

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2257

Introduced by Assembly Member Nava

February 18, 2010

~~An act to amend Section 10131 of the Business and Professions Code, relating to real estate brokers. An act to amend Sections 11302 and 11310 of, and to amend, repeal, and add Sections 10000, 10050, 11301, and 11313 of, the Business and Professions Code, to amend, repeal, and add Sections 25005 and 31004 of the Corporations Code, to amend Sections 4970 and 23001 of, to amend and repeal Section 252 of, to amend, repeal, and add Sections 112, 210, 4805.055, 5104, 5106, 12003, 14003, 17002, 18002, 18002.5, 22005, 30002, 31055, and 33045.5 of, to add Sections 23002 and 50003.5 to, and to add Division 0.5 (commencing with Section 25) and Division 20.5 (commencing with Section 55000) to, the Financial Code, and to amend Section 11552 of, and to amend, repeal, and add Sections 13975 and 13978.6 of, the Government Code, relating to financial services, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2257, as amended, Nava. ~~Real estate brokers.~~ *Financial services.* Existing law establishes the Department of Financial Institutions, the Department of Corporations, the Department of Real Estate, and the Office of Real Estate Appraisers in the Business, Transportation and Housing Agency.

Existing law provides for the licensing and regulation of, among others, banks, credit unions, and other financial institutions by the Commissioner of Financial Institutions. Existing law provides for the

licensing and regulation of, among others, residential mortgage lenders and finance lenders by the Commissioner of Corporations. Existing law provides for the licensing and regulation of, among others, real estate brokers and salespersons by the Real Estate Commissioner. Existing law provides for the licensure and regulation of real estate appraisers by the Director of the Office of Real Estate Appraisers. Existing law provides for the Real Estate Fund, a continuously appropriated fund, for purposes of providing funding for the regulation and enforcement of the Real Estate Law.

This bill would do the following, effective July 1, 2012: (1) establish a new Department of Financial Services (DFS) in the Business, Transportation and Housing Agency (BTHA), (2) designate the chief officer of DFS as the Commissioner of Financial Services, (3) transfer the powers, duties, purposes, jurisdiction, responsibilities, and functions of the Department of Corporations (DOC) and Department of Financial Institutions (DFI) to 2 new divisions under the DFS, the Division of Corporations and the Division of Financial Institutions, (4) designate the Commissioner of Corporations and the Commissioner of Financial Institutions as the directors of the Division of Corporations and the Division of Financial Institutions, respectively, (5) establish a new Office of Financial and Real Estate Consumer Advocacy within the DFS, and (6) transfer authority over real estate appraisers to the Department of Real Estate (DRE) under the Real Estate Law.

This bill would, effective July 1, 2012, transfer from the DRE to the Division of Corporations the authority to license, regulate, enforce, and discipline real estate licensees engaged in residential real estate financial services, as specified. The bill would, by July 1, 2012, require the Commissioner of Financial Services to, among other things, adopt or amend regulations and rules to implement this transfer. The bill would establish the Real Estate Financial Services Fund and the Real Estate Financial Services Recovery Account within the fund, both with continuously appropriated funds, and would direct that a specified percentage of licensure fees paid by those licensees engaging in residential real estate financial services be deposited in the recovery account. The bill would authorize an aggrieved person with a final judgment against a licensee to file an application, that includes a statement under penalty of perjury, with the Division of Corporations for payment from the recovery account. The bill would make these provisions relating to the fund and the account operative on July 1, 2012. By creating a continuously appropriated fund and account, the

bill would make an appropriation. By expanding the crime of perjury, the bill would impose a state-mandated local program.

In order to implement the above provisions, this bill would require the Secretary of Business, Transportation and Housing, in consultation with DFI, DOC, DRE, and the Office of Real Estate Appraisers, to, on or before January 1, 2012, report to the Legislature and make specified recommendations regarding the consolidation of these entities and their respective operations. This bill would appropriate \$150,000 from the General Fund portions of the Real Estate Fund to the Secretary of Business, Transportation and Housing to fund the reports, thereby making an appropriation. The bill would make findings and declarations in this regard, and would make technical and conforming changes to related provisions and definitions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Real Estate Law, provides for the licensing and regulation by the Real Estate Commissioner of real estate licensees, including real estate brokers, as defined.~~

~~This bill would make a nonsubstantive change to these provisions.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The regulation and oversight of financial services in
- 4 California is principally divided between two regulators, the
- 5 Department of Financial Institutions and the Department of
- 6 Corporations.
- 7 (b) California is one of only a few states that separate the
- 8 regulation of financial services among different licensing agencies.
- 9 California is also anomalous in that three state departments
- 10 regulate and oversee mortgage brokerage as well as the sale of
- 11 specified business opportunity activities.

1 (c) This division of oversight is most apparent in the regulation
2 of home mortgage lending that is split among multiple licensing
3 schemes, including the California Finance Lenders Law, the
4 California Residential Mortgage Lending Act, the Real Estate
5 Law, and laws governing the operation of state and federally
6 chartered banks or credit unions. This division of oversight has
7 made it cumbersome and expensive for California to consistently
8 implement, across three departments, major advancements in
9 consumer protection such as the federal guidance on nontraditional
10 mortgage product risks and statement on subprime mortgage
11 lending, the S.A.F.E. Mortgage Licensing Act of 2008 (Public Law
12 110-289) and, most recently, the California Foreclosure Prevention
13 Act.

14 (d) The Department of Real Estate and the Office of Real Estate
15 Appraisers protect consumers in real estate transactions by
16 licensing real estate agents and appraisers, respectively.

17 (e) This partition of regulation dilutes consumer protection and
18 creates confusion and unnecessary administrative difficulties for
19 financial services entities.

20 (f) The current regulatory system creates licensing arbitrage,
21 with entities seeking out licenses from various regulators in order
22 to obtain an advantage.

23 (g) It is in the public's best interest effective July 1, 2012, to
24 have a single regulator, the Commissioner of the new Department
25 of Financial Services, ultimately responsible for the regulation of
26 financial services in California previously spread among the
27 Department of Corporations to be transferred intact to the new
28 Department of Financial Services as the Division of Corporations,
29 and the Department of Financial Institutions to be transferred
30 intact to the new Department of Financial Services as the Division
31 of Financial Institutions.

32 (h) It is in the public's best interest that the Department of Real
33 Estate remain as a separate department regulating real estate
34 transactions, subdivided lands, and business opportunity activities.
35 However, effective July 1, 2012, the Department of Real Estate
36 shall transfer its licensure, regulation, enforcement, and discipline
37 of those persons engaged in real estate financial services to the
38 new Division of Corporations within the Department of Financial
39 Services as set forth in subdivision (b) of Section 25 of Division
40 0.5 of the Financial Code. This transfer shall maintain existing

1 consumer protections, including the availability of a recovery fund
2 similar to the Recovery Account of the Real Estate Fund.

3 (i) It is in the public's best interest to combine the remaining
4 operations of the Department of Real Estate and the Office of Real
5 Estate Appraisers, while remaining compliant with federal
6 provisions related to the regulation of real estate appraisers.

7 (j) It is in the public's best interest at this time to not expand or
8 diminish existing authorities of the existing departments,
9 commissioners, or directors upon transfer and renaming except
10 as set forth in subdivision (b) of Section 25 of Division 0.5 of the
11 Financial Code. It is in the public's best interest at this time to not
12 expand or diminish any existing duties, including fiduciary duties,
13 of licensees of existing departments or to diminish consumer
14 protection.

15 (k) It is in the public's best interest to collect public comment
16 and make recommendations on a series of potential future changes
17 for later consideration by the Legislature and regulators as set
18 forth in Sections 48 to 50, inclusive, of Division 0.5 of the Financial
19 Code.

20 (l) It is in the public's best interest to create a formal Office of
21 Financial and Real Estate Consumer Advocacy to advise the
22 Commissioner of Financial Services and the Real Estate
23 Commissioner on how their departments can provide a high degree
24 of service and protection to the public and other duties described
25 in Division 0.5 (commencing with Section 25) of the Financial
26 Code.

27 SEC. 2. Section 10000 of the Business and Professions Code
28 is amended to read:

29 10000. This part may be cited as the Real Estate Law.

30 This section shall become inoperative on July 1, 2012, and, as
31 of January 1, 2013, is repealed, unless a later enacted statute, that
32 becomes operative on or before January 1, 2013, deletes or extends
33 the dates on which it becomes inoperative and is repealed.

34 SEC. 3. Section 10000 is added to the Business and Professions
35 Code, to read:

36 10000. (a) This part and Part 3 (commencing with Section
37 11300) may be cited as the Real Estate Law.

38 (b) This section shall become operative on July 1, 2012.

39 SEC. 4. Section 10050 of the Business and Professions Code
40 is amended to read:

1 10050. There is in the Business and Transportation Agency a
2 Department of Real Estate, the chief officer of which department
3 is named the Real Estate Commissioner.

4 It shall be the principal responsibility of the commissioner to
5 enforce all laws in this part (commencing with Section 10000) and
6 Chapter 1 (commencing with Section 11000) of Part 2 of this
7 division in a manner which achieves the maximum protection for
8 the purchasers of real property and those persons dealing with real
9 estate licensees.

10 *This section shall become inoperative on July 1, 2012, and, as*
11 *of January 1, 2013, is repealed, unless a later enacted statute, that*
12 *becomes operative on or before January 1, 2013, deletes or extends*
13 *the dates on which it becomes inoperative and is repealed.*

14 SEC. 5. Section 10050 is added to the Business and Professions
15 Code, to read:

16 10050. (a) There is in the Business, Transportation and
17 Housing Agency a Department of Real Estate, the chief officer of
18 which department is named the Real Estate Commissioner.

19 (b) It shall be the principal responsibility of the commissioner
20 to enforce all laws in this part, Chapter 1 of Part 2, and Part 3
21 (commencing with Section 11300), subject to subdivision (c) of
22 Section 49 of the Financial Code, in a manner that achieves the
23 maximum protection for the purchasers of real property and those
24 persons dealing with real estate licensees and real estate
25 appraisers.

26 (c) This section shall become operative on July 1, 2012.

27 SEC. 6. Section 11301 of the Business and Professions Code
28 is amended to read:

29 11301. There is hereby created within the Business,
30 Transportation and Housing Agency an Office of Real Estate
31 Appraisers to administer and enforce this part.

32 *This section shall become inoperative on July 1, 2012, and, as*
33 *of January 1, 2013, is repealed, unless a later enacted statute, that*
34 *becomes operative on or before January 1, 2013, deletes or extends*
35 *the dates on which it becomes inoperative and is repealed.*

36 SEC. 7. Section 11301 is added to the Business and Professions
37 Code, to read:

38 11301. (a) There is hereby created within the Department of
39 Real Estate an Office of Real Estate Appraisers to administer and
40 enforce this part.

1 (b) *This section shall become operative on July 1, 2012.*

2 SEC. 8. *Section 11302 of the Business and Professions Code*
3 *is amended to read:*

4 11302. For the purpose of applying this part, the following
5 terms, unless otherwise expressly indicated, shall mean and have
6 the following definitions:

7 (a) "Agency" means the Business, Transportation and Housing
8 Agency.

9 (b) "Appraisal" means a written statement independently and
10 impartially prepared by a qualified appraiser setting forth an
11 opinion in a federally related transaction as to the market value of
12 an adequately described property as of a specific date, supported
13 by the presentation and analysis of relevant market information.

14 The term "appraisal" does not include an opinion given by a real
15 estate licensee or engineer or land surveyor in the ordinary course
16 of his or her business in connection with a function for which a
17 license is required under Chapter 7 (commencing with Section
18 6700) or Chapter 15 (commencing with Section 8700) of Division
19 3, or Chapter 3 (commencing with Section 10130) or Chapter 7
20 (commencing with Section 10500) and the opinion shall not be
21 referred to as an appraisal. This part does not apply to a probate
22 referee acting pursuant to Sections 400 to 408, inclusive, of the
23 Probate Code unless the appraised transaction is federally related.

24 (c) "Appraisal Foundation" means the Appraisal Foundation
25 that was incorporated as an Illinois not-for-profit corporation on
26 November 30, 1987.

