~directly or indirectly cause the funds or other consideration to be~~  
18 ~~deposited in an escrow or trust account, except as to a specific loan~~  
19 ~~or note secured by a deed of trust that the broker owns, is~~  
20 ~~authorized to negotiate, or is unconditionally obligated to buy.~~

21 ~~(2) All funds received by the broker from the purchasers or~~  
22 ~~lenders shall be handled in accordance with Section 10145 for~~  
23 ~~disbursement to the persons thereto entitled upon recordation of~~  
24 ~~the interests of the purchasers or lenders in the note and deed of~~  
25 ~~trust. No provision of this section shall be construed as modifying~~  
26 ~~or superseding applicable law regulating the escrowholder in any~~  
27 ~~transaction or the handling of the escrow account.~~

28 ~~(3) The books and records of the broker or servicing agent, or~~  
29 ~~both, shall be maintained in a manner that readily identifies~~  
30 ~~transactions under this section and the receipt and disbursement of~~  
31 ~~funds in connection with these transactions.~~

32 ~~(4) If required by paragraph (3) of subdivision (j), the review~~  
33 ~~by the independent certified public accountant shall include a~~  
34 ~~sample of transactions, as reflected in the records of the trust~~  
35 ~~account required pursuant to paragraph (1) of subdivision (j), and~~  
36 ~~the bank statements and supporting documents. These documents~~  
37 ~~shall be reviewed for compliance with this section with respect to~~  
38 ~~the handling and distribution of funds. The sample shall be~~  
39 ~~selected at random by the accountant from all these transactions~~  
40 ~~and shall consist of the following: (A) three sales made or 5 percent~~



1 of the sales made pursuant to this section during the period for  
2 which the examination is conducted, whichever is greater, and (B)  
3 10 payments processed or 2 percent of payments processed under  
4 this section during the period for which the examination is  
5 conducted, whichever is greater.

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

25 (6) Within 30 days of the close of the period for which the  
26 report is made, or within any additional time as the commissioner  
27 may in writing allow in a particular case, the accountant shall  
28 forward to the broker or servicing agent, as the case may be, and  
29 to the commissioner, the report of the accountant, stating that the  
30 inspection was performed in accordance with this section, listing  
31 the sales and the payments examined, specifying the nature of the  
32 deficiencies, if any, noted by the accountant with respect to each  
33 sale or payment, together with any further information as the  
34 accountant may wish to include, such as corrective steps taken  
35 with respect to any deficiency so noted, or stating that no  
36 deficiencies were observed. If the broker meets the threshold  
37 criteria of Section 10232, the report of the accountant shall be  
38 submitted as part of the quarterly reports required under Section  
39 10232.25.



1 ~~(j) The notes or interests shall be sold subject to a written~~  
2 ~~agreement that obligates a licensed real estate broker, or a person~~  
3 ~~exempted from the licensing requirement for real estate brokers~~  
4 ~~under Chapter 3 (commencing with Section 10130) of Part 1 of~~  
5 ~~Division 4, to act as agent for the purchasers or lenders to service~~  
6 ~~the note or notes and deed of trust, including the receipt and~~  
7 ~~transmission of payments and the institution of foreclosure~~  
8 ~~proceedings in the event of a default. A copy of this servicing~~  
9 ~~agreement shall be delivered to each purchaser. The broker shall~~  
10 ~~offer to the lenders or purchasers the services of the broker or one~~  
11 ~~or more affiliates of the broker, or both, as servicing agent for each~~  
12 ~~transaction conducted pursuant to this section. The agreement~~  
13 ~~shall require all of the following:~~

14 ~~(1) (A) That payments received on the note or notes be~~  
15 ~~deposited immediately to a trust account maintained in accordance~~  
16 ~~with this section and with the provisions for trust accounts of~~  
17 ~~licensed real estate brokers contained in Section 10145 and Article~~  
18 ~~15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of~~  
19 ~~the California Code of Regulations.~~

20 ~~(B) That payments deposited pursuant to subparagraph (A)~~  
21 ~~shall not be commingled with the assets of the servicing agent or~~  
22 ~~used for any transaction other than the transaction for which the~~  
23 ~~funds are received.~~

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

38 ~~(3) If the broker or person who is or becomes the servicing~~  
39 ~~agent for notes or interests sold pursuant to this section upon which~~  
40 ~~the payments due during any period of three consecutive months~~



1 in the aggregate exceed one hundred twenty-five thousand dollars  
2 (\$125,000) or the number of persons entitled to the payments  
3 exceeds 120, the trust account or accounts of that broker or affiliate  
4 shall be inspected by an independent certified public accountant at  
5 no less than three-month intervals during the time the volume is  
6 maintained. Within 30 days after the close of the period for which  
7 the review is made, the report of the accountant shall be forwarded  
8 as provided in paragraph (5) of subdivision (i). If the broker is  
9 required to file an annual report pursuant to subdivision (n) or  
10 Section 10232.2, the quarterly report pursuant to this subdivision  
11 need not be filed for the last quarter of the year for which the annual  
12 report is made. For the purposes of this subdivision, an affiliate of  
13 a broker is any person controlled by, controlling, or under common  
14 control with the broker.

