REAL ESTATE LAW AND SUBDIVIDED LANDS LAW

As amended and in effect January 1, 2014

From the Business and Professions Code

DIVISION 4. REAL ESTATE
PART 1. LICENSING OF PERSONS
CHAPTER 1. GENERAL PROVISIONS

Definitions

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

10001. The definitions in this chapter apply to the provisions of this part only and do not affect any other provisions of this code.

10003. "Commissioner" refers to the Real Estate Commissioner.

10004. "Bureau" means the Bureau of Real Estate in the Department of Consumer Affairs.

10005. Whenever the terms "bureau," "division," "department," "Department of Real Estate," "State Real Estate Division," or "Real Estate Division" are used in this division, they mean the Bureau of Real Estate.

Whenever the terms "Department of Real Estate," "State Real Estate Division," or "Real Estate Division" are used in any other law, they mean the Bureau of Real Estate.

10006. "Person" includes corporation, company and firm.

10007. "Provisions of this part relating to real estate" refers to the provisions of Chapters 1, 2, 3 and 6 of Part 1.

10008. "Provisions of this part relating to business opportunity regulation" refers to the provisions of Chapters 1, 2, and 6 of Part 1.

10008.5. Solely with regard to any transaction involving the sale, lease, or exchange of a business opportunity occurring before, on, or after the effective date of this section, this division shall not apply to any person licensed at the time of the transaction as a securities broker or securities dealer under any law of this state or of the United States, or by any employee, officer, or agent of that person while acting under the direction of, and within the scope of, his or her employment with that person in connection with the transaction.

As used in this section, "any transaction involving the sale, lease, or exchange of a business opportunity" does not include any of the acts described in Section 10131 or Section 10131.2 if the substance of the transaction is to transfer, sell, lease, or exchange an interest in real property for the purpose of evading this part.

10009.5. "Provisions of this part relating to mineral, oil and gas brokerage" refers to the provisions of Chapters 1, 2, 6 and 7, of Part 1.

10010. "Provisions of this part relating to hearings" refers to the provisions of Article 3 of Chapter 2 of Part 1.

10011. "Licensee," when used without modification, refers to a person, whether broker or salesman, licensed under any of the provisions of this part.

10012. "Broker," when used without modification, refers to a person licensed as a broker under any of the provisions of this part.

10013. "Salesman," when used without modification, refers to a person licensed as a salesman under any of the provisions of this part.

10014. "Real estate licensee" refers to a person, whether broker or salesman, licensed under Chapter 3 of this part.

10015. "Real estate broker" refers to a person licensed as a broker under Chapter 3 of this part.

10016. "Real estate salesman" refers to a person licensed as a salesman under Chapter 3 of this part.

10017. Whenever the word salesman is used in this division, or in the rules and regulations of the commissioner, it means salesperson. A licensee, however, may elect to refer to the

licensed status as real estate salesman, real estate saleswoman, or real estate salesperson.

10023. "Mineral, oil and gas licensee" refers to a person licensed under Chapter 7 (commencing with Section 10500) of this part.

10024. "Mineral, oil and gas broker" refers to a person licensed as a broker under Chapter 7 of this part.

"Advance Fee"

10026. (a) The term "advance fee," as used in this part, is a fee, regardless of the form, that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license, or for a listing, as that term is defined in Section 10027, before fully completing the service the licensee contracted to perform or represented would be performed. Neither an advance fee nor the services to be performed shall be separated or divided into components for the purpose of avoiding the application of this division.

(b) For the purposes of this section, the term "advance fee" does not include:

(1) "Security" as that term is used in Section 1950.5 of the Civil Code.

(2) A "screening fee" as that term is used in Section 1950.6 of the Civil Code.

(3) A fee that is claimed, demanded, charged, received, or collected for the purpose of advertising the sale, lease, or exchange of real estate, or of a business opportunity, in a newspaper of general circulation, any other written publication, or through electronic media comparable to any type of written publication, provided that the electronic media or the publication is not under the control or ownership of the broker.

(4) A fee earned for a specific service under a "limited service" contract. For purposes of this section, a "limited service" contract is a written agreement for real estate services described in subdivision (a), (b), or (c) of Section 10131, and pursuant to which such services are promoted, advertised, or presented as stand-alone services, to be performed on a task-by-task basis, and for which compensation is received as each separate, contracted-for task is completed. To qualify for this exclusion, all services performed pursuant to the contract must be described in subdivision (a), (b), or (c) of Section 10131.

(c) A contract between a real estate broker and a principal that requires payment of a commission to the broker after the contract is fully performed does not represent an agreement for an advance fee.

(d) This section does not exempt from regulation the charging or collecting of a fee under Section 1950.5 or 1950.6 of the Civil Code, but instead regulates fees that are not subject to those sections.

"Listing"

10027. The term "listing" as used in this part includes, but is not limited to:

(a) The name or a list of the names, of the owners, landlords, exchangers, or lessors, or the location or locations, of property, or of an interest in property, offered for rent, sale, lease, or exchange.

(b) The name, or a list of the names, or the location or locations at which prospective or potential purchasers, buyers, lessees, tenants or exchangers of property may be found or contacted.