27 ~~(d) (1) "Appraisal management company" means any person~~
28 ~~or entity that satisfies all of the following conditions:~~

29 ~~(A) Maintains an approved list or lists, containing 11 or more~~
30 ~~independent contractor appraisers licensed or certified pursuant~~
31 ~~to this part, or employs 11 or more appraisers licensed or certified~~
32 ~~pursuant to this part.~~

33 ~~(B) Receives requests for appraisals from one or more clients.~~

34 ~~(C) For a fee paid by one or more of its clients, delegates~~
35 ~~appraisal assignments for completion by its independent contractor~~
36 ~~or employee appraisers.~~

37 ~~(2) "Appraisal management company" does not include any of~~
38 ~~the following, when that person or entity directly contracts with~~
39 ~~an independent appraiser:~~

1 ~~(A) Any bank, credit union, trust company, savings and loan~~
2 ~~association, or industrial loan company doing business under the~~
3 ~~authority of, or in accordance with, a license, certificate, or charter~~
4 ~~issued by the United States or any state, district, territory, or~~
5 ~~commonwealth of the United States that is authorized to transact~~
6 ~~business in this state.~~

7 ~~(B) Any finance lender or finance broker licensed pursuant to~~
8 ~~Division 9 (commencing with Section 22000) of the Financial~~
9 ~~Code, when acting under the authority of that license.~~

10 ~~(C) Any residential mortgage lender or residential mortgage~~
11 ~~servicer licensed pursuant to Division 20 (commencing with~~
12 ~~Section 50000) of the Financial Code, when acting under the~~
13 ~~authority of that license.~~

14 ~~(D) Any real estate broker licensed pursuant to Part 1~~
15 ~~(commencing with Section 10000) of Division 4 of the Business~~
16 ~~and Professions Code, when acting under the authority of that~~
17 ~~license.~~

18 ~~(3) “Appraisal management company” does not include any~~
19 ~~person licensed to practice law in this state who is working with~~
20 ~~or on behalf of a client of that person in connection with one or~~
21 ~~more appraisals for that client.~~

22 ~~(e)~~

23 ~~(d) “Appraisal Subcommittee” means the Appraisal~~
24 ~~Subcommittee of the Federal Financial Institutions Examination~~
25 ~~Council.~~

26 ~~(f) “Controlling person” means one or more of the following:~~

27 ~~(1) An officer or director of an appraisal management company;~~
28 ~~or an individual who holds a 10 percent or greater ownership~~
29 ~~interest in an appraisal management company.~~

30 ~~(2) An individual employed, appointed, or authorized by an~~
31 ~~appraisal management company that has the authority to enter into~~
32 ~~a contractual relationship with clients for the performance of~~
33 ~~appraisal services and that has the authority to enter into~~
34 ~~agreements with independent appraisers for the completion of~~
35 ~~appraisals.~~

36 ~~(3) An individual who possesses the power to direct or cause~~
37 ~~the direction of the management or policies of an appraisal~~
38 ~~management company.~~

39 ~~(g)~~

1 (e) "Director" means the Director of the Office of Real Estate
2 Appraisers.

3 ~~(h)~~

4 (f) "Federal financial institutions regulatory agency" means the
5 Federal Reserve Board, Federal Deposit Insurance Corporation,
6 Office of the Comptroller of the Currency, Office of Thrift
7 Supervision, Federal Home Loan Bank System, National Credit
8 Union Administration, and any other agency determined by the
9 director to have jurisdiction over transactions subject to this part.

10 ~~(i)~~

11 (g) "Federally related real estate appraisal activity" means the
12 act or process of making or performing an appraisal on real estate
13 or real property in a federally related transaction and preparing an
14 appraisal as a result of that activity.

15 ~~(j)~~

16 (h) "Federally related transaction" means any real estate-related
17 financial transaction which a federal financial institutions
18 regulatory agency engages in, contracts for or regulates and which
19 requires the services of a state licensed real estate appraiser
20 regulated by this part. This term also includes any transaction
21 identified as such by a federal financial institutions regulatory
22 agency.

23 ~~(k)~~

24 (i) "License" means any license, certificate, permit, registration,
25 or other means issued by the office authorizing the person to whom
26 it is issued to act pursuant to this part within this state.

27 ~~(l)~~

28 (j) "Licensure" means the procedures and requirements a person
29 shall comply with in order to qualify for issuance of a license and
30 includes the issuance of the license.

31 ~~(m)~~

32 (k) "Office" means the Office of Real Estate Appraisers.

33 ~~(n) "Registration" means the procedures and requirements with~~
34 ~~which a person or entity shall comply in order to qualify to conduct~~
35 ~~business as an appraisal management company.~~

36 ~~(o)~~

37 (l) "Secretary" means the Secretary of Business, Transportation
38 and Housing.

39 ~~(p)~~

1 (m) “State licensed real estate appraiser” is a person who is
2 issued and holds a current valid license under this part.

3 ~~(q)~~

4 (n) “Uniform Standards of Professional Appraisal Practice” are
5 the standards of professional appraisal practice established by the
6 Appraisal Foundation.

7 ~~(r)~~

8 (o) “Course provider” means a person or entity that provides
9 educational courses related to professional appraisal practice.

10 (p) “Commissioner” means the Real Estate Commissioner.

11 SEC. 9. Section 11310 of the Business and Professions Code
12 is amended to read:

13 11310. The Governor shall appoint, subject to confirmation
14 by the Senate, the Director of the Office of Real Estate Appraisers
15 who shall, ~~in consultation with the Governor and secretary,~~
16 administer the licensing and certification program for real estate
17 appraisers. In making the appointment, consideration shall be given
18 to the qualifications of an individual that demonstrate knowledge
19 of the real estate appraisal profession.

20 (a) ~~The~~ (1) Prior to July 1, 2012, the director shall serve at
21 the pleasure of the ~~Governor~~. Governor and shall administer the
22 licensing and certification program in consultation with the
23 Governor and the secretary. The salary for the director shall be
24 fixed and determined by the secretary with approval of the
25 Department of Personnel Administration.

26 (2) On and after July 1, 2012, the director shall serve at the
27 pleasure of the Governor and shall administer the licensing and
28 certification program in consultation with the Governor and the
29 commissioner. The salary for the director shall be fixed and
30 determined by the commissioner with approval of the Department
31 of Personnel Administration.

32 (3) Institutional safeguards shall be established and maintained
33 between the Department of Real Estate and the Office of Real
34 Estate Appraisers and its employees to protect the independence
35 of the appraiser regulatory function from realty-related activities
36 consistent with Title XI of the federal Financial Institutions Reform,
37 Recovery and Enforcement Act of 1989, as amended by the Real
38 Estate Appraisal Reform Amendments (12 U.S.C. Secs. 3331-3351).
39 Decisions relating to appraisal license issuance, revocation, and
40 disciplinary actions shall be made by the Director of the Office of

1 *Real Estate Appraisers and shall not be made or influenced by the*
2 *Department of Real Estate or the Real Estate Commissioner.*

3 (b) The director shall not be actively engaged in the appraisal
4 business or any other affected industry for the term of appointment,
5 and thereafter the director shall be subject to Section 87406 of the
6 Government Code.

7 (c) The director, in consultation with the secretary ~~and in or, on~~
8 *and after July 1, 2012, in consultation with the commissioner, and*
9 *in accordance with the State Civil Service Act, may appoint and*
10 *fix the compensation of legal, clerical, technical, investigation,*
11 *and auditing personnel as may be necessary to carry out this part.*
12 *All personnel shall perform their respective duties under the*
13 *supervision and direction of the director.*

14 (d) The director may appoint not more than four deputy directors
15 as he or she deems appropriate. The deputy directors shall perform
16 their respective duties under the supervision and direction of the
17 director.

18 (e) Every power granted to or duty imposed upon the director
19 under this part may be exercised or performed in the name of the
20 director by the deputy directors, subject to conditions and
21 limitations as the director may prescribe.

22 *SEC. 10. Section 11313 of the Business and Professions Code*
23 *is amended to read:*

24 11313. The office is under the supervision and control of the
25 secretary. The duty of enforcing and administering this part is
26 vested in the director and he or she is responsible to the secretary
27 therefor. The director shall adopt and enforce rules and regulations
28 as are determined reasonably necessary to carry out the purposes
29 of this part. Those rules and regulations shall be adopted pursuant
30 to Chapter 3.5 (commencing with Section 11340) of Part 1 of
31 Division 3 of Title 2 of the Government Code.

32 *This section shall become inoperative on July 1, 2012, and, as*
33 *of January 1, 2012, is repealed, unless a later enacted statute, that*
34 *becomes operative on or before January 1, 2013, deletes or extends*
35 *the dates on which it becomes inoperative and is repealed.*

36 *SEC. 11. Section 11313 is added to the Business and*
37 *Professions Code, to read:*

38 11313. (a) *The office is under the supervision and control of*
39 *the commissioner. The duty of enforcing and administering this*
40 *part is vested in the director and he or she is responsible to the*

1 commissioner therefor. The director shall adopt and enforce rules
2 and regulations as are determined reasonably necessary to carry
3 out the purposes of this part. Those rules and regulations shall be
4 adopted pursuant to Chapter 3.5 (commencing with Section 11340)
5 of Part 1 of Division 3 of Title 2 of the Government Code.

6 (b) This section shall become operative on July 1, 2012.

7 SEC. 12. Section 25005 of the Corporations Code is amended
8 to read:

9 25005. "Commissioner" means the Commissioner of
10 Corporations.

11 This section shall become inoperative on July 1, 2012, and, as
12 of January 1, 2013, is repealed, unless a later enacted statute, that
13 becomes operative on or before January 1, 2013, deletes or extends
14 the dates on which it becomes inoperative and is repealed.

15 SEC. 13. Section 25005 is added to the Corporations Code, to
16 read:

17 25005. (a) As used in this part, the following terms have the
18 following meanings:

19 (1) "Department of Corporations" or "department" means the
20 Department of Financial Services, Division of Corporations.

21 (2) "Commissioner of Corporations" or "commissioner" means
22 the Director of the Division of Corporations.

23 (b) This section shall become operative on July 1, 2012.

24 SEC. 14. Section 31004 of the Corporations Code is amended
25 to read:

26 31004. "Commissioner" means the Commissioner of
27 Corporations.

28 This section shall become inoperative on July 1, 2012, and, as
29 of January 1, 2013, is repealed, unless a later enacted statute, that
30 becomes operative on or before January 1, 2013, deletes or extends
31 the dates on which it becomes inoperative and is repealed.

32 SEC. 15. Section 31004 is added to the Corporations Code, to
33 read:

34 31004. (a) As used in this part, the following terms have the
35 following meanings:

36 (1) "Department of Corporations" or "department" means the
37 Department of Financial Services, Division of Corporations.

38 (2) "Commissioner of Corporations" or "commissioner" means
39 the Director of the Division of Corporations.

40 (b) This section shall become operative on July 1, 2012.

1 *SEC. 16. Division 0.5 (commencing with Section 25) is added*
2 *to the Financial Code, to read:*

3
4 *DIVISION 0.5. CONSOLIDATION OF FINANCIAL SERVICES*
5

6 25. (a) *Effective July 1, 2012, there shall be in the state*
7 *government, in the Business, Transportation and Housing Agency,*
8 *a Department of Financial Services, which shall consist of the*
9 *following:*

10 (1) *The Division of Financial Institutions, comprised of the*
11 *former Department of Financial Institutions, which shall be*
12 *primarily responsible for the execution of all laws previously under*
13 *that department's jurisdiction subject to oversight by the*
14 *Commissioner of Financial Services.*

15 (2) *The Division of Corporations, comprised of the former*
16 *Department of Corporations, which shall be primarily responsible*
17 *for the execution of all laws previously under that department's*
18 *jurisdiction subject to oversight by the Commissioner of Financial*
19 *Services.*

20 (3) (A) *The Office of Financial and Real Estate Consumer*
21 *Advocacy, which shall act in an advisory capacity to the*
22 *Department of Financial Services and the Department of Real*
23 *Estate and shall not have rulemaking authority. The office's goal*
24 *shall be to assist these departments with providing a high degree*
25 *of service and protection to the public.*

26 (B) *The Office of Financial and Real Estate Consumer Advocacy*
27 *may advise the departments regarding the effectiveness and*
28 *possible improvement of the following with respect to each*
29 *department:*

30 (i) *Internet Web sites, brochures, and other public*
31 *communications.*

32 (ii) *Complaint processes.*

33 (iii) *Public outreach.*

34 (iv) *Regulations.*

35 (v) *Any other functions as determined by the Commissioner of*
36 *Financial Services or the Real Estate Commissioner.*

37 (C) *The Office of Financial and Real Estate Consumer Advocacy*
38 *may also advise the departments regarding developments in the*
39 *following:*

40 (i) *Innovative financial products and services.*

1 (ii) Efforts to assist low-income earners enter the financial
2 mainstream and build good credit.

3 (iii) Financial literacy.

4 (iv) Federal oversight of consumer issues.

5 (v) Any other topics as determined by the Commissioner of
6 Financial Services or the Real Estate Commissioner.

7 (D) The Director of the Office of Financial and Real Estate
8 Consumer Advocacy shall do all of the following:

9 (i) Appear as requested before the appropriate policy committees
10 of the Assembly and Senate.