15 (4) ~~Unless the servicing agent will receive notice pursuant to~~  
16 ~~Section 2924b of the Civil Code, the servicing agent shall file a~~  
17 ~~request for notice of default upon any prior encumbrances and~~  
18 ~~promptly notify the purchasers or lenders of any default on the~~  
19 ~~prior encumbrances or on the note or notes subject to the servicing~~  
20 ~~agreement.~~

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

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

25 (B) ~~Any request for reconveyance of the deed of trust received~~  
26 ~~on behalf of the purchasers or lenders.~~

27 (k) ~~The broker shall disclose in writing to each purchaser or~~  
28 ~~lender the material facts concerning the transaction on a disclosure~~  
29 ~~form adopted or approved by the commissioner pursuant to~~  
30 ~~Section 10232.5, subject to the following:~~

31 (1) ~~The disclosure form shall include a description of the terms~~  
32 ~~upon which the note and deed of trust are being sold, including the~~  
33 ~~terms of the undivided interests being offered therein, including~~  
34 ~~the following:~~

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

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

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

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



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



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

9 (o) Each broker conducting transactions pursuant to this  
10 section, or broker or person who becomes the servicing agent for  
11 notes or interest sold pursuant to this section, who meets the  
12 criteria of paragraph (3) of subdivision (j) shall file with the  
13 commissioner a report of the transactions that is prepared in  
14 accordance with subdivision (c) of Section 10232.2. If the broker  
15 also meets the threshold criteria of Section 10232, the report shall  
16 include the transactions subject to that section as well. This report  
17 shall be confidential pursuant to subdivision (f) of Section  
18 10232.2.

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

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

33 (r) For the purposes of this section, the following definitions  
34 shall apply:

35 (1) "Broker" means a person licensed as a broker under this  
36 part.

37 (2) "Affiliate" means a person controlled by, controlling, or  
38 under common control with, the broker.

39 (3) "Servicing agent" means the real estate broker or person  
40 exempted from the licensing requirements for real estate brokers



1 under Chapter 3 (commencing with Section 10130) of Part 1 of  
2 Division 4, to act as agent for the purchasers or lenders to service  
3 the notes and deeds of trust, including the handling the receipt and  
4 transmission of payments and the institution of foreclosure  
5 proceedings in the event of a default.

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

10 (s) (1) If any person other than a real estate broker makes or  
11 keeps any of the books, accounts, or other records maintained in  
12 connection with a transaction described in this section, the  
13 provisions of this section and of any regulation or order issued  
14 under this section shall apply to the person with respect to the  
15 performance of those services and with respect to those books,  
16 accounts, and other records to the same extent as if the person were  
17 the broker.

18 (2) If any person other than an affiliate of a broker makes or  
19 keeps any of the books, accounts, or other records maintained in  
20 connection with a transaction described in this section, or in the  
21 case of an affiliate other than a parent or subsidiary of the broker,  
22 the provisions of this section and of any regulation or order issued  
23 under this section shall apply to the person with respect to those  
24 books, accounts, and other records to the same extent as if the  
25 person were the affiliate.

26 *SEC. 2. Section 10233 of the Business and Professions Code*  
27 *is amended to read:*

28 10233. ~~Any~~ A real estate licensee who undertakes to service  
29 a promissory note secured directly or collaterally by a lien on real  
30 property or a real property sales contract shall comply with each  
31 of the following requirements:

32 (a) The licensee shall have a written authorization from the  
33 borrower, the lender, or the owner of the note or contract, that is  
34 included within the terms of a written servicing agreement that  
35 satisfies the requirements of subdivision (j) (k) of Section ~~10229~~  
36 10238.

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

39 (1) An accounting of the unpaid principal balance at the end of  
40 each year.



1 (2) An accounting of collections and disbursements received  
2 and made during each year.

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

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

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

11 (2) The recording of a notice of trustee’s sale.

