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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 4. REAL ESTATE [10000 - 11506] (*Division 4 added by Stats. 1943, Ch. 127.)*

PART 1. LICENSING OF PERSONS [10000 - 10580] (*Part 1 added by Stats. 1943, Ch. 127.)*

CHAPTER 3. Real Estate Regulations [10130 - 10249.93] (*Chapter 3 added by Stats. 1943, Ch. 127.)*

ARTICLE 6. Claim of Exemption From Securities Qualification [10237 - 10239.3] (*Article 6 added by Stats. 2003, Ch. 901, Sec. 2.)*

10237. This article applies only to the exemption from securities qualification claimed under Section 25102.5 of the Corporations Code. This article does not apply to any other exemption from securities qualification, including subdivision (e) of Section 25102 of the Corporations Code, that may be claimed without complying with this article, or to any permit to qualify the offer and sale of securities under the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code). Any transaction that involves the sale of or offer to sell a series of notes secured directly by interests in one or more parcels of real property, or the sale of undivided interests in a note secured directly by one or more parcels of real property equivalent to a series transaction, shall comply with all of the provisions of this article.

(Amended (as added by Stats. 2003, Ch. 901, Sec. 2) by Stats. 2011, Ch. 717, Sec. 11. (SB 53) Effective January 1, 2012.)

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

TO:	Real Estate Commissioner Mortgage Loan Section 1651 Exposition Boulevard Sacramento, CA 95815
This notice is filed pursuant to Sections 10237 and 10238 of the Business and Professions Code.	
() Original Notice() Amended Notice	
1.	Name of the Broker conducting transaction under Section 10237:
2.	Broker license identification number:
3.	List the month the fiscal year ends:
4.	Broker's telephone number:
5.	Firm name (if different from "1"):
6.	Street address (main location):
	# and StreetCityStateZIP Code _____
7.	Mailing address (if different from "6"):

8.	Servicing agent: Identify by name, address, and telephone number the person or entity who will act as the servicing agent in transactions pursuant to Section 10237 (including the undersigned Broker if that is the case):	
9.	Total number of multilender notes arranged:	
10.	Total number of interests sold to investors on the multilender's notes: _____	
11.	Inspection of trust account (before answering this question, review the provisions of paragraph (3) of subdivision (k) of Section 10238).	
CHECK ONLY ONE OF THE FOLLOWING:		
()	The undersigned Broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (k) of Section 10238.	
Amount of Multilender Payments Collected Last Fiscal Quarter:		
Total Number of Investors Due Payments Last Fiscal Quarter:		
()	The undersigned Broker is NOT (or does NOT expect to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (k) of Section 10238.	
12.	Signature. The contents of this notice are true and correct.	
	Date	Type Name of Broker
		Signature of Broker or of Designated Officer of Corporate Broker
		Type Name of Person(s) Signing This Notice

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

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

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

(d) Each parcel of real property directly securing the notes or interests shall be located in this state, the note or notes shall not by their terms be subject to subordination to any subsequently created deed of trust upon the real property, and the note or notes shall not be promotional notes secured by liens on separate parcels of real property in one subdivision or in contiguous subdivisions. For

purposes of this subdivision, a promotional note means a promissory note secured by a trust deed, executed on unimproved real property or executed after construction of an improvement of the property but before the first purchase of the property as so improved, or executed as a means of financing the first purchase of the property as so improved, that is subordinate, or by its terms may become subordinate, to any other trust deed on the property. However, the term "promotional note" does not include either of the following:

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

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

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

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

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

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

Transaction Identifier:	
Name of Purchaser: Date:	
Check either one of the following, if true:	
()	My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.
()	My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year or, in the alternative, as estimated for the current year.
Signature	

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

(3) Spouses and their dependents, and an individual and his or her dependents, shall be counted as one person.

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

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

(6) A partnership, limited liability company, corporation, or other organization that was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption from securities qualification is counted as one person.

(g) The notes or interests of the purchasers shall be identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being a lender, and the sale to each purchaser pursuant to this section shall be upon the same terms, subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued. This subdivision does not preclude different selling prices for interests to the extent that these differences are reasonably related to changes in the market value of the loan occurring between the sales of these interests. The interest of each purchaser shall be recorded pursuant to subdivisions (a) to (c), inclusive, of Section 10234.

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

(A)	Single-family residence, owner occupied	80%
(B)	Single-family residence, not owner occupied	75%
(C)	Commercial properties and income-producing properties not described in (B) or (E)	65%
(D)	Single-family residentially zoned lot or parcel that has installed offsite improvements including drainage, curbs, gutters, sidewalks, paved roads, and utilities as mandated by the political subdivision having jurisdiction over the lot or parcel	65%
(E)	Land that produces income from crops, timber, or minerals	60%
(F)	Land that is not income producing but has been zoned for (and if required, approved for subdivision as) commercial or residential development	50%
(G)	Other real property	35%

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

(3) A copy of the appraisal or the broker's evaluation, for each parcel of real property securing the notes or interests, shall be delivered to each purchaser. For purposes of this paragraph, "appraisal" means a written estimate of value based upon the assembling, analyzing, and reconciling of facts and value indicators for the real property in question. A broker shall not purport to make an appraisal unless he or she is qualified on the basis of special training, preparation, or experience.