11 (ii) Review existing laws or regulations, and make
12 recommendations to the Commissioner of the Department of
13 Financial Services regarding any amendments and updates to
14 existing laws or regulations, that would improve consumer
15 protection.

16 (iii) Test division communications to and for the public,
17 including Internet Web sites, complaint forms, and license lookup
18 features for ease of the use by the public, and make
19 recommendations to subdivisions to improve public awareness
20 and access to information.

21 (iv) Develop plain language information about the benefits and
22 pitfalls associated with consumer financial products offered by
23 regulated entities.

24 (v) Develop and provide plain language information and
25 descriptions of the laws and regulations under the jurisdiction of
26 the Department of Financial Services for dissemination through
27 the department's Internet Web site or through other means of
28 communication.

29 (vi) Serve as a liaison to the public and confer with consumer
30 advocates regarding laws and regulations to preserve and enhance
31 consumer protection.

32 (vii) Conduct and report to the Legislature an annual review
33 of complaint procedures for complaint solicitation, handling, and
34 resolution.

35 (E) The Director of the Office of Financial and Real Estate
36 Consumer Advocacy shall not have an official relation to, or have
37 a financial interest in, a person or corporation subject to regulation
38 by the Department of Financial Services. If the Director of the
39 Office of Financial and Real Estate Consumer Advocacy acquires
40 a material financial interest in a corporation or person subject to

1 regulation by the Department of Financial Services other than
2 involuntarily, his or her office shall become vacant unless within
3 a reasonable time he or she divests himself or herself of the
4 interest.

5 (b) (1) Effective July 1, 2012, the Department of Real Estate
6 shall transfer to the Division of Corporations within the
7 Department of Financial Services, the regulatory oversight,
8 including, without limitation, licensing and enforcement, for all
9 residential real property loan servicers and brokers, and those
10 salespersons performing residential loan servicing and lending
11 activities under the supervision of brokers, including, but not
12 limited to, those persons engaged in any of the activities described
13 in subdivision (d) of Section 10131 of the Business and Professions
14 Code, the residential lending and servicing activities described in
15 subdivision (e) of Section 10131 of the Business and Professions
16 Code, and any other residential lending and servicing activities
17 covered by the Real Estate Law (Division 4 (commencing with
18 Section 10000) of the Business and Professions Code), and those
19 persons required to be licensed by the state as “loan originators,”
20 pursuant to the federal Secure and Fair Enforcement for Mortgage
21 Licensing Act (12 U.S.C. Secs. 5101-5116) and all applicable state
22 laws.

23 (2) Notwithstanding paragraph (1), all persons described in
24 paragraph (1) and formerly licensed by the Department of Real
25 Estate shall continue to have the authority to engage in all
26 activities relating to lending, brokering, and servicing previously
27 authorized pursuant to the Real Estate Law (Division 4
28 (commencing with Section 10000) of the Business and Professions
29 Code).

30 (3) By July 1, 2012, the Commissioner of Financial Services
31 shall adopt, amend, or repeal regulations and rules that are
32 reasonably necessary and appropriate to implement the transfer
33 from the Department of Real Estate described in paragraph (1)
34 and to license, regulate, enforce, and discipline those persons
35 engaged in residential real estate financial services as described
36 in paragraph (1).

37 (c) Nothing in this division shall expand or diminish existing
38 authorities of the existing departments or commissioners except
39 as set forth in paragraph (3) of subdivision (a) and subdivision
40 (b). Nothing in this division shall expand or diminish any existing

1 duties, including fiduciary duties, of their licensees. Nothing in
2 this division or the regulations it authorizes shall diminish existing
3 consumer protections.

4 26. The chief officer of the Department of Financial Services
5 shall be the Commissioner of Financial Services. The
6 Commissioner of Financial Services shall be the head of the
7 department and, except as otherwise provided in this code, shall
8 be subject to the provisions of the Government Code relating to
9 department heads, but need not reside in Sacramento.

10 27. The Commissioner of Financial Services shall be appointed
11 by the Governor and shall hold office at the pleasure of the
12 Governor. The appointment of the commissioner shall be subject
13 to confirmation by the Senate. The commissioner shall receive an
14 annual salary fixed by the Secretary of Business, Transportation
15 and Housing and the Department of Personnel Administration.

16 28. The Commissioner of Financial Services shall be a citizen
17 of the United States. The commissioner shall be chosen solely for
18 his or her qualifications and fitness to perform the duties of his or
19 her office.

20 29. Before entering upon the duties of his or her office, the
21 Commissioner of Financial Services shall take and subscribe to
22 the constitutional oath of office and file the same with the Secretary
23 of State.

24 30. The Commissioner of Financial Services shall be
25 responsible for the performance of all duties, the exercise of all
26 powers and jurisdiction, and the assumption and discharge of all
27 responsibilities formerly vested by law in the Department of
28 Financial Institutions and the Department of Corporations. As
29 described in Section 32, the Director of the Division of Financial
30 Institutions and the Director of the Division of Corporations shall
31 be vested with the primary responsibility for all of the duties,
32 powers, and jurisdiction of the former Commissioner of Financial
33 Institutions and the Commissioner of Corporations, respectively,
34 subject to oversight by the Commissioner of Financial Services.
35 The commissioner has, and may exercise, all the powers necessary
36 or convenient for the administration and enforcement of these
37 laws. The commissioner may issue rules and regulations consistent
38 with law as he or she may deem necessary or advisable in executing
39 the powers, duties, and responsibilities of the Department of
40 Financial Services. The Commissioner of Financial Services shall

1 *be responsible for the performance of those duties, the exercise of*
2 *those powers and jurisdiction, and the assumption and discharge*
3 *of those responsibilities formerly vested by law in the Real Estate*
4 *Commissioner and transferred to the Commissioner of Financial*
5 *Services pursuant to subdivision (b) of Section 25.*

6 32. *Effective July 1, 2012, the Division of Financial Institutions*
7 *shall be headed by the former Commissioner of Financial*
8 *Institutions who shall have the title Director of the Division of*
9 *Financial Institutions. Effective July 1, 2012, the Division of*
10 *Corporations shall be headed by the former Commissioner of*
11 *Corporations who shall have the title Director of the Division of*
12 *Corporations. After July 1, 2012, the Governor shall appoint a*
13 *Director of the Division of Financial Institutions and a Director*
14 *of the Division of Corporations. These directors shall hold office*
15 *at the pleasure of the Governor and these appointments shall be*
16 *subject to confirmation by the Senate.*

17 33. *The Office of Financial and Real Estate Consumer*
18 *Advocacy shall be headed by the Director of the Office of Financial*
19 *and Real Estate Consumer Advocacy who shall be appointed by*
20 *the Governor and shall serve at the Governor's pleasure. This*
21 *appointment shall be subject to confirmation by the Senate. The*
22 *Director of the Office of Financial and Real Estate Consumer*
23 *Advocacy shall be chosen solely for his or her qualifications and*
24 *fitness to perform the duties of his or her office. The annual salary*
25 *of the Director of the Office of Financial and Real Estate Consumer*
26 *Advocacy shall be fixed by the Secretary of Business,*
27 *Transportation and Housing and the Department of Personnel*
28 *Administration.*

29 34. (a) *Effective July 1, 2012, the Commissioner of Financial*
30 *Services and the Department of Financial Services shall succeed*
31 *to all the rights and property of the Commissioner of Corporations*
32 *and the Commissioner of Financial Institutions, and the*
33 *Department of Corporations and the Department of Financial*
34 *Institutions, respectively. The Commissioner of Financial Services*
35 *and the Department of Financial Services shall be subject to all*
36 *the debts and liabilities of the predecessor Commissioner of*
37 *Corporations and the Commissioner of Financial Institutions, and*
38 *the Department of Corporations and the Department of Financial*
39 *Institutions, as if the Commissioner of Financial Services and the*
40 *Department of Financial Services had incurred them.*

(b) Any action or proceeding by or against the Commissioner of Corporations, the Commissioner of Financial Institutions, the Department of Corporations, or the Department of Financial Institutions may be prosecuted to judgment, which shall bind the Commissioner of Financial Services or the Department of Financial Services, respectively. Alternatively, the Commissioner of Financial Services or the Department of Financial Services may be proceeded against or substituted in place of the Commissioner of Corporations or the Commissioner of Financial Institutions and the Department of Corporations or the Department of Financial Institutions, respectively.

(c) The following funds and accounts shall continue in existence and shall be under the jurisdiction of the Commissioner of Financial Services without being commingled. These funds shall only be used for purposes set forth in existing statutes or regulations pertaining to them, unless a subsequent statute is enacted changing them.

(1) The Financial Institutions Fund created by Section 265.

(2) The Credit Union Fund created by Section 14354.

(3) The Guaranty Corporation Fund created by Section 18535.

(4) The State Corporations Fund created by subdivision (b) of Section 13978.6 of the Government Code.

(5) Any other fund or account subject to the jurisdiction of the former Department of Corporations or the former Department of Financial Institutions.

(d) All agreements entered into with, and orders and regulations issued by, the Commissioner of Corporations or the Commissioner of Financial Institutions, or the Department of Corporations or the Department of Financial Institutions, shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Services or the Department of Financial Services.

35. (a) The Commissioner of Financial Services may make the agreements that he or she deems necessary or appropriate in exercising his or her powers.

(b) (1) The agreements authorized under subdivision (a) may include, but are not limited to, agreements with agencies of this state, of other states of the United States, of the United States, or of foreign nations that regulate financial institutions, relating to oversight of financial services.

1 (2) Any agreement with a governmental agency that regulates
2 financial services is exempt from the advertising and competitive
3 bidding requirements of the Public Contract Code.

4 36. Notwithstanding any other law, the Commissioner of
5 Financial Services may adopt and implement any method of
6 accepting electronic filings of applications, reports, or other
7 matters, which, in the opinion of the commissioner, is secure. Any
8 method of electronic filing chosen by the commissioner shall
9 include a method to verify the identity of the person making the
10 filing. The verification shall be deemed to satisfy all other
11 verifications required by this division, and shall have the same
12 force and effect as the use of manual signatures.

13 37. The Commissioner of Financial Services shall appoint a
14 chief deputy who shall hold office at the pleasure of the
15 Commissioner of Financial Services. The annual salary of the
16 chief deputy shall be fixed by the Commissioner of Financial
17 Services with the approval of the Director of Finance. The chief
18 deputy shall be chosen solely for his or her qualifications and
19 fitness to perform the duties of his or her office and for the ability
20 to succeed to the office of the Commissioner of Financial Services,
21 if needed. If the Commissioner of Financial Services is unable to
22 perform his or her duties for more than 30 consecutive days or if
23 the office of the Commissioner of Financial Services becomes
24 vacant, the chief deputy shall have all the powers and duties of
25 the Commissioner of Financial Services until the return or recovery
26 of the Commissioner of Financial Services, or, in case of a vacancy,
27 until a new Commissioner of Financial Services is appointed by
28 the Governor and qualifies to hold office.

29 38. The Commissioner of Financial Services may employ
30 deputies in addition to the chief deputy and other employees that
31 he or she may need to discharge in a proper manner the duties
32 imposed upon him or her by law. The commissioner shall prescribe
33 their duties and fix their compensation in accordance with
34 classifications made by the State Personnel Board. The
35 commissioner may also, at those times and on those terms as may
36 be approved by the Governor, employ those attorneys as he or she
37 may need.

38 39. Before entering upon the duties of his or her office, each
39 deputy of the Commissioner of Financial Services, the Director of
40 the Division of Financial Institutions, the Director of the Division

1 of Corporations, and the Director of the Office of Financial and
2 Real Estate Consumer Advocacy shall take and subscribe to the
3 constitutional oath of office and file the same with the Secretary
4 of State.

5 40. The Commissioner of Financial Services may require, at
6 any time, of any deputy, the Director of the Division of Financial
7 Institutions, the Director of the Division of Corporations, the
8 Director of the Office of Financial and Real Estate Consumer
9 Advocacy, or any other employee of the department, an official
10 bond in an amount that he or she may deem necessary. The
11 premium for bonds required by the commissioner shall be an
12 expense of the department.

13 41. On or before July 1, 2012, the Commissioner of Financial
14 Services shall adopt and promulgate a Conflict of Interest Code
15 pursuant to the provisions of Article 3 (commencing with Section
16 87300) of Chapter 7 of Title 9 of the Government Code. The
17 Conflict of Interest Code shall have the force of law and any
18 violation of the Conflict of Interest Code by a designated employee
19 shall be deemed a violation of Chapter 7 (commencing with Section
20 87100) of Title 9 of the Government Code.