12 (3) The receipt of any payment constituting an amount greater  
13 than or equal to five monthly payments, together with a request for  
14 partial or total reconveyance of the real property, in which case the  
15 notice shall also indicate any further transfer or delivery  
16 instructions.

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

19 SEC. 3. Article 6 (commencing with Section 10237) is added  
20 to Chapter 3 of Part 1 of Division 4 of the Business and Professions  
21 Code, to read:

22

23 Article 6. Claim of Exemption From Securities Qualification

24

25 10237. Any transaction that involves the sale of or offer to sell  
26 a series of notes secured directly by an interest in the same real  
27 property, or the sale of undivided interests in a note secured  
28 directly by real property equivalent to a series transaction, shall  
29 comply with all of requirements of Section 10238.

30 10238. (a) A notice in the following form and containing the  
31 following information shall be filed with the commissioner within  
32 30 days after the first transaction and within 30 days of any  
33 material change in the information required in the notice:

34

35 TO: Real Estate Commissioner

36 Mortgage Loan Section

37 2201 Broadway

38 Sacramento, CA 95818

39



1 This notice is filed pursuant to Section 10237 of the Business and Professions  
2 Code.

3  
4 ( ) Original Notice ( ) Amended Notice  
5

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

9  
10 2. Broker license identification number: \_\_\_\_\_  
11

12 3. List the month the fiscal year ends: \_\_\_\_\_  
13

14 4. Broker's telephone number: \_\_\_\_\_  
15

16 5. Firm name (if different from "I"):  
17 \_\_\_\_\_  
18

19  
20 6. Street address (main location):  
21 \_\_\_\_\_  
22  
23 # and Street City State ZIP Code  
24

25 7. Mailing address (if different from "6"):  
26 \_\_\_\_\_  
27  
28



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

5 \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_

8  
9 9. *Total number of multilender notes arranged:* \_\_\_\_\_

10  
11 10. *Total number of interests sold to investors on the*  
12 *multilender's notes:* \_\_\_\_\_

13  
14 11. *Inspection of trust account (before answering this question, review*  
15 *the provisions of paragraph (3) of subdivision (k) of Section*  
16 *10238).*

17  
18 **CHECK ONLY ONE OF THE FOLLOWING:**

19  
20 ( ) *The undersigned Broker is (or expects to be) required to file reports*  
21 *of inspection of its trust account(s) with the Real Estate*  
22 *Commissioner pursuant to paragraph (3) of subdivision (k) of Section*  
23 *10238.*

24  
25 *Amount of Multilender Payments Collected Last Fiscal Quarter:* \_\_\_\_\_

26  
27 *Total Number of Investors Due Payments Last Fiscal Quarter:* \_\_\_\_\_

28  
29 ( ) *The undersigned Broker is NOT (or does NOT expect to be) required to*  
30 *file reports of inspection of its trust account(s) with the Real Estate*  
31 *Commissioner pursuant to paragraph (3) of subdivision (k) of Section*  
32 *10238.*

33  
34 12. *Signature. The contents of this notice are true and correct.*

35 \_\_\_\_\_  
36 \_\_\_\_\_  
37 *Date* *Type Name of Broker*

38



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---

*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.**

*(b) A broker or person who becomes the servicing agent for notes or interest sold pursuant to this article, 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 subdivision (a) with the commissioner within 30 days after becoming the servicing agent.*

*(c) All advertising employed for transactions under this article shall show the name of the broker and comply with Section 10235 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 article 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.*

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

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

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

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

30 (2) A transaction in which the broker or an affiliate of the  
31 broker is reselling from inventory property acquired by the broker  
32 pursuant to a foreclosure under, or sale pursuant to, a deed of trust  
33 securing a note for which the broker is the servicing agent or that  
34 the broker sold to the holder or holders.

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

40



1 Transaction Identifier: \_\_\_\_\_

2

3 Name of Purchaser: \_\_\_\_\_ Date: \_\_\_\_\_

4

5 Check either one of the following, if true:

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

8

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

12

13 \_\_\_\_\_

14

Signature

15

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

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

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

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

34 (6) A partnership, corporation, or other organization that is  
35 not specifically formed for the purpose of purchasing securities  
36 offered pursuant to this article is counted as one person.