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

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

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

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

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

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

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

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

(5) If a note or an interest will be secured by more than one parcel of real property, for the purpose of determining the maximum amount of the note or interest, each security property shall be assigned a portion of the note or interest that shall not exceed the percentage of current market value determined by, and in accordance with, the provisions of paragraphs (1) and (2).

(i) The documentation of the transaction shall require both of the following:

(1) A default upon any note or interest is a default upon all notes or interests.

(2) The holders of more than 50 percent of the recorded beneficial interests of the notes or interests may govern the actions to be taken on behalf of all holders in accordance with Section 2941.9 of the Civil Code in the event of default or foreclosure for matters that require direction or approval of the holders, including designation of the broker, servicing agent, or other person acting on their behalf, and the sale, encumbrance, or lease of real property owned by the holders resulting from foreclosure or receipt of a deed in lieu of foreclosure. The terms called for by this subdivision may be included in the deed of trust, in the assignment of interests, or in any other documentation as is necessary or appropriate to make them binding on the parties.

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

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

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

(4) If required by paragraph (3) of subdivision (k), the review by the independent certified public accountant shall include a sample of transactions, as reflected in the records of the trust account required pursuant to paragraph (1) of subdivision (k), and the bank statements and supporting documents. These documents shall be reviewed for compliance with this article with respect to the handling and distribution of funds. The sample shall be selected at random by the accountant from all these transactions and shall consist of both of the following:

(A) Three sales made or 5 percent of the sales made pursuant to this article during the period for which the examination is conducted, whichever is greater.

(B) Ten payments processed or 2 percent of payments processed under this article during the period for which the examination is conducted, whichever is greater.

(5) For the purposes of this subdivision, the transaction that constitutes a "sale" is the series of transactions by which a series of notes of a maker, or the interests in the note of a maker, are sold or issued to their various purchasers under this article, including all receipts and disbursements in that process of funds received from the purchasers or lenders. The transaction that constitutes a "payment," for the purposes of this subdivision, is the receipt of a payment from the person obligated on the note or from some other person on behalf of the person so obligated, including the broker or servicing agent, and the distribution of that payment to the persons entitled thereto. If a payment involves an advance paid by the broker or servicing agent as the result of a dishonored check, the inspection shall identify the source of funds from which the payment was made or, in the alternative, the steps that are reasonably necessary to determine that there was not a disbursement of trust funds. The accountant shall inspect for compliance

with the following specific provisions of this section: paragraphs (1), (2), and (3) of this subdivision and paragraphs (1) and (2) of subdivision (k).

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The aggregate sale price of the note.

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

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

(iv) The name and address of the escrow holder for the transaction.

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

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

(i) The name and address of the escrow holder for the transaction.

(ii) The anticipated closing date.

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

(C) In the case of a transaction involving a note or interest secured by more than one parcel of real property, in addition to the requirements of subparagraphs (A) and (B):

(i) The address, description, and estimated fair market value of each property securing the loan.

(ii) The amount of the available equity in each property securing the loan after the loan amount to be apportioned to each property is assigned.

(iii) The loan to value percentage for each property after the loan amount to be apportioned to each property is assigned pursuant to subdivision (h).

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

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

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

(5) If more than one parcel of real property secures the notes or interests, the disclosure form shall also fully disclose any risks to investors associated with securing the notes or interests with multiple parcels of real property.

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

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

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

(p) Each broker conducting transactions pursuant to this article, or broker or person who becomes the servicing agent for notes or interests sold pursuant to this article, who meets the criteria of paragraph (3) of subdivision (k) shall file with the commissioner a report of the transactions that is prepared in accordance with subdivision (c) of Section 10232.2. If the broker also meets the threshold criteria of Section 10232, the report shall also include the transactions subject to that section. This report shall be confidential pursuant to subdivision (f) of Section 10232.2.

(Amended by Stats. 2018, Ch. 285, Sec. 50. (AB 2884) Effective January 1, 2019.)

10239. The jurisdiction of the Commissioner of Financial Protection and Innovation under the Corporate Securities Law of 1968 shall be neither limited nor expanded by this article. Nothing in this article shall be construed to supersede or restrict the application of the Corporate Securities Law of 1968. A transaction under this article shall not be construed to be a transaction involving the

issuance of securities subject to authorization by the Real Estate Commissioner under subdivision (e) of Section 25100 of the Corporations Code.

(Amended by Stats. 2022, Ch. 452, Sec. 10. (SB 1498) Effective January 1, 2023.)

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

(Added by Stats. 2003, Ch. 901, Sec. 2. Effective January 1, 2004.)

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

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

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

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

(d) Except as provided in paragraph (5) of subdivision (j) of Section 10238, the terms "sale" and "offer to sell," shall have the same meaning as set forth in Section 25017 of the Corporations Code and include the acts of negotiating and arranging the transaction.

(Added by Stats. 2003, Ch. 901, Sec. 2. Effective January 1, 2004.)

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

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

(Added by Stats. 2003, Ch. 901, Sec. 2. Effective January 1, 2004.)