21 42. In addition to the offices previously maintained by the
22 Department of Financial Institutions and the Department of
23 Corporations, the Commissioner of Financial Services may
24 establish offices in any other location in the state that he or she
25 considers appropriate. The commissioner shall provide at the
26 expense of the department the office space, furniture, and
27 equipment that may be necessary or convenient for the transaction
28 of the business of the Department of Financial Services.

29 43. The Department of Financial Services may expend moneys
30 in accordance with law for the necessary travel expenses of officers
31 and employees of the department while traveling in the line of their
32 duties either within or without the state.

33 44. The Commissioner of Financial Services shall adopt and
34 keep an official seal. Papers executed by the Commissioner of
35 Financial Services in his or her official capacity pursuant to law
36 and bearing the seal, or copies thereof certified by him or her,
37 shall be received in evidence in like manner as the original and
38 may be recorded in the same manner and with the same effect as
39 a deed regularly acknowledged.

1 45. Notwithstanding any other law, as of July 1, 2012, all
2 references to the Department of Financial Institutions shall be
3 deemed to refer to the Division of Financial Institutions within the
4 Department of Financial Services and all references to the
5 Department of Corporations shall be deemed to refer to the
6 Division of Corporations within the Department of Financial
7 Services.

8 46. (a) The Department of Real Estate shall continue to exist
9 in state government, subject to the limitations set forth in
10 subdivision (b) of Section 25 with regard to authority that is
11 transferred to the Department of Financial Services, Division of
12 Corporations, and shall continue to be located within the Business,
13 Transportation and Housing Agency.

14 (b) Effective July 1, 2012, the Office of Real Estate Appraisers
15 shall be transferred to the Department of Real Estate. The Office
16 of Real Estate Appraisers shall be primarily responsible for the
17 execution of all laws previously under its jurisdiction subject to
18 oversight by the Director of the Office of Real Estate Appraisers.
19 The Real Estate Appraisers' Licensing and Certification Law (Part
20 3 (commencing with Section 11300) of Division 4 of the Business
21 and Professions Code), shall be deemed to be part of the Real
22 Estate Law (Part 1 (commencing with Section 10000) of Division
23 4 of the Business and Professions Code).

24 47. After transfer to the Department of Real Estate on July 1,
25 2012, the Office of Real Estate Appraisers shall continue to be
26 headed by the Director of the Office of Real Estate Appraisers.
27 The Director of the Office of Real Estate Appraisers shall be
28 appointed by the Governor and shall serve at his or her pleasure.
29 The qualifications for the position of Director of the Office of Real
30 Estate Appraisers shall remain unchanged.

31 48. On or before January 1, 2012, and for purposes of
32 implementation of Section 25, the Secretary of Business,
33 Transportation and Housing, in consultation with the
34 Commissioner of Financial Institutions, the Commissioner of
35 Corporations, and the Real Estate Commissioner, consistent with
36 Section 9795 of the Government Code shall submit a report to the
37 Legislature that addresses the following:

38 (a) Recommendations regarding any further reorganization of
39 the Department of Financial Services that may be advisable beyond
40 that set forth in this division.

1 (b) Recommendations regarding any new or different authorities
2 needed to address any gaps in, or shortcomings of, the regulation
3 of financial services in California.

4 (c) Recommendations regarding the possible consolidation of
5 the regulation of business opportunities that remains in the
6 Department of Real Estate or the regulation of any other financial
7 services that currently takes place outside the jurisdiction of the
8 Business, Transportation and Housing Agency.

9 (d) Recommendations regarding the consolidation of the
10 regulation of home mortgage lending in California, including, but
11 not limited to, recommendations on licensing schemes, including
12 the California Finance Lenders Law (Division 9 (commencing
13 with Section 22000), the California Residential Mortgage Lending
14 Act (Division 20 (commencing with Section 50000), the Real Estate
15 Law (Part 1 (commencing with Section 10000) of Division 4 of
16 the Business and Professions Code), and laws governing the
17 operation of state and federally chartered banks or credit unions.

18 (e) Recommendations regarding any firewalls between the future
19 Department of Financial Services and its divisions and the Office
20 of Financial and Real Estate Consumer Advocacy, or employees,
21 that may be advisable.

22 (f) Recommendations regarding additional changes that should
23 be made in light of any developments at the federal level regarding
24 the regulation of financial services.

25 (g) Recommendations to better serve and protect financial and
26 real estate consumers in California, including, but not limited to,
27 public outreach and public protections.

28 (h) Recommendations regarding the advisability of establishing
29 new recovery accounts, in addition to the Real Estate Financial
30 Services Recovery Account described in Division 20.5 (commencing
31 with Section 55000), to protect financial services and real estate
32 consumers in California.

33 (i) Recommendations regarding any staffing changes that are
34 advisable.

35 (j) Recommendations regarding any information technology
36 changes that are advisable.

37 (k) Recommendations regarding the optimal number, size, and
38 locations of offices for the Department of Financial Services and
39 its divisions and the Office of Financial and Real Estate Consumer
40 Advocacy.

1 (l) Recommendations regarding the structure of fees and other
2 revenue sources, as well as reserve accounts.

3 (m) The estimated cost impacts of all recommendations made
4 and details regarding how those estimated impacts are expected
5 to manifest.

6 (n) Any other recommendations the Secretary of Business,
7 Transportation and Housing believes would be helpful.

8 (o) Recommendations regarding any necessary statutory
9 changes required to achieve the recommendations made in the
10 report.

11 (p) Recommendations regarding any necessary regulation
12 changes required to achieve the recommendations made in the
13 report.

14 49. On or before January 1, 2012, and for purposes of
15 implementing Sections 46 and 47, the Secretary of Business,
16 Transportation and Housing, in consultation with the Real Estate
17 Commissioner and the Director of the Office of Real Estate
18 Appraisers, consistent with Section 9795 of the Government Code,
19 shall submit a joint report to the Legislature that addresses the
20 following:

21 (a) Recommendations regarding the consolidation of the
22 operations, licensing frameworks, and other aspects of the
23 Department of Real Estate and the Office of Real Estate
24 Appraisers.

25 (b) Recommendations regarding any new or different authorities
26 needed to effect the consolidation.

27 (c) Recommendations regarding any necessary statutory changes
28 required to achieve the recommendations made in the report.

29 (d) Recommendations regarding any necessary regulation
30 changes required to achieve the recommendations in the report.

31 (e) Recommendations regarding the structure of fees and other
32 revenue sources, as well as reserve accounts.

33 (f) Recommendations regarding the future of the Recovery
34 Account of the Real Estate Fund and the advisability of establishing
35 additional or different recovery accounts to protect consumers in
36 real estate transactions in California.

37 (g) Recommendations regarding staffing changes that are
38 advisable.

39 (h) Recommendations regarding technology changes that are
40 advisable.

1 (i) Recommendations regarding state representation at
2 administrative hearings.

3 (j) The estimated cost impacts of all recommendations made
4 and details regarding how those estimated impacts are expected
5 to manifest.

6 (k) Any other recommendations that the Real Estate
7 Commissioner and the Director of the Office of Real Estate
8 Appraisers believe would be helpful.

9 (l) Recommendations addressing any federal level restrictions
10 or impositions on the consolidation of entities recommenced.

11 50. Fourteen days after the effective date of this act, the
12 Secretary of Business, Transportation and Housing shall post the
13 items listed in Sections 48 and 49 on the agency's Internet Web
14 site in a manner that provides for public comment for a period of
15 120 days. The posting shall also provide a mailing address for
16 members of the public to use if they choose to submit comments
17 by mail instead of via the Internet Web site during this period. All
18 comments shall specifically reference the sections to which they
19 are directed. Public comments received shall be considered in
20 making the secretary's final recommendations pursuant to Sections
21 48 and 49.

22 SEC. 17. Section 112 of the Financial Code is amended to
23 read:

24 112. "Commissioner" means the Commissioner of Financial
25 Institutions and "department" means the Department of Financial
26 Institutions.

27 This section shall become inoperative on July 1, 2012, and, as
28 of January 1, 2013, is repealed, unless a later enacted statute, that
29 becomes operative on or before January 1, 2013, deletes or extends
30 the dates on which it becomes inoperative and is repealed.

31 SEC. 18. Section 112 is added to the Financial Code, to read:

32 112. (a) As used in this division, the following terms have the
33 following meanings:

34 (1) "Department of Financial Institutions" or "department"
35 means the Department of Financial Services, Division of Financial
36 Institutions.

37 (2) "Commissioner of Financial Institutions" or
38 "commissioner" means the Director of the Division of Financial
39 Institutions.

40 (b) This section shall become operative on July 1, 2012.

1 *SEC. 19. Section 210 of the Financial Code is amended to*
2 *read:*

3 210. The chief officer of the Department of Financial
4 Institutions is the Commissioner of Financial Institutions. The
5 Commissioner of Financial Institutions is the head of the
6 department and, except as otherwise provided in this code, is
7 subject to the provisions of the Government Code relating to
8 department heads, but need not reside in Sacramento.

9 *This section shall become inoperative on July 1, 2012, and, as*
10 *of January 1, 2013, is repealed, unless a later enacted statute, that*
11 *becomes operative on or before January 1, 2013, deletes or extends*
12 *the dates on which it becomes inoperative and is repealed.*

13 *SEC. 20. Section 210 is added to the Financial Code, to read:*

14 210. The Director of the Division of Financial Institutions is
15 the head of the Division of Financial Institutions, as specified in
16 Division 0.5 (commencing with Section 25).

17 *This section shall become operative on July 1, 2012.*

18 *SEC. 21. Section 252 of the Financial Code is amended to*
19 *read:*

20 252. The commissioner shall adopt and keep an official seal.
21 Papers executed by the commissioner in his or her official capacity
22 pursuant to law and bearing the seal, or copies thereof certified by
23 him or her, shall be received in evidence in like manner as the
24 original and may be recorded in the same manner and with the
25 same effect as a deed regularly acknowledged.

26 *This section shall become inoperative on July 1, 2012, and, as*
27 *of January 1, 2013, is repealed, unless a later enacted statute, that*
28 *becomes operative on or before January 1, 2013, deletes or extends*
29 *the dates on which it becomes inoperative and is repealed.*

30 *SEC. 22. Section 4805.055 of the Financial Code is amended*
31 *to read:*

32 4805.055. "Commissioner" means the Commissioner of
33 Financial Institutions.

34 *This section shall become inoperative on July 1, 2012, and, as*
35 *of January 1, 2013, is repealed, unless a later enacted statute, that*
36 *becomes operative on or before January 1, 2013, deletes or extends*
37 *the dates on which it becomes inoperative and is repealed.*

38 *SEC. 23. Section 4805.055 is added to the Financial Code, to*
39 *read:*

1 4805.055. (a) As used in this division, the following terms
2 have the following meanings:

3 (1) “Department of Financial Institutions” or “department”
4 means the Department of Financial Services, Division of Financial
5 Institutions.

6 (2) “Commissioner of Financial Institutions” or
7 “commissioner” means the Director of the Division of Financial
8 Institutions.

9 (b) This section shall become operative on July 1, 2012.

10 SEC. 24. Section 4970 of the Financial Code is amended to
11 read:

12 4970. For purposes of this division:

13 (a) “Annual percentage rate” means the annual percentage rate
14 for the loan calculated according to the provisions of the federal
15 Truth in Lending Act and the regulations adopted thereunder by
16 the Federal Reserve Board.

17 (b) “Covered loan” means a consumer loan in which the original
18 principal balance of the loan does not exceed the most current
19 conforming loan limit for a single-family first mortgage loan
20 established by the Federal National Mortgage Association in the
21 case of a mortgage or deed of trust, and where one of the following
22 conditions are met:

23 (1) For a mortgage or deed of trust, the annual percentage rate
24 at consummation of the transaction will exceed by more than eight
25 percentage points the yield on Treasury securities having
26 comparable periods of maturity on the 15th day of the month
27 immediately preceding the month in which the application for the
28 extension of credit is received by the creditor.

29 (2) The total points and fees payable by the consumer at or
30 before closing for a mortgage or deed of trust will exceed 6 percent
31 of the total loan amount.

32 (c) “Points and fees” shall include the following:

33 (1) All items required to be disclosed as finance charges under
34 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal
35 Regulations, including the Official Staff Commentary, as amended
36 from time to time, except interest.

37 (2) All compensation and fees paid to mortgage brokers in
38 connection with the loan transaction.

1 (3) All items listed in Section 226.4(c)(7) of Title 12 of the Code
2 of Federal Regulations, only if the person originating the covered
3 loan receives direct compensation in connection with the charge.