37 (g) The notes or interests of the purchasers shall be identical in  
38 their underlying terms, including the right to direct or require  
39 foreclosure, rights to and rate of interest, and other incidents of  
40 being a lender, and the sale to each purchaser pursuant to this



1 section shall be upon the same terms, subject to adjustment for the  
2 face or principal amount or percentage interest purchased and for  
3 interest earned or accrued. This subdivision does not preclude  
4 different selling prices for interests to the extent that these  
5 differences are reasonably related to changes in the market value  
6 of the loan occurring between the sales of these interests. The  
7 interest of each purchaser shall be recorded.

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

- 19
- 20 (A) Single-family residence, owner occupied ..... 80%
- 21 (B) Single-family residence, not owner occupied ..... 75%
- 22 (C) Commercial and income-producing properties ..... 65%
- 23 (D) Single-family residentially zoned lot or parcel which has  
24 installed offsite improvements including drainage, curbs,  
25 gutters, sidewalks, paved roads, and utilities as mandated  
26 by the political subdivision having jurisdiction over the lot  
27 or parcel ..... 65%
- 28 (E) Land that has been zoned for (and if required, approved for  
29 subdivision as) commercial or residential development .. 50%
- 30 (F) Other real property ..... 35%
- 31

32 (2) The percentage amounts specified in paragraph (1) may be  
33 exceeded when and to the extent that the broker determines that the  
34 encumbrance of the property in excess of these percentages is  
35 reasonable and prudent considering all relevant factors  
36 pertaining to the real property. However, in no event shall the  
37 aggregate principal amount of the notes or interests sold, together  
38 with the unpaid principal amount of any encumbrances upon the  
39 property senior thereto, exceed 80 percent of the current fair  
40 market value of improved real property or 50 percent of the current



1 fair market value of unimproved real property, except in the case  
2 of a single-family zoned lot or parcel as defined in paragraph (1),  
3 which shall not exceed 65 percent of the current fair market value  
4 of that lot or parcel, plus the amount insured as specified in  
5 paragraph (1). A written statement shall be prepared by the broker  
6 that sets forth the material considerations and facts that the broker  
7 relies upon for his or her determination, which shall be retained  
8 as a part of the broker's record of the transaction. Either a copy of  
9 the statement or the information contained therein shall be  
10 included in the disclosures required pursuant to subdivision (l).

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

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

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

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

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

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



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

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

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

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

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

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

38 (3) The books and records of the broker or servicing agent, or  
39 both, shall be maintained in a manner that readily identifies



1 *transactions under this article and the receipt and disbursement of*  
2 *funds in connection with these transactions.*

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

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

36 *(6) Within 30 days of the close of the period for which the report*  
37 *is made, or within any additional time as the commissioner may in*  
38 *writing allow in a particular case, the accountant shall forward to*  
39 *the broker or servicing agent, as the case may be, and to the*  
40 *commissioner, the report of the accountant, stating that the*



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

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

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

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

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



1 *the trust fund when the past due payment is received. However, this*  
2 *article does not authorize the broker, servicing agent, or any other*  
3 *person to issue, or to engage in any practice constituting, any*  
4 *guarantee or to engage in the practice of advancing payments on*  
5 *behalf of the borrower.*

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

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

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

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

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

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

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



1 *terms of the undivided interests being offered therein, including the*  
2 *following:*

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

4 *(i) The aggregate sale price of the note.*

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

7 *(iii) The effective rate of return to the purchasers if the note is*  
8 *paid according to its terms.*

9 *(iv) The name and address of the escrowholder for the*  
10 *transaction.*

11 *(v) A description of, and the estimated amount of, each cost*  
12 *payable by the seller in connection with the sale and a description*  
13 *of, and the estimated amount of, each cost payable by the*  
14 *purchasers in connection with the sale.*

15 *(B) In the case of the origination of a note:*

16 *(i) The name and address of the escrowholder for the*  
17 *transaction.*

18 *(ii) The anticipated closing date.*

19 *(iii) A description of, and the estimated amount of, each cost*  
20 *payable by the borrower in connection with the loan and a*  
21 *description of, and the estimated amount of, each cost payable by*  
22 *the lenders in connection with the loan.*

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

26 *(3) Any interest of the broker or affiliate in the transaction, as*  
27 *described in subdivision (e), shall be included with the disclosure*  
28 *form.*

29 *(4) When the particular circumstances of a transaction make*  
30 *information not specified in the disclosure form material or*  
31 *essential to keep the information provided in the form from being*  
32 *misleading, and the other information is known to the broker, the*  
33 *other information shall also be provided by the broker.*

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

37 *(n) No agreement in connection with a transaction covered by*  
38 *this article shall grant to the real estate broker, the servicing agent,*  
39 *or any affiliate of the broker or agent the option or election to*  
40 *acquire the interests of the purchasers or lenders or to acquire the*