(c) An agreement by which a person who is engaged in the business of promoting the sale or lease of business opportunities or real estate agrees to render to an owner or lessee of such property any services, to promote the sale or lease of said property.

(d) An agreement by which a person who is engaged in the business of finding, locating or promoting the sale or lease of business opportunities or real estate, agrees to circularize, notify or refer real estate brokers or salesmen to said property which is offered for sale or lease.

"Trust Deed"

10028. "Trust deed" or "deed of trust" as used in this part includes "mortgage."

"Real Property Sales Contract"
10029. "Real property sales contract" as used in this part is an agreement wherein one party agrees to convey title to real property to another party upon the satisfaction of specified conditions set forth in the contract and which does not require conveyance of title within one year from the date of formation of the contract.

"Business Opportunity"
10030. As used in this part, the words "business opportunity" shall include the sale or lease of the business and goodwill of an existing business enterprise or opportunity.

Broker-Salesperson Relationship – Independent Contractor or Employee – No Effect on Obligations to Public
10032. (a) All obligations created under Section 10000, and following, all regulations issued by the commissioner relating to real estate salespersons, and all other obligations of brokers and real estate salespersons to members of the public shall apply regardless of whether the real estate salesperson and the broker to whom he or she is licensed have characterized their relationship as one of "independent contractor" or of "employer and employee."

(b) A real estate broker and a real estate salesperson licensed under that broker may contract between themselves as independent contractors or as employer and employee, for purposes of their legal relationship with and obligations to each other. Characterization of a relationship as either "employer and employee" or "independent contractor" for statutory purposes, including, but not limited to, withholding taxes on wages and for purposes of unemployment compensation, shall be governed by Section 650 and Sections 13000 to 13054, inclusive, of the Unemployment Insurance Code. For purposes of workers compensation the characterization of the relationship shall be governed by Section 3200, and following, of the Labor Code.

Criminal Provisions
10035. Neither Section 10185 nor any other provision of this part which makes violation of this part a crime shall be construed to preclude application of any other criminal provision of the law of this state to an act or omission which constitutes a violation of this part.

CHAPTER 2. ADMINISTRATION

Article 1. The Real Estate Commissioner

Chief Officer of Bureau of Real Estate
10050. (a) There is in the Department of Consumer Affairs a Bureau of Real Estate, the chief officer of which bureau is named the Real Estate Commissioner.

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

(c) Wherever the term "commissioner" is used in this division, it means the Real Estate Commissioner.

Public Protection
10050.1. Protection of the public shall be the highest priority for the Department of Real Estate in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Appointment of Real Estate Commissioner
10051. The commissioner shall be appointed by the Governor.

Commissioner's Qualifications
10052. The commissioner shall have been for five years a real estate broker actively engaged in business as such in California, or shall possess related experience associated with real estate activity in California for five years within the last 10 years.

Commissioner's Salary
10053. The commissioner shall receive an annual salary as provided in Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code, to be paid monthly out of the State Treasury upon a warrant of the Controller, and shall be allowed

his or her actual and necessary expenses in the discharge of his or her duties.

Article 2. *The Real Estate Commissioner (continued)*

Enforcement
10071. The commissioner shall enforce the provisions of this part and of Chapter 1 of Part 2. He has full power to regulate and control the issuance and revocation, both temporary and permanent, of all licenses to be issued under the provisions of this part, and to perform all other acts and duties provided in this part and Chapter 1 of Part 2 and necessary for their enforcement.

Personnel
10073. The commissioner shall employ such deputies, clerks and employees as he may need to discharge in proper manner the duties imposed upon him by law.

Vocations Restricted
10074. After qualifying as such neither the commissioner nor any of the deputies, clerks or employees of the department shall be interested in any mineral, oil or gas business, mineral, oil or gas brokerage firm, real estate company or any real estate brokerage firm, as director, stockholder, officer, member, agent or employee, or act as a broker or salesman, or act as a copartner or agent for any broker or brokers, salesman or salesmen.

Duties and Compensation
10075. Deputies, clerks and employees shall perform such duties as the commissioner shall assign to them.

Subject to the powers of the State Personnel Board and the Director of Finance, the commissioner shall fix the compensation of such deputies, clerks and employees, which compensation shall be paid monthly on a certificate of the commissioner, and on the warrant of the Controller out of the State Treasury.

Oaths
10076. Each deputy shall, after his appointment, take and subscribe to the constitutional oath of office and file the same in the office of the Secretary of State.

Main and Branch Offices
10077. The commissioner shall have his principal office in the City of Sacramento, and may establish branch offices in the City and County of San Francisco, the City of Los Angeles and in such other cities as the commissioner may deem necessary, subject to the approval of the Department of Finance.

Seal
10078. The commissioner shall adopt a seal with the words "Real Estate Commissioner State of California" and such other device as the commissioner may desire engraved thereon, by which he shall authenticate the proceedings of his office.

Copies of all records and papers in the office of the commissioner certified under the hand and seal of the commissioner shall be received in evidence in all cases equally and with like effect as the originals.

Legal Advisor
10079. (a) The Attorney General shall render to the commissioner opinions upon all questions of law relating to the construction or interpretation of this part or Chapter 1 of Part 2 or arising in the administration thereof that may be submitted to him or her by the commissioner. Except as provided in subdivision (b), the Attorney General shall act as the