4 (d) “Consumer loan” means a consumer credit transaction that
5 is secured by real property located in this state used, or intended
6 to be used or occupied, as the principal dwelling of the consumer
7 that is improved by a one-to-four residential unit. “Consumer loan”
8 does not include a reverse mortgage, an open line of credit as
9 defined in Part 226 of Title 12 of the Code of Federal Regulations
10 (Regulation Z), or a consumer credit transaction that is secured by
11 rental property or second homes. “Consumer loan” does not include
12 a bridge loan. For purposes of this division, a bridge loan is any
13 temporary loan, having a maturity of one year or less, for the
14 purpose of acquisition or construction of a dwelling intended to
15 become the consumer’s principal dwelling.

16 (e) “Original principal balance” means the total initial amount
17 the consumer is obligated to repay on the loan.

18 (f) “Licensing agency” shall mean the Department of Real Estate
19 for licensed real estate brokers, the Department of Corporations
20 for licensed residential mortgage lenders and licensed finance
21 lenders and brokers, and the Department of Financial Institutions
22 for commercial and industrial banks and savings associations and
23 credit unions organized in this state. *On and after July 1, 2012, or*
24 *as otherwise specified, “licensing agency” shall instead be defined*
25 *as specified in Sections 25, 45, and 46.*

26 (g) “Licensed person” means a real estate broker licensed under
27 the Real Estate Law (Part 1 (commencing with Section 10000) of
28 Division 4 of the Business and Professions Code), a finance lender
29 or broker licensed under the California Finance Lenders Law
30 (Division 9 (commencing with Section 22000)), a residential
31 mortgage lender licensed under the California Residential Mortgage
32 Lending Act (Division 20 (commencing with Section 50000)), a
33 commercial or industrial bank organized under the Banking Law
34 (Division 1 (commencing with Section 99)), a savings association
35 organized under the Savings Association Law (Division 2
36 (commencing with Section 5000)), and a credit union organized
37 under the California Credit Union Law (Division 5 (commencing
38 with Section 14000)). Nothing in this division shall be construed
39 to prevent any enforcement by a governmental entity against any
40 person who originates a loan and who is exempt or excluded from

1 licensure by all of the licensing agencies, based on a violation of
2 any provision of this division. Nothing in this division shall be
3 construed to prevent the Department of Real Estate from enforcing
4 this division against a licensed salesperson employed by a licensed
5 real estate broker as if that salesperson were a licensed person
6 under this division. A licensed person includes any person engaged
7 in the practice of consumer lending, as defined in this division, for
8 which a license is required under any other provision of law, but
9 whose license is invalid, suspended or revoked, or where no license
10 has been obtained.

11 (h) "Originate" means to arrange, negotiate, or make a consumer
12 loan.

13 (i) "Servicer" has the same meaning provided in Section 6 (i)(2)
14 of the Real Estate Settlement Procedures Act of 1974.

15 SEC. 25. Section 5104 of the Financial Code is amended to
16 read:

17 5104. "Commissioner" means the Commissioner of Financial
18 Institutions.

19 *This section shall become inoperative on July 1, 2012, and, as*
20 *of January 1, 2013, is repealed, unless a later enacted statute, that*
21 *becomes operative on or before January 1, 2013, deletes or extends*
22 *the dates on which it becomes inoperative and is repealed.*

23 SEC. 26. Section 5104 is added to the Financial Code, to read:

24 5104. As used in this division, "Commissioner of Financial
25 Institutions" or "commissioner" means the Director of the Division
26 of Financial Institutions.

27 *This section shall become operative on July 1, 2012.*

28 SEC. 27. Section 5106 of the Financial Code is amended to
29 read:

30 5106. "Department" means the Department of Financial
31 Institutions.

32 *This section shall become inoperative on July 1, 2012, and, as*
33 *of January 1, 2013, is repealed, unless a later enacted statute, that*
34 *becomes operative on or before January 1, 2013, deletes or extends*
35 *the dates on which it becomes inoperative and is repealed.*

36 SEC. 28. Section 5106 is added to the Financial Code, to read:

37 5106. As used in this division, "Department of Financial
38 Institutions" or "department" means the Department of Financial
39 Services, Division of Financial Institutions.

40 *This section shall become operative on July 1, 2012.*

1 *SEC. 29. Section 12003 of the Financial Code is amended to*
2 *read:*

3 12003. “Commissioner” means the Commissioner of
4 Corporations of the State of California, or any deputy, investigator,
5 auditor, or any other person employed by him or her.

6 *This section shall become inoperative on July 1, 2012, and, as*
7 *of January 1, 2013, is repealed, unless a later enacted statute, that*
8 *becomes operative on or before January 1, 2013, deletes or extends*
9 *the dates on which it becomes inoperative and is repealed.*

10 *SEC. 30. Section 12003 is added to the Financial Code, to*
11 *read:*

12 12003. (a) *As used in this division, the following terms have*
13 *the following meanings:*

14 (1) “Department of Corporations” or “department” means the
15 Department of Financial Services, Division of Corporations.

16 (2) “Commissioner of Corporations” or “commissioner” means
17 the Director of the Division of Corporations, or any deputy,
18 investigator, auditor, or any other person employed by him or her.

19 (b) *This section shall become operative on July 1, 2012.*

20 *SEC. 31. Section 14003 of the Financial Code is amended to*
21 *read:*

22 14003. “Commissioner” means the Commissioner of Financial
23 Institutions of the State of California.

24 *This section shall become inoperative on July 1, 2012, and, as*
25 *of January 1, 2013, is repealed, unless a later enacted statute, that*
26 *becomes operative on or before January 1, 2013, deletes or extends*
27 *the dates on which it becomes inoperative and is repealed.*

28 *SEC. 32. Section 14003 is added to the Financial Code, to*
29 *read:*

30 14003. (a) *As used in this division, the following terms have*
31 *the following meanings:*

32 (1) “Department of Financial Institutions” or “department”
33 means the Department of Financial Services, Division of Financial
34 Institutions.

35 (2) “Commissioner of Financial Institutions” or
36 “commissioner” means the Director of the Division of Financial
37 Institutions.

38 (b) *This section shall become operative on July 1, 2012.*

39 *SEC. 33. Section 17002 of the Financial Code is amended to*
40 *read:*

1 17002. “Commissioner” means the Commissioner of
2 Corporations.

3 *This section shall become inoperative on July 1, 2012, and, as*
4 *of January 1, 2013, is repealed, unless a later enacted statute, that*
5 *becomes operative on or before January 1, 2013, deletes or extends*
6 *the dates on which it becomes inoperative and is repealed.*

7 SEC. 34. Section 17002 is added to the Financial Code, to
8 read:

9 17002. (a) As used in this division, the following terms have
10 the following meanings:

11 (1) “Department of Corporations” or “department” means the
12 Department of Financial Services, Division of Corporations.

13 (2) “Commissioner of Corporations” or “commissioner” means
14 the Director of the Division of Corporations.

15 (b) This section shall become operative on July 1, 2012.

16 SEC. 35. Section 18002 of the Financial Code is amended to
17 read:

18 18002. “Commissioner” means the Commissioner of Financial
19 Institutions of the State of California.

20 *This section shall become inoperative on July 1, 2012, and, as*
21 *of January 1, 2013, is repealed, unless a later enacted statute, that*
22 *becomes operative on or before January 1, 2013, deletes or extends*
23 *the dates on which it becomes inoperative and is repealed.*

24 SEC. 36. Section 18002 is added to the Financial Code, to
25 read:

26 18002. As used in this division, “Commissioner of Financial
27 Institutions” or “commissioner” means the Director of the Division
28 of Financial Institutions.

29 This section shall become operative on July 1, 2012.

30 SEC. 37. Section 18002.5 of the Financial Code is amended
31 to read:

32 18002.5. “Department” means the Department of Financial
33 Institutions.

34 *This section shall become inoperative on July 1, 2012, and, as*
35 *of January 1, 2013, is repealed, unless a later enacted statute, that*
36 *becomes operative on or before January 1, 2013, deletes or extends*
37 *the dates on which it becomes inoperative and is repealed.*

38 SEC. 38. Section 18002.5 is added to the Financial Code, to
39 read:

1 18002.5. As used in this division, “Department of Financial
2 Institutions” or “department” means the Department of Financial
3 Services, Division of Financial Institutions.

4 This section shall become operative on July 1, 2012.

5 SEC. 39. Section 22005 of the Financial Code is amended to
6 read:

7 22005. “Commissioner” means the Commissioner of
8 Corporations.

9 This section shall become inoperative on July 1, 2012, and, as
10 of January 1, 2013, is repealed, unless a later enacted statute, that
11 becomes operative on or before January 1, 2013, deletes or extends
12 the dates on which it becomes inoperative and is repealed.

13 SEC. 40. Section 22005 is added to the Financial Code, to
14 read:

15 22005. (a) As used in this division, the following terms have
16 the following meanings:

17 (1) “Department of Corporations” or “department” means the
18 Department of Financial Services, Division of Corporations.

19 (2) “Commissioner of Corporations” or “commissioner” means
20 the Director of the Division of Corporations.

21 (b) This section shall become operative on July 1, 2012.

22 SEC. 41. Section 23001 of the Financial Code is amended to
23 read:

24 23001. As used in this division, the following terms have the
25 following meanings:

26 (a) “Deferred deposit transaction” means a transaction whereby
27 a person defers depositing a customer’s personal check until a
28 specific date, pursuant to a written agreement for a fee or other
29 charge, as provided in Section 23035.

30 (b) “Commissioner” means the Commissioner of ~~Corporations.~~
31 ~~Corporations, except as specified in Section 23002.~~

32 (c) “Department” means the Department of ~~Corporations.~~
33 ~~Corporations, except as specified in Section 23002.~~

34 (d) “Licensee” means any person who offers, originates, or
35 makes a deferred deposit transaction, who arranges a deferred
36 deposit transaction for a deferred deposit originator, who acts as
37 an agent for a deferred deposit originator, or who assists a deferred
38 deposit originator in the origination of a deferred deposit
39 transaction. However, “licensee” does not include a state or
40 federally chartered bank, thrift, savings association, industrial loan

1 company, or credit union. "Licensee" also does not include a retail
2 seller engaged primarily in the business of selling consumer goods,
3 including consumables, to retail buyers that cashes checks or issues
4 money orders for a minimum fee not exceeding two dollars (\$2)
5 as a service to its customers that is incidental to its main purpose
6 or business. "Licensee" also does not include an employee regularly
7 employed by a licensee at the licensee's place of business. An
8 employee, when acting under the scope of the employee's
9 employment, shall be exempt from any other law from which the
10 employee's employer is exempt.

11 (e) "Person" means an individual, a corporation, a partnership,
12 a limited liability company, a joint venture, an association, a joint
13 stock company, a trust, an unincorporated organization, a
14 government entity, or a political subdivision of a government
15 entity.

16 (f) "Deferred deposit originator" means a person who offers,
17 originates, or makes a deferred deposit transaction.

18 SEC. 42. Section 23002 is added to the Financial Code, to
19 read:

20 23002. (a) As used in this division, the following terms have
21 the following meanings:

22 (1) "Department of Corporations" or "department" means the
23 Department of Financial Services, Division of Corporations.

24 (2) "Commissioner of Corporations" or "commissioner" means
25 the Director of the Division of Corporations.

26 (b) This section shall become operative on July 1, 2012.

27 SEC. 43. Section 30002 of the Financial Code is amended to
28 read:

29 30002. "Commissioner" means the Commissioner of
30 Corporations.

31 This section shall become inoperative on July 1, 2012, and, as
32 of January 1, 2013, is repealed, unless a later enacted statute, that
33 becomes operative on or before January 1, 2013, deletes or extends
34 the dates on which it becomes inoperative and is repealed.

35 SEC. 44. Section 30002 is added to the Financial Code, to
36 read:

37 30002. (a) As used in this division, the following terms have
38 the following meanings:

39 (1) "Department of Corporations" or "department" means the
40 Department of Financial Services, Division of Corporations.

1 (2) “Commissioner of Corporations” or “commissioner” means
2 the Director of the Division of Corporations.

3 (b) This section shall become operative on July 1, 2012.

4 SEC. 45. Section 31055 of the Financial Code is amended to
5 read:

6 31055. “Commissioner” means the Commissioner of Financial
7 Institutions, or any person to whom the Commissioner of Financial
8 Institutions delegates the authority to act for him or her in the
9 particular matter.

10 This section shall become inoperative on July 1, 2012, and, as
11 of January 1, 2013, is repealed, unless a later enacted statute, that
12 becomes operative on or before January 1, 2013, deletes or extends
13 the dates on which it becomes inoperative and is repealed.

14 SEC. 46. Section 31055 is added to the Financial Code, to
15 read:

16 31055. (a) As used in this division, the following terms have
17 the following meanings:

18 (1) “Department of Financial Institutions” or “department”
19 means the Department of Financial Services, Division of Financial
20 Institutions.

21 (2) “Commissioner of Financial Institutions” or
22 “commissioner” means the Director of the Division of Financial
23 Institutions, or any person to whom the director delegates the
24 authority to act for him or her in a particular matter.