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

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

17 *(p) Each broker conducting transactions pursuant to this*  
18 *article, or broker or person who becomes the servicing agent for*  
19 *notes or interest sold pursuant to this article, who meets the*  
20 *criteria of paragraph (3) of subdivision (k) shall file with the*  
21 *commissioner a report of the transactions that is prepared in*  
22 *accordance with subdivision (c) of Section 10232.2. If the broker*  
23 *also meets the threshold criteria of Section 10232, the report shall*  
24 *include the transactions subject to that section as well. This report*  
25 *shall be confidential pursuant to subdivision (f) of Section*  
26 *10232.2.*

27 *10239. The jurisdiction of the Commissioner of Corporations*  
28 *under the Corporate Securities Law of 1968 shall be neither*  
29 *limited nor expanded by this article. Nothing in this article shall*  
30 *be construed to supersede or restrict the application of the*  
31 *Corporate Securities Law of 1968. A transaction under this article*  
32 *shall not be construed to be a transaction involving the issuance*  
33 *of securities subject to authorization by the Real Estate*  
34 *Commissioner under subdivision (e) of Section 25100 of the*  
35 *Corporations Code.*

36 *10239.1. Nothing in this article shall be construed to change*  
37 *the agency relationships between the parties where they exist or*  
38 *limit in any manner the fiduciary duty of brokers to borrowers,*  
39 *lenders, and purchasers of notes or interests in transactions*  
40 *subject to this article.*



1 10239.2. For the purposes of this article, the following  
2 definitions shall apply:

3 (a) “Broker” means a person licensed as a broker under this  
4 part.

5 (b) “Affiliate” means a person controlled by, controlling, or  
6 under common control with, the broker.

7 (c) “Servicing agent” means the real estate broker or person  
8 exempted from the licensing requirements for real estate brokers  
9 under this chapter to act as agent for the purchasers or lenders to  
10 service the notes and deeds of trust, including the handling of the  
11 receipt and transmission of payments and the institution of  
12 foreclosure proceedings in the event of a default.

13 (d) Except as provided in paragraph (4) of subdivision (j) of  
14 Section 10238, the terms “sale” and “offer to sell,” shall have the  
15 same meaning as set forth in Section 25017 of the Corporations  
16 Code and include the acts of negotiating and arranging the  
17 transaction.

18 10239.3. (a) If any person other than a real estate broker  
19 makes or keeps any of the books, accounts, or other records  
20 maintained in connection with a transaction described in this  
21 article, the provisions of this article and of any regulation or order  
22 issued under this article shall apply to the person with respect to  
23 the performance of those services and with respect to those books,  
24 accounts, and other records to the same extent as if the person were  
25 the broker.

26 (b) If any person other than an affiliate of a broker makes or  
27 keeps any of the books, accounts, or other records maintained in  
28 connection with a transaction described in this article, or in the  
29 case of an affiliate other than a parent or subsidiary of the broker,  
30 the provisions of this article and of any regulation or order issued  
31 under this article shall apply to the person with respect to those  
32 books, accounts, and other records to the same extent as if the  
33 person were the affiliate.

34 SEC. 4. Section 25102.5 of the Corporations Code is amended  
35 to read:

36 25102.5. There shall be exempted from Section 25110 a  
37 transaction that is the sale of a series of notes secured directly by  
38 an interest in the same real property, or the sale of undivided  
39 interests in a note secured directly by real property equivalent to  
40 a series transaction, that complies with all of the provisions of



1 *Article 6 (commencing with Section ~~10229~~ 10237) of Chapter 3 of*  
 2 *Part 1 of Division 4 of the Business and Professions Code. For*  
 3 *purposes of this section, a real estate broker licensed by the Real*  
 4 *Estate Commissioner of this state who engages in the offer and sale*  
 5 *of notes secured directly by real property of various makers, which*  
 6 *are a series of notes or notes in which undivided interests are*  
 7 *offered and sold, shall be deemed to be the issuer of these notes and*  
 8 *undivided interests if the notes of the various makers are offered*  
 9 *and sold pursuant to a plan or arrangement that is common to the*  
 10 *various makers with respect to documentation and loan standards*  
 11 *and that include provisions for servicing these notes on behalf of*  
 12 *purchasers.*

**All matter omitted in this version of the  
 bill appears in the bill as amended in the  
 Assembly, April 28, 2003 (JR 11)**

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CORRECTIONS

Text — Pages 16, 18, and 21.

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