

AMENDED IN SENATE AUGUST 25, 2003

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

Introduced by Assembly Member Leno

February 19, 2003

An act to amend ~~Section~~ *Sections 10177 and 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 10177 of the Business and Professions*
2 *Code is amended to read:*

3 10177. The commissioner may suspend or revoke the license
4 of a real estate licensee, or may deny the issuance of a license to
5 an applicant, who has done any of the following, or may suspend
6 or revoke the license of a corporation, or deny the issuance of a
7 license to a corporation, if an officer, director, or person owning
8 or controlling 10 percent or more of the corporation’s stock has
9 done any of the following:

10 (a) Procured, or attempted to procure, a real estate license or
11 license renewal, for himself or herself or any salesperson, by fraud,
12 misrepresentation, or deceit, or by making any material
13 misstatement of fact in an application for a real estate license,
14 license renewal, or reinstatement.

15 (b) Entered a plea of guilty or nolo contendere to, or been found
16 guilty of, or been convicted of, a felony or a crime involving moral
17 turpitude, and the time for appeal has elapsed or the judgment of
18 conviction has been affirmed on appeal, irrespective of an order
19 granting probation following that conviction, suspending the
20 imposition of sentence, or of a subsequent order under Section
21 1203.4 of the Penal Code allowing that licensee to withdraw his
22 or her plea of guilty and to enter a plea of not guilty, or dismissing
23 the accusation or information.

24 (c) Knowingly authorized, directed, connived at, or aided in the
25 publication, advertisement, distribution, or circulation of any
26 material false statement or representation concerning his or her
27 business, or any business opportunity or any land or subdivision



1 (as defined in Chapter 1 (commencing with Section 11000) of Part
2 2) offered for sale.

3 (d) Willfully disregarded or violated the Real Estate Law (Part
4 1 (commencing with Section 10000)) or Chapter 1 (commencing
5 with Section 11000) of Part 2 or the rules and regulations of the
6 commissioner for the administration and enforcement of the Real
7 Estate Law and Chapter 1 (commencing with Section 11000) of
8 Part 2.

9 (e) Willfully used the term “realtor” or any trade name or
10 insignia of membership in any real estate organization of which the
11 licensee is not a member.

12 (f) Acted or conducted himself or herself in a manner that
13 would have warranted the denial of his or her application for a real
14 estate license, or has either had a license denied or had a license
15 issued by another agency of this state, another state, or the federal
16 government revoked or suspended for acts that, if done by a real
17 estate licensee, would be grounds for the suspension or revocation
18 of a California real estate license, if the action of denial,
19 revocation, or suspension by the other agency or entity was taken
20 only after giving the licensee or applicant fair notice of the charges,
21 an opportunity for a hearing, and other due process protections
22 comparable to the Administrative Procedure Act (Chapter 3.5
23 (commencing with Section 11340), Chapter 4 (commencing with
24 Section 11370), and Chapter 5 (commencing with Section 11500)
25 of Part 1 of Division 3 of Title 2 of the Government Code), and
26 only upon an express finding of a violation of law by the agency
27 or entity.

28 (g) Demonstrated negligence or incompetence in performing
29 any act for which he or she is required to hold a license.

30 (h) As a broker licensee, failed to exercise reasonable
31 supervision over the activities of his or her salespersons, or, as the
32 officer designated by a corporate broker licensee, failed to exercise
33 reasonable supervision and control of the activities of the
34 corporation for which a real estate license is required.

35 (i) Has used his or her employment by a governmental agency
36 in a capacity giving access to records, other than public records,
37 in a manner that violates the confidential nature of the records.

38 (j) Engaged in any other conduct, whether of the same or a
39 different character than specified in this section, which constitutes
40 fraud or dishonest dealing.



1 (k) Violated any of the terms, conditions, restrictions, and
2 limitations contained in any order granting a restricted license.

3 (l) Solicited or induced the sale, lease, or listing for sale or lease
4 of residential property on the ground, wholly or in part, of loss of
5 value, increase in crime, or decline of the quality of the schools due
6 to the present or prospective entry into the neighborhood of a
7 person or persons of another race, color, religion, ancestry, or
8 national origin.