25 (b) This section shall become operative on July 1, 2012.

26 SEC. 47. Section 33045.5 of the Financial Code is amended
27 to read:

28 33045.5. “Commissioner” means the Commissioner of
29 Financial Institutions, or any person to whom the Commissioner
30 of Financial Institutions delegates the authority to act for the
31 Commissioner of Financial Institutions in this matter.

32 This section shall become inoperative on July 1, 2012, and, as
33 of January 1, 2013, is repealed, unless a later enacted statute, that
34 becomes operative on or before January 1, 2013, deletes or extends
35 the dates on which it becomes inoperative and is repealed.

36 SEC. 48. Section 33045.5 is added to the Financial Code, to
37 read:

38 33045.5. (a) As used in this division, the following terms have
39 the following meanings:

(1) “Department of Financial Institutions” or “department” means the Department of Financial Services, Division of Financial Institutions.

(2) “Commissioner of Financial Institutions” or “commissioner” means the Director of the Division of Financial Institutions, or any person to whom the director delegates the authority to act for him or her in a particular matter.

(b) This section shall become operative on July 1, 2012.

SEC. 49. Section 50003.5 is added to the Financial Code, to read:

50003.5. (a) Notwithstanding Section 50003, as used in this division, the following terms have the following meanings:

(1) “Department of Corporations” or “department” means the Department of Financial Services, Division of Corporations.

(2) “Commissioner of Corporations” or “commissioner” means the Director of the Division of Corporations.

(b) This section shall become operative on July 1, 2012.

SEC. 50. Division 20.5 (commencing with Section 55000) is added to the Financial Code, to read:

DIVISION 20.5. REAL ESTATE FINANCIAL SERVICES

CHAPTER 1. GENERAL PROVISIONS

55000. This division shall be known and may be cited as the Real Estate Financial Services Law.

55001. For the purposes of this division, the following definitions shall apply:

(a) “Division of Corporations” means the Division of Corporations within the Department of Financial Services.

(b) “Commissioner” means the Commissioner of Financial Services.

(c) “Fund” means the Real Estate Financial Services Fund established in Section 55005.

(d) “Real estate financial services” means the services performed by those persons described in subdivision (b) of Section 25.

(e) “Recovery account” means the Real Estate Financial Services Recovery Account established in Section 55010.

1 *CHAPTER 2. REAL ESTATE FINANCIAL SERVICES FUND*

2
3 55005. There is hereby created in the State Treasury the Real
4 Estate Financial Services Fund. Notwithstanding Section 13340
5 of the Government Code, moneys in the fund are continuously
6 appropriated to the Division of Corporations and shall be used
7 for carrying out the purposes of this division.

8
9 *CHAPTER 3. REAL ESTATE FINANCIAL SERVICES RECOVERY*
10 *ACCOUNT*

11
12 55010. There shall be a separate account that shall be known
13 as the Real Estate Financial Services Recovery Account in the
14 Real Estate Financial Services Fund for purposes of recovery
15 related to real estate financial services licensed by the Division
16 of Corporations. The commissioner may, by regulation, require
17 that up to 12 percent of the amount of any license fee collected
18 from a real estate financial services licensee be credited to the
19 recovery account. If, as of June 30 of any fiscal year, the balance
20 of funds in the recovery account is at least three million five
21 hundred thousand dollars (\$3,500,000), all funds in excess of this
22 amount that have been credited to the recovery account shall
23 instead be credited to the fund. As long as the balance of funds in
24 the recovery account exceeds three million five hundred thousand
25 dollars (\$3,500,000), all license fees collected from real estate
26 financial services licensees shall be credited to the fund. Moneys
27 in the recovery account are continuously appropriated to the
28 Division of Corporations and shall be used for carrying out the
29 provisions of this chapter.

30 55011. If, on June 30 of any year, the balance remaining in
31 the recovery account is less than two hundred thousand dollars
32 (\$200,000), every person engaging in real estate financial services,
33 at the time of initial licensure and license renewal, shall pay, in
34 addition to the license fee, a fee of seven dollars (\$7). This fee
35 shall be paid into the State Treasury and credited to the recovery
36 account.

37 55012. (a) In addition to the amount paid into the recovery
38 account as set forth in Sections 55010 and 55011, the commissioner
39 may authorize the transfer from the fund to the recovery account
40 any amounts as are deemed necessary.

1 (b) If, on June 30 of any year, the balance remaining in the
2 recovery account is more than four hundred thousand dollars
3 (\$400,000), the commissioner may authorize the transfer of all or
4 part of the surplus amount into the fund.

5 (c) The commissioner may authorize the return to the recovery
6 account of all or any amount previously transferred to the fund
7 under this section.

8 55013. (a) When an aggrieved person obtains (1) a final
9 judgment in a court of competent jurisdiction, including, but not
10 limited to, a criminal restitution order issued pursuant to
11 subdivision (f) of Section 1202.4 of the Penal Code or Section 3663
12 of Title 18 of the United States Code, or (2) an arbitration award
13 that includes findings of fact and conclusions of law rendered in
14 accordance with the rules established by the American Arbitration
15 Association or another recognized arbitration body, and in
16 accordance with Sections 1281 to 1294.2, inclusive, of the Code
17 of Civil Procedure where applicable, and where the arbitration
18 award has been confirmed and reduced to judgment pursuant to
19 Section 1287.4 of the Code of Civil Procedure, against a defendant
20 based upon the defendant's fraud, misrepresentation, or deceit,
21 made with intent to defraud, or conversion of trust funds, arising
22 directly out of any transaction in which the defendant, while
23 licensed by the Division of Corporations, performed real estate
24 financial services for which a license was required, the aggrieved
25 person may, upon the judgment becoming final, file an application
26 with the Division of Corporations for payment from the recovery
27 account, within the limitations specified in Section 55024, of the
28 amount unpaid on the judgment that represents an actual and
29 direct loss to the claimant in the transaction. As used in this
30 chapter, "court of competent jurisdiction" includes the federal
31 courts, but does not include the courts of another state.

32 (b) The application shall be delivered in person or by certified
33 mail to an office of the Division of Corporations no later than one
34 year after the judgment has become final.

35 (c) The application shall be made on a form prescribed by the
36 Division of Corporations, verified by the claimant, and shall
37 include all of the following:

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

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

1 (3) *The identification of the judgment, the amount of the claim,*
2 *and an explanation of its computation.*

3 (4) *A detailed narrative statement of the facts in explanation of*
4 *the allegations of the complaint upon which the underlying*
5 *judgment is based.*

6 (5) (A) *Except as provided in subparagraph (B), a statement by*
7 *the claimant, signed under penalty of perjury, that the complaint*
8 *upon which the underlying judgment is based was prosecuted*
9 *conscientiously and in good faith. As used in this section,*
10 *“conscientiously and in good faith” means that no party potentially*
11 *liable to the claimant in the underlying transaction was*
12 *intentionally and without good cause omitted from the complaint,*
13 *that no party named in the complaint who otherwise reasonably*
14 *appeared capable of responding in damages was dismissed from*
15 *the complaint intentionally and without good cause, and that the*
16 *claimant employed no other procedural means contrary to the*
17 *diligent prosecution of the complaint in order to seek to qualify*
18 *for the recovery account.*

19 (B) *For the purpose of an application based on a criminal*
20 *restitution order, all of the following statements by the claimant:*

21 (i) *The claimant has not intentionally and without good cause*
22 *failed to pursue any person potentially liable to the claimant in*
23 *the underlying transaction other than a defendant who is the*
24 *subject of a criminal restitution order.*

25 (ii) *The claimant has not intentionally and without good cause*
26 *failed to pursue in a civil action for damages all persons potentially*
27 *liable to the claimant in the underlying transaction who otherwise*
28 *reasonably appeared capable of responding in damages other than*
29 *a defendant who is the subject of a criminal restitution order.*

30 (iii) *The claimant employed no other procedural means contrary*
31 *to the diligent prosecution of the complaint in order to seek to*
32 *qualify for recovery from the recovery account.*

33 (6) *The name and address of the judgment debtor or, if not*
34 *known, the names and addresses of persons who may know the*
35 *judgment debtor’s present whereabouts.*

36 (7) *The following representations and information from the*
37 *claimant:*

38 (A) *That he or she is not a spouse of the judgment debtor nor a*
39 *personal representative of the spouse.*

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

3 (C) That the judgment underlying the claim meets the
4 requirements of subdivision (a).

5 (D) A description of searches and inquiries conducted by or on
6 behalf of the claimant with respect to the judgment debtor's assets
7 liable to be sold or applied to satisfaction of the judgment, an
8 itemized valuation of the assets discovered, and the results of
9 actions by the claimant to have the assets applied to satisfaction
10 of the judgment.

11 (E) That he or she has diligently pursued collection efforts
12 against all judgment debtors and all other persons liable to the
13 claimant in the transaction that is the basis for the underlying
14 judgment.

15 (F) That the underlying judgment and debt have not been
16 discharged in bankruptcy, or, in the case of a bankruptcy
17 proceeding that is open at or after the time of the filing of the
18 application, that the judgment and debt have been declared to be
19 nondischargeable.

20 (G) That the application was mailed or delivered to the Division
21 of Corporations no later than one year after the underlying
22 judgment became final.

23 (d) The application form shall include detailed instructions with
24 respect to documentary evidence, pleadings, court rulings, the
25 products of discovery in the underlying litigation, and a notice to
26 the applicant of his or her obligation to protect the underlying
27 judgment from discharge in bankruptcy, to be appended to the
28 application.

29 (e) An application for payment from the recovery account that
30 is based on a criminal restitution order shall comply with all of
31 the requirements of this chapter. For the purpose of an application
32 based on a criminal restitution order, the following terms shall
33 have all of the following meanings:

34 (1) "Judgment" means the criminal restitution order.

35 (2) "Complaint" means the facts of the underlying transaction
36 upon which the criminal restitution order is based.

37 (3) "Judgment debtor" means any defendant who is the subject
38 of the criminal restitution order.

39 55014. (a) The claimant shall serve a copy of the notice
40 prescribed in subdivision (e) together with a copy of the application

1 upon the judgment debtor by personal service, by certified mail,
2 or by publication, as set forth in subdivision (b).

3 (b) If the judgment debtor holds an unexpired and unrevoked
4 license issued by the Division of Corporations, service of the notice
5 and a copy of the application may be made by certified mail
6 addressed to the judgment debtor at the latest business or residence
7 address on file with the Division of Corporations. If the judgment
8 debtor does not hold an unexpired and unrevoked license issued
9 by the Division of Corporations and personal service cannot be
10 effected through the exercise of reasonable diligence, the claimant
11 shall serve the judgment debtor by one publication of the notice
12 in each of two successive weeks in a newspaper of general
13 circulation published in the county in which the judgment debtor
14 was last known to reside.

15 (c) If the application is served upon the judgment debtor by
16 certified mail, service is complete five days after mailing if the
17 place of address is within the State of California, 10 days after
18 mailing if the place of address is outside the State of California
19 but within the United States, and 20 days after mailing if the place
20 of address is outside the United States. Personal service is complete
21 on the date of service. Service by publication is complete upon
22 completion of the second week of publication.

23 (d) If a judgment debtor wishes to contest payment of an
24 application by the commissioner, he or she shall mail or deliver
25 a written response to the application addressed to the Division of
26 Corporations at its headquarters office within 30 days after service
27 of the notice and application, and shall mail or deliver a copy of
28 the response to the claimant. If a judgment debtor fails to mail or
29 deliver a timely response, he or she shall have waived his or her
30 right to present objections to payment.

31 (e) The notice served upon the judgment debtor shall include
32 the following statement:

33
34 “NOTICE: Based upon a judgment entered against you in favor
35 of _____, application for payment from the Real Estate
36 (name of claimant)
37 Financial Services Recovery Account of the Real Estate Financial
38 Services Fund is being made to the Division of Corporations.

1 *“If payment is made from the Real Estate Financial Services*
2 *Recovery Account, all licenses and license rights that you have*
3 *under the applicable licensing laws and regulations will be*
4 *automatically suspended on the date of payment and cannot be*
5 *reinstated until the Real Estate Financial Services Recovery*
6 *Account has been reimbursed for the amount paid plus interest at*
7 *the prevailing rate.*

8 *“If you wish to contest payment by the Commissioner of*
9 *Financial Services, you must file a written response to the*
10 *application addressed to the Division of Corporations, at*
11 *_____ within 30 days after mailing, delivery, or publication*
12 *of this notice and mail or deliver a copy of that response to the*
13 *claimant. If you fail to do so, you will have waived your right to*
14 *present your objections to payment.”*

15
16 *(f) If a judgment debtor fails to mail or deliver a written*
17 *response to the application with the Division of Corporations*
18 *within 30 days after personal service, mailing, or final publication*
19 *of the notice, the judgment debtor shall not then be entitled to*
20 *notice of any action taken or proposed to be taken by the*
21 *commissioner with respect to the application.*

22 55015. *(a) If the commissioner determines that the application*
23 *as submitted by the claimant fails to comply substantially with the*
24 *requirements of Section 55013 or with the requirements of a*
25 *regulation adopted by the commissioner, the commissioner shall,*
26 *within 15 days after receipt of the application, mail an itemized*
27 *list of deficiencies to the claimant.*

28 *(b) The time within which the commissioner is required to act*
29 *under Section 55016 shall be measured from the date of receipt*
30 *by the Division of Corporations of an application that is*
31 *substantially complete. In the event of an irreconcilable dispute*
32 *between the claimant and the commissioner on the question of*
33 *whether the application is substantially complete, the claimant*
34 *may immediately file the claim with the court pursuant to Section*
35 *55020.*

36 55016. *(a) The commissioner shall render a final written*
37 *decision on the application within 90 days after a completed*
38 *application has been received unless the claimant agrees in writing*
39 *to extend the time within which the commissioner may render a*

1 decision. If the commissioner fails to render a written decision in
2 response to the claim within 90 days after its receipt or within the
3 extended period agreed to by the claimant, the claim shall be
4 deemed to have been denied by the commissioner on the final day
5 for rendering the decision.

6 (b) The commissioner may deny or grant the application or may
7 enter into a compromise with the claimant to pay less in settlement
8 than the full amount of the claim. If the claimant refuses to accept
9 a settlement of the claim offered by the commissioner, the written
10 decision of the commissioner shall be to deny the claim or it shall
11 be deemed denied if a written decision is not rendered within the
12 time specified in subdivision (a). Evidence of settlement offers and
13 discussions between the commissioner or the Division of
14 Corporations and the claimant shall not be competent evidence
15 in judicial proceedings undertaken by the claimant pursuant to
16 Section 55020.

17 55017. In its consideration and investigation of an application,
18 the Division of Corporations shall have recourse to all appropriate
19 means of investigation and discovery available to it under Article
20 2 (commencing with Section 11180) of Chapter 2 of Part 1 of
21 Division 3 of Title 2 of the Government Code.

22 55018. (a) The commissioner shall give notice of a decision
23 rendered with respect to the application to the claimant and to a
24 judgment debtor who has filed a timely response to the application
25 in accordance with Section 55014.

26 (b) If the application is denied, the notice to the claimant and
27 judgment debtor shall include all of the following:

28
29 “NOTICE: Claimant’s application has been denied. If the
30 claimant wishes to pursue the application in court, the claimant
31 must file the application as follows in a superior court of this state
32 not later than six months after receipt of this notice, pursuant to
33 Section 55020. If the underlying judgment is a California state
34 court judgment, the application shall be filed in the court in which
35 the underlying judgment was entered. If the underlying judgment
36 is a federal court judgment, the application shall be filed in the
37 superior court of any county within California that would have
38 been a proper venue if the underlying lawsuit had been filed in a
39 California state court, or in the Superior Court of the County of
40 Sacramento.”

1
2 (c) If the decision of the commissioner is to make a payment to
3 the claimant out of the recovery account, the following notice shall
4 be given to the judgment debtor along with a copy of the decision
5 of the commissioner:
6

7 “NOTICE: The decision of the Commissioner of Financial
8 Services on the application of ____ is to pay \$ ____ from the Real
9 Estate Financial Services Recovery Account. A copy of that
10 decision is enclosed.

11 “Pursuant to Section 55026, all of your licenses and license
12 rights under applicable laws and regulations will be suspended
13 effective on the date of the payment, and you will not be eligible
14 for reinstatement of any of those licenses or license rights until
15 you have reimbursed the Real Estate Financial Services Recovery
16 Account for this payment plus interest at the prevailing legal rate.

17 “If you desire a judicial review of the suspension of your licenses
18 and license rights, you may petition the superior court for a writ
19 of mandamus. If the underlying judgment is a California state
20 court judgment, the petition shall be filed in the court in which the
21 judgment was entered. If the underlying judgment is a federal court
22 judgment, the petition shall be filed in the superior court of any
23 county within California that would have been a proper venue if
24 the underlying lawsuit had been filed in a California state court,
25 or in the Superior Court of the County of Sacramento. To be timely,
26 the petition must be filed with the court within 30 days of receipt
27 of this notice.”
28

29 55019. If, at any time prior to the rendering of a decision on
30 an application, the commissioner makes a preliminary
31 determination that the aggregate valid applications of all aggrieved
32 persons against that licensee are likely to exceed the limits of
33 liability in Section 55024, the commissioner shall, in lieu of further
34 administrative proceedings, initiate a proration proceeding
35 pursuant to Section 55025 in a superior court of any county in this
36 state that would be a proper court for the filing of a denied
37 application or writ of mandamus pursuant to Section 55018.

38 55020. (a) A claimant against whom the commissioner has
39 rendered a decision denying an application pursuant to Section
40 55013 may, within six months after the mailing of the notice of the

1 denial, file a verified application in superior court for an Order
2 Directing Payment Out of the Real Estate Financial Services
3 Recovery Account based upon the grounds set forth in the
4 application to the commissioner. If the underlying judgment is a
5 California state court judgment, the application shall be filed in
6 the court in which the underlying judgment was entered. If the
7 underlying judgment is a federal court judgment, the application
8 shall be filed in the superior court of any county within California
9 that would have been a proper venue if the underlying lawsuit had
10 been filed in a California state court, or in the Superior Court of
11 the County of Sacramento.

12 (b) A copy of the verified application shall be served upon the
13 commissioner and upon the judgment debtor. A certificate or
14 affidavit of service shall be filed by the claimant with the court.
15 Service on the commissioner may be made by certified mail
16 addressed to the headquarters office of the Division of
17 Corporations. Service upon a judgment debtor may be made in
18 accordance with Section 55014. The notice served upon the
19 judgment debtor shall read as follows:

20
21 “NOTICE: An application has been filed with the court for a
22 payment from the Real Estate Financial Services Recovery Account
23 that was previously denied by the Commissioner of Financial
24 Services.”

25 “If the Division of Corporations makes a payment from the Real
26 Estate Financial Services Recovery Account pursuant to court
27 order, all of your licenses and license rights under applicable laws
28 and regulations will be automatically suspended until the Real
29 Estate Financial Services Recovery Account has been reimbursed
30 for the amount paid plus interest at the prevailing rate.”

31 “If you wish to defend in court against this application, you must
32 file a written response with the court within 30 days after having
33 been served with a copy of the application. If you do not file a
34 written response, you will have waived your right to defend against
35 the application.”

36
37 55021. (a) The commissioner and the judgment debtor shall
38 each have 30 days after being served with the application to file
39 a written response. The court shall then set the matter for hearing
40 upon the petition of the claimant. The court shall grant a request

1 of the commissioner for a continuance of as much as 30 days and
2 may, upon a showing of good cause by any party, continue the
3 hearing as the court deems appropriate.

4 (b) The claimant shall have the burden of proving compliance
5 with the requirements of Section 55013 by competent evidence at
6 an evidentiary hearing. The claimant shall be entitled to a de novo
7 review of the merits of the application as contained in the
8 administrative record.

9 (c) If the judgment debtor fails to file a written response to the
10 application, the application may be compromised or settled by the
11 commissioner at any time during the court proceedings and the
12 court shall, upon joint petition of the claimant and the
13 commissioner, issue an order directing payment out of the recovery
14 account.

15 55022. Whenever the court proceeds upon an application under
16 Section 55020, it shall order payment out of the recovery account
17 only upon a determination that the aggrieved party has a valid
18 cause of action within the purview of Section 55013, and has
19 complied with Section 55020.

20 The commissioner may defend any of these actions on behalf of
21 the recovery account and shall have recourse to all appropriate
22 means of defense and review, including examination of witnesses
23 and the right to relitigate any issues material and relevant in the
24 proceeding against the recovery account which were determined
25 in the underlying action on which the judgment in favor of the
26 applicant was based. If the judgment in favor of the applicant was
27 by default, stipulation, consent, or pursuant to Section 594 of the
28 Code of Civil Procedure, or whenever the action against the
29 licensee was defended by a trustee in bankruptcy, the applicant
30 shall have the burden of proving that the cause of action against
31 the licensee was for fraud, misrepresentation, deceit, or conversion
32 of trust funds. Otherwise, the judgment shall create a rebuttable
33 presumption of the fraud, misrepresentation, deceit, or conversion
34 of trust funds by the licensee, which presumption shall affect the
35 burden of producing evidence.

36 The commissioner may move the court at any time to dismiss
37 the application when it appears there are no triable issues and the
38 petition is without merit. The motion may be supported by affidavit
39 of any person or persons having knowledge of the facts, and may
40 be made on the basis that the petition, and the judgment referred

1 to in the petition, does not form the basis for a meritorious recovery
2 claim within the purview of Section 55013; provided, however,
3 the commissioner shall give written notice at least 10 days before
4 the motion.

5 The commissioner may, subject to court approval, compromise
6 a claim based upon the application of an aggrieved party. The
7 commissioner shall not be bound by any compromise or stipulation
8 of the judgment debtor.

9 55023. The judgment debtor may defend an action against the
10 recovery account on his or her own behalf and shall have recourse
11 to all appropriate means of defense and review, including
12 examination of witnesses. All matters, including, but not limited
13 to, the issues of fraud, misrepresentation, deceit, or conversion of
14 trust funds, finally adjudicated in the underlying action are
15 conclusive as to the judgment debtor and the applicant in the
16 proceeding against the recovery account.

17 55024. Notwithstanding any other provision of this chapter
18 and regardless of the number of persons aggrieved or parcels of
19 real estate involved in a transaction or the number of judgments
20 against a licensee, the liability of the recovery account shall not
21 exceed the following amounts:

22 (a) Fifty thousand dollars (\$50,000) for any one transaction
23 and two hundred fifty thousand dollars (\$250,000) for any one
24 licensee.

25 (b) When multiple licensed persons performing real estate
26 financial services are involved in a transaction and the individual
27 conduct of two or more of the licensees results in a judgment
28 meeting the requirements of subdivision (a) of Section 55013, the
29 claimant may seek recovery from the recovery account based on
30 the judgment against any of the licensed persons, subject to the
31 limitations of this section and subparagraph (E) of paragraph (7)
32 of subdivision (c) of Section 55013.

33 55025. If the amount of liability of the recovery account as
34 provided for in Section 55024 is insufficient to pay in full the valid
35 claims of all aggrieved persons by whom claims have been filed
36 against any one licensee, the amount shall be distributed among
37 them in the ratio that their respective claims bear to the aggregate
38 of the valid claims, or in any other manner as the court deems
39 equitable. Distribution of any moneys shall be among the persons
40 entitled to a share, without regard to the order of priority in which

1 *their respective judgments may have been obtained or their claims*
2 *have been filed. Upon petition of the commissioner, the court may*
3 *require all claimants and prospective claimants against one*
4 *licensee to be joined in one action, to the end that the respective*
5 *rights of all claimants to the recovery account may be equitably*
6 *adjudicated and settled.*

7 *55026. If the commissioner pays from the recovery account*
8 *any amount in settlement of a claim or toward satisfaction of a*
9 *judgment against a licensed person performing real estate financial*
10 *services, the license shall be automatically suspended upon the*
11 *date of payment from the recovery account. No person engaging*
12 *in real estate financial services shall be granted reinstatement*
13 *until he or she has repaid in full, plus interest at the prevailing*
14 *legal rate applicable to a judgment rendered in any court of this*
15 *state, the amount paid from the recovery account on his or her*
16 *account. A discharge in bankruptcy shall not relieve a person from*
17 *the penalties and disabilities provided in this chapter.*

18 *55027. If, at any time, the money deposited in the recovery*
19 *account is insufficient to satisfy any duly authorized claim or*
20 *portion thereof, the commissioner shall, when sufficient money*
21 *has been deposited in the recovery account, satisfy the unpaid*
22 *claims or portions thereof, in the order that the claims or portions*
23 *thereof were originally filed, plus accumulated interest at the rate*
24 *of 4 percent a year.*

25 *55028. Any sums received by the commissioner pursuant to*
26 *any provisions of this chapter shall be deposited in the State*
27 *Treasury and credited to the recovery account.*

28 *55029. It shall be unlawful for any person or the agent of any*
29 *person to file with the commissioner any notice, statement, or other*
30 *document required under the provisions of this chapter which is*
31 *false or untrue or contains any willful, material misstatement of*
32 *fact. This type of conduct shall constitute a public offense*
33 *punishable by imprisonment in the county jail for a period of not*
34 *more than one year or a fine of not more than one thousand dollars*
35 *(\$1,000), or both.*

36 *55030. When the commissioner has paid from the recovery*
37 *account any sum to the judgment creditor, the commissioner shall*
38 *be subrogated to all of the rights of the judgment creditor and the*
39 *judgment creditor shall assign all of his or her right, title, and*
40 *interest in the judgment to the commissioner of and any amount*

1 and interest so recovered by the commissioner on the judgment
2 shall be deposited to the recovery account.

3 55031. The failure of an aggrieved person to comply with all
4 of the provisions of this chapter shall constitute a waiver of any
5 rights under this chapter.

6 55032. Nothing in this chapter shall limit the authority of the
7 commissioner to take disciplinary action against any licensee for
8 a violation of applicable licensing laws, or of the rules and
9 regulations of the commissioner; nor shall the repayment in full
10 of all obligations to the recovery account by any licensee nullify
11 or modify the effect of any other disciplinary proceeding brought
12 pursuant to applicable law or regulation.

13
14 *CHAPTER 4. MISCELLANEOUS*

15
16 55040. This division shall become operative on July 1, 2012.

17 SEC. 51. Section 11552 of the Government Code is amended
18 to read:

19 11552. (a) Effective January 1, 1988, an annual salary of
20 eighty-five thousand four hundred two dollars (\$85,402) shall be
21 paid to each of the following:

22 (1) Commissioner of Financial Institutions Services.

23 ~~(2) Commissioner of Corporations.~~

24 ~~(3)~~

25 (2) Director of Transportation.

26 ~~(4)~~

27 (3) Real Estate Commissioner.

28 ~~(5)~~

29 (4) Director of Social Services.

30 ~~(6)~~

31 (5) Director of Water Resources.

32 ~~(7)~~

33 (6) Chief Deputy Secretary for Adult Operations of the
34 Department of Corrections and Rehabilitation.

35 ~~(8)~~

36 (7) Director of General Services.

37 ~~(9)~~

38 (8) Director of Motor Vehicles.

39 ~~(10)~~

1 (9) Chief Deputy Secretary for Juvenile Justice in the
2 Department of Corrections and Rehabilitation.
3 ~~(11)~~
4 (10) Executive Officer of the Franchise Tax Board.
5 ~~(12)~~
6 (11) Director of Employment Development.
7 ~~(13)~~
8 (12) Director of Alcoholic Beverage Control.
9 ~~(14)~~
10 (13) Director of Housing and Community Development.
11 ~~(15)~~
12 (14) Director of Alcohol and Drug Programs.
13 ~~(16)~~
14 (15) Director of Statewide Health Planning and Development.
15 ~~(17)~~
16 (16) Director of the Department of Personnel Administration.
17 ~~(18)~~
18 (17) Director of Health Care Services.
19 ~~(19)~~
20 (18) Director of Mental Health.
21 ~~(20)~~
22 (19) Director of Developmental Services.
23 ~~(21)~~
24 (20) State Public Defender.
25 ~~(22)~~
26 (21) Director of the California State Lottery.
27 ~~(23)~~
28 (22) Director of Fish and Game.
29 ~~(24)~~
30 (23) Director of Parks and Recreation.
31 ~~(25)~~
32 (24) Director of Rehabilitation.
33 ~~(26)~~
34 (25) Director of the Office of Administrative Law.
35 ~~(27)~~
36 (26) Director of Consumer Affairs.
37 ~~(28)~~
38 (27) Director of Forestry and Fire Protection.
39 ~~(29)~~

1 (28) The Inspector General pursuant to Section 6125 of the
2 Penal Code.

3 ~~(30)~~

4 (29) Director of Child Support Services.

5 ~~(31)~~

6 (30) Director of Industrial Relations.

7 ~~(32)~~

8 (31) Chief Deputy Secretary for Adult Programs in the
9 Department of Corrections and Rehabilitation.

10 ~~(33)~~

11 (32) Director of Toxic Substances Control.

12 ~~(34)~~

13 (33) Director of Pesticide Regulation.

14 ~~(35)~~

15 (34) Director of Managed Health Care.

16 ~~(36)~~

17 (35) Director of Environmental Health Hazard Assessment.

18 ~~(37)~~

19 (36) Director of Technology.

20 ~~(38)~~

21 (37) Director of California Bay-Delta Authority.

22 ~~(39)~~

23 (38) Director of California Conservation Corps.

24 (b) The annual compensation provided by this section shall be
25 increased in any fiscal year in which a general salary increase is
26 provided for state employees. The amount of the increase provided
27 by this section shall be comparable to, but shall not exceed, the
28 percentage of the general salary increases provided for state
29 employees during that fiscal year.

30 *SEC. 52. Section 13975 of the Government Code is amended*
31 *to read:*

32 13975. (a) The Business and Transportation Agency in state
33 government is hereby renamed the Business, Transportation and
34 Housing Agency. The agency consists of the State Department of
35 Alcoholic Beverage Control, the Department of the California
36 Highway Patrol, the Department of Corporations, the Department
37 of Housing and Community Development, the Department of
38 Motor Vehicles, the Department of Real Estate, the Department
39 of Transportation, the Department of Financial Institutions, the
40 Department of Managed Health Care, and the Board of Pilot

Commissioners for the Bays of San Francisco, San Pablo, and Suisun; and the California Housing Finance Agency is also located within the Business, Transportation and Housing Agency, as specified in Division 31 (commencing with Section 50000) of the Health and Safety Code.

(b) This section shall become inoperative on July 1, 2012, and, as of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 53. Section 13975 is added to the Government Code, to read:

13975. (a) The Business and Transportation Agency in state government is hereby renamed the Business, Transportation and Housing Agency. The agency consists of the State Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Financial Services, the Department of Housing and Community Development, the Department of Motor Vehicles, the Department of Real Estate, the Department of Transportation, the Department of Managed Health Care, and the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun. The California Housing Finance Agency is also located within the Business, Transportation and Housing Agency, as specified in Division 31 (commencing with Section 50000) of the Health and Safety Code.

(b) This section shall become operative on July 1, 2012.

SEC. 54. Section 13978.6 of the Government Code is amended to read:

13978.6. (a) The Secretary of the Business, Transportation and Housing Agency shall be generally responsible for the sound fiscal management of each department, office, or other unit within the agency. The secretary shall review and approve the proposed budget of each department, office, or other unit. The secretary shall hold the head of each department, office, or other unit responsible for management control over the administrative, fiscal, and program performance of his or her department, office, or other unit. The secretary shall review the operations and evaluate the performance at appropriate intervals of each department, office, or other unit, and shall seek continually to improve the organization structure, the operating policies, and the management information systems of each department, office, or other unit.

(b) There is in the Business, Transportation, and Housing Agency a Department of Corporations, which has the responsibility for administering various laws. In order to effectively support the Department of Corporations in the administration of these laws, there is hereby established the State Corporations Fund. All expenses and salaries of the Department of Corporations shall be paid out of the State Corporations Fund. Therefore, notwithstanding any provision of any law administered by the Department of Corporations declaring that fees, reimbursements, assessments, or other money or amounts charged and collected by the Department of Corporations under these laws are to be delivered or transmitted to the Treasurer and deposited to the credit of the General Fund, on and after July 1, 1992, all fees, reimbursements, assessments, and other money or amounts charged and collected under these laws and attributable to the 1992–93 fiscal year and subsequent fiscal years shall be delivered or transmitted to the Treasurer and deposited to the credit of the State Corporations Fund.

(c) Funds appropriated from the State Corporations Fund and made available for expenditure for any law or program of the Department of Corporations may come from the following:

(1) Fees and any other amounts charged and collected pursuant to Section 25608 of the Corporations Code, except for fees and other amounts charged and collected pursuant to subdivisions (o) to (r), inclusive, of Section 25608 of the Corporations Code.

(2) Fees collected pursuant to subdivisions (a), (b), (c), and (d) of Section 25608.1 of the Corporations Code.

(d) This section shall become inoperative on July 1, 2012, and, as of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 55. Section 13978.6 is added to the Government Code, to read:

13978.6. (a) The Secretary of the Business, Transportation and Housing Agency shall be generally responsible for the sound fiscal management of each department, office, or other unit within the agency. The secretary shall review and approve the proposed budget of each department, office, or other unit. The secretary shall hold the head of each department, office, or other unit responsible for management control over the administrative, fiscal, and program performance of his or her department, office, or other

1 unit. The secretary shall review the operations and evaluate the
2 performance at appropriate intervals of each department, office,
3 or other unit, and shall seek continually to improve the
4 organization structure, the operating policies, and the management
5 information systems of each department, office, or other unit.

6 (b) There is in the Business, Transportation and Housing Agency
7 a Department of Financial Services, which has the responsibility
8 for administering various laws. In order to effectively support the
9 Department of Financial Services in the administration of these
10 laws, there is hereby continued in existence the State Corporations
11 Fund. All expenses and salaries of the Department of Financial
12 Services shall be paid out of the State Corporations Fund.
13 Therefore, notwithstanding any provision of any law administered
14 by the Department of Financial Services declaring that fees,
15 reimbursements, assessments, or other money or amounts charged
16 and collected by the Department of Financial Services under these
17 laws are to be delivered or transmitted to the Treasurer and
18 deposited to the credit of the General Fund, on and after July 1,
19 1992, all fees, reimbursements, assessments, and other money or
20 amounts charged and collected under these laws and attributable
21 to the 1992–93 fiscal year and subsequent fiscal years shall be
22 delivered or transmitted to the Treasurer and deposited to the
23 credit of the State Corporations Fund.

24 (c) Funds appropriated from the State Corporations Fund and
25 made available for expenditure for any law or program of the
26 Department of Financial Services may come from the following:

27 (1) Fees and any other amounts charged and collected pursuant
28 to Section 25608 of the Corporations Code, except for fees and
29 other amounts charged and collected pursuant to subdivisions (o)
30 to (r), inclusive, of Section 25608 of the Corporations Code.

31 (2) Fees collected pursuant to subdivisions (a), (b), (c), and (d)
32 of Section 25608.1 of the Corporations Code.

33 (d) This section shall become operative on July 1, 2012.

34 SEC. 56. The sum of one hundred fifty thousand dollars
35 (\$150,000) is hereby appropriated from the General Fund portions
36 of the Real Estate Fund to the Secretary of Business,
37 Transportation and Housing to fund the reports described in
38 Sections 48 and 49 of the Financial Code.

39 SEC. 57. No reimbursement is required by this act pursuant
40 to Section 6 of Article XIII B of the California Constitution because

1 *the only costs that may be incurred by a local agency or school*
2 *district will be incurred because this act creates a new crime or*
3 *infraction, eliminates a crime or infraction, or changes the penalty*
4 *for a crime or infraction, within the meaning of Section 17556 of*
5 *the Government Code, or changes the definition of a crime within*
6 *the meaning of Section 6 of Article XIII B of the California*
7 *Constitution.*

8 ~~SECTION 1. Section 10131 of the Business and Professions~~
9 ~~Code is amended to read:~~

10 ~~10131. A real estate broker within the meaning of this part is~~
11 ~~a person who, for a compensation or in expectation of a~~
12 ~~compensation, regardless of the form or time of payment, does or~~
13 ~~negotiates to do one or more of the following acts for another or~~
14 ~~others:~~

15 ~~(a) Sells or offers to sell, buys or offers to buy, solicits a~~
16 ~~prospective seller or purchaser of, solicits or obtains listings of,~~
17 ~~or negotiates the purchase, sale or exchange of real property or a~~
18 ~~business opportunity.~~

19 ~~(b) Leases or rents or offers to lease or rent, or places for rent,~~
20 ~~or solicits listings of places for rent, or solicits for prospective~~
21 ~~tenants, or negotiates the sale, purchase or exchanges of leases on~~
22 ~~real property, or on a business opportunity, or collects rents from~~
23 ~~real property, or improvements thereon, or from business~~
24 ~~opportunities.~~

25 ~~(c) Assists or offers to assist in filing an application for the~~
26 ~~purchase or lease of, or in locating or entering upon, lands owned~~
27 ~~by the state or federal government.~~

28 ~~(d) Solicits borrowers or lenders for or negotiates loans or~~
29 ~~collects payments or performs services for borrowers or lenders~~
30 ~~or note owners in connection with loans secured directly or~~
31 ~~collaterally by liens on real property or on a business opportunity.~~

32 ~~(e) Sells or offers to sell, buys or offers to buy, or exchanges or~~
33 ~~offers to exchange a real property sales contract, or a promissory~~
34 ~~note secured directly or collaterally by a lien on real property or~~
35 ~~on a business opportunity, and performs services for the holders~~
36 ~~thereof.~~