9 (m) Violated the Franchise Investment Law (Division 5
10 commencing with Section 31000) of Title 4 of the Corporations
11 Code) or regulations of the Commissioner of Corporations
12 pertaining thereto.

13 (n) Violated the Corporate Securities Law of 1968 (Division 1
14 commencing with Section 25000) of Title 4 of the Corporations
15 Code) or the regulations of the Commissioner of Corporations
16 pertaining thereto.

17 (o) Failed to disclose to the buyer of real property, in a
18 transaction in which the licensee is an agent for the buyer, the
19 nature and extent of a licensee’s direct or indirect ownership
20 interest in that real property. The direct or indirect ownership
21 interest in the property by a person related to the licensee by blood
22 or marriage, by an entity in which the licensee has an ownership
23 interest, or by any other person with whom the licensee has a
24 special relationship shall be disclosed to the buyer.

25 (p) Violated ~~Section 10229~~ Article 6 (commencing with
26 Section 10237).

27 If a real estate broker that is a corporation has not done any of
28 the foregoing acts, either directly or through its employees, agents,
29 officers, directors, or persons owning or controlling 10 percent or
30 more of the corporation’s stock, the commissioner may not deny
31 the issuance of a real estate license to, or suspend or revoke the real
32 estate license of, the corporation, provided that any offending
33 officer, director, or stockholder, who has done any of the foregoing
34 acts individually and not on behalf of the corporation, has been
35 completely disassociated from any affiliation or ownership in the
36 corporation.

37 SEC. 2. Section 10229 of the Business and Professions Code
38 is repealed.

39 ~~SEC. 2.~~



1 *SEC. 3.* Section 10233 of the Business and Professions Code
2 is amended to read:

3 10233. A real estate licensee who undertakes to service a
4 promissory note secured directly or collaterally by a lien on real
5 property or a real property sales contract shall comply with each
6 of the following requirements:

7 (a) The licensee shall have a written authorization from the
8 borrower, the lender, or the owner of the note or contract, that is
9 included within the terms of a written servicing agreement that
10 satisfies the requirements of subdivision (k) of Section 10238.

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

13 (1) An accounting of the unpaid principal balance at the end of
14 each year.

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

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

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

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

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

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

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

33 ~~SEC. 3.—~~

34 *SEC. 4.* Article 6 (commencing with Section 10237) is added
35 to Chapter 3 of Part 1 of Division 4 of the Business and Professions
36 Code, to read:
37



1 Article 6. Claim of Exemption From Securities Qualification

2

3 10237. Any transaction that involves the sale of or offer to sell
4 a series of notes secured directly by an interest in the same real
5 property, or the sale of undivided interests in a note secured
6 directly by real property equivalent to a series transaction, shall
7 comply with all of ~~requirements of Section 10238~~ *the provisions*
8 *of this article.*

9 10238. (a) 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 TO: Real Estate Commissioner
15 Mortgage Loan Section
16 2201 Broadway
17 Sacramento, CA 95818

18

19 This notice is filed pursuant to Section 10237 of the Business and Professions
20 Code.

21

22 () Original Notice () Amended Notice

23

24 1. Name of Broker conducting transaction under Section 10237:

25

26 _____

27

28 2. Broker license identification number: _____

29

30 3. List the month the fiscal year ends: _____

31

32 4. Broker's telephone number: _____

33

34 5. Firm name (if different from "1"):

35

36 _____

37



1 6. Street address (main location):

2 _____
3

4 # and Street City State ZIP Code

5

6 7. Mailing address (if different from "6"):

7 _____
8

9

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

14 _____
15

16 _____
17

18

18 9. Total number of multilender notes arranged: _____

19

20 10. Total number of interests sold to investors on the
21 multilender's notes: _____

22

23 11. Inspection of trust account (before answering this question, review
24 the provisions of paragraph (3) of subdivision (k) of Section
25 10238).

26

27 CHECK ONLY ONE OF THE FOLLOWING:

28

29 () The undersigned Broker is (or expects to be) required to file reports
30 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



1 Amount of Multilender Payments Collected Last Fiscal Quarter: _____

2

3 Total Number of Investors Due Payments Last Fiscal Quarter: _____

4

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

9

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

11

12

13

Date

Type Name of Broker

14

15

16

Signature of Broker or of Designated Officer of
Corporate Broker

17

18

19

20

Type Name of Person(s) Signing This Notice

21

22

23

24

25

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.

26

27

28

29

30

31

32

33

(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.

34

35

36

37

38

39

(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



1 representation may reasonably be construed by the investor as an
2 implication of merit or approval of the transaction.

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

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

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

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



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

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

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

16
17 Transaction Identifier: _____

18
19 Name of Purchaser: _____ Date: _____

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

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

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

28
29 _____
30 Signature

31
32 (2) The number of offerees shall not be considered for the
33 purposes of this section.

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

36 (4) A retirement plan, trust, business trust, corporation, or other
37 entity that is wholly owned by an individual and the individual's
38 spouse or the individual's dependents, or any combination thereof,
39 shall not be counted separately from the individual, but the
40 investments of these entities shall be aggregated with those of the



1 individual for the purposes of the statement required by paragraph
2 (1). If the investments of any entities are required to be aggregated
3 under this subdivision, the adjusted gross income or net worth of
4 these entities may also be aggregated with the net worth, income,
5 or both, of the individual.

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

10 (6) A partnership, *limited liability company*, corporation, or
11 other organization that ~~is~~ was not specifically formed for the
12 purpose of purchasing securities offered pursuant to this article ~~the~~
13 *security offered in reliance upon this exemption from securities*
14 *qualification* is counted as one person.

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

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

- 37
- 38 (A) Single-family residence, owner occupied 80%
- 39 (B) Single-family residence, not owner occupied 75%
- 40 (C) Commercial and income-producing properties 65%



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

9

10 (2) The percentage amounts specified in paragraph (1) may be

11 exceeded when and to the extent that the broker determines that the

12 encumbrance of the property in excess of these percentages is

13 reasonable and prudent considering all relevant factors pertaining

14 to the real property. However, in no event shall the aggregate

15 principal amount of the notes or interests sold, together with the

16 unpaid principal amount of any encumbrances upon the property

17 senior thereto, exceed 80 percent of the current fair market value

18 of improved real property or 50 percent of the current fair market

19 value of unimproved real property, except in the case of a

20 single-family zoned lot or parcel as defined in paragraph (1),

21 which shall not exceed 65 percent of the current fair market value

22 of that lot or parcel, plus the amount insured as specified in

23 paragraph (1). A written statement shall be prepared by the broker

24 that sets forth the material considerations and facts that the broker

25 relies upon for his or her determination, which shall be retained as

26 a part of the broker’s record of the transaction. Either a copy of the

27 statement or the information contained therein shall be included in

28 the disclosures required pursuant to subdivision (l).

29 (3) A copy of the appraisal or the broker’s evaluation shall be

30 delivered to each purchaser. The broker shall advise purchasers of

31 their right to receive a copy. For purposes of this paragraph,

32 “appraisal” means a written estimate of value based upon the

33 assembling, analyzing, and reconciling of facts and value

34 indicators for the real property in question. A broker shall not

35 purport to make an appraisal unless the person so employed is

36 qualified on the basis of special training, preparation, or

37 experience.

38 (4) For construction or rehabilitation loans, the term “current

39 market value” may be deemed to be the value of the completed

40 project if the following safeguards are met:



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

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

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

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

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

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

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

28 (i) The documentation of the transaction shall require that (1)
29 a default upon any interest or note is a default upon all interests or
30 notes and (2) the holders of more than 50 percent of the recorded
31 beneficial interests of the notes or interests may govern the actions
32 to be taken on behalf of all holders in accordance with Section
33 2941.9 of the Civil Code in the event of default or foreclosure for
34 matters that require direction or approval of the holders, including
35 designation of the broker, servicing agent, or other person acting
36 on their behalf, and the sale, encumbrance, or lease of real property
37 owned by the holders resulting from foreclosure or receipt of a
38 deed in lieu of foreclosure. The terms called for by this subdivision
39 may be included in the deed of trust, in the assignment of interests,



1 or in any other documentation as is necessary or appropriate to
2 make them binding on the parties.

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

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

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

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

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



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

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

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



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

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

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

25 (3) If the broker or person who is or becomes the servicing
26 agent for notes or interests sold pursuant to this article upon which
27 the payments due during any period of three consecutive months
28 in the aggregate exceed one hundred twenty-five thousand dollars
29 (\$125,000) or the number of persons entitled to the payments
30 exceeds 120, the trust account or accounts of that broker or affiliate
31 shall be inspected by an independent certified public accountant at
32 no less than three-month intervals during the time the volume is
33 maintained. Within 30 days after the close of the period for which
34 the review is made, the report of the accountant shall be forwarded
35 as provided in paragraph ~~(5)~~ (6) of subdivision (j). If the broker
36 is required to file an annual report pursuant to subdivision ~~(n)~~ of
37 (o) or pursuant to Section 10232.2, the quarterly report pursuant
38 to this subdivision need not be filed for the last quarter of the year
39 for which the annual report is made. For the purposes of this



1 subdivision, an affiliate of a broker is any person controlled by,
2 controlling, or under common control with the broker.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (ii) The anticipated closing date.

39 (iii) A description of, and the estimated amount of, each cost
40 payable by the borrower in connection with the loan and a



1 description of, and the estimated amount of, each cost payable by
2 the lenders in connection with the loan.

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

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

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

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

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

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

37 (p) Each broker conducting transactions pursuant to this
38 article, or broker or person who becomes the servicing agent for
39 notes or interest sold pursuant to this article, who meets the criteria
40 of paragraph (3) of subdivision (k) shall file with the



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

7 10239. The jurisdiction of the Commissioner of Corporations
8 under the Corporate Securities Law of 1968 shall be neither
9 limited nor expanded by this article. Nothing in this article shall
10 be construed to supersede or restrict the application of the
11 Corporate Securities Law of 1968. A transaction under this article
12 shall not be construed to be a transaction involving the issuance of
13 securities subject to authorization by the Real Estate
14 Commissioner under subdivision (e) of Section 25100 of the
15 Corporations Code.

16 10239.1. Nothing in this article shall be construed to change
17 the agency relationships between the parties where they exist or
18 limit in any manner the fiduciary duty of brokers to borrowers,
19 lenders, and purchasers of notes or interests in transactions subject
20 to this article.

21 10239.2. For the purposes of this article, the following
22 definitions shall apply:

23 (a) “Broker” means a person licensed as a broker under this
24 part.

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

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

33 (d) Except as provided in paragraph ~~(4)~~ (5) of subdivision (j)
34 of Section 10238, the terms “sale” and “offer to sell,” shall have
35 the same meaning as set forth in Section 25017 of the Corporations
36 Code and include the acts of negotiating and arranging the
37 transaction.

38 10239.3. (a) If any person other than a real estate broker
39 makes or keeps any of the books, accounts, or other records
40 maintained in connection with a transaction described in this



1 article, the provisions of this article and of any regulation or order
2 issued under this article shall apply to the person with respect to
3 the performance of those services and with respect to those books,
4 accounts, and other records to the same extent as if the person were
5 the broker.

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

14 *10239.4. This article applies only to the exemption from*
15 *securities qualification claimed under Section 25102.5 of the*
16 *Corporations Code. This article does not apply to any other*
17 *exemption from securities qualification, including subdivision (e)*
18 *of Section 25102 of the Corporations Code, which may be claimed*
19 *without complying with this article, or to any permit to qualify the*
20 *offer and sale of securities under the Corporate Securities Law of*
21 *1968. A real estate broker, when engaging in acts for which a*
22 *license is required, who arranges a transaction pursuant to this*
23 *article or pursuant to an offering subject to the Corporations*
24 *Code, shall clearly indicate in the broker's transaction file the*
25 *provision of the Corporate Securities Law of 1968 pertaining to*
26 *qualification or exemption from qualification under which the*
27 *transaction is being conducted, and shall retain this information*
28 *for the period specified in subdivision (a) of Section 10148.*

29 ~~SEC. 4.—~~

30 *SEC. 5.* Section 25102.5 of the Corporations Code is amended
31 to read:

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



1 notes secured directly by real property of various makers, which
2 are a series of notes or notes in which undivided interests are
3 offered and sold, shall be deemed to be the issuer of these notes and
4 undivided interests if the notes of the various makers are offered
5 and sold pursuant to a plan or arrangement that is common to the
6 various makers with respect to documentation and loan standards
7 and that include provisions for servicing these notes on behalf of
8 purchasers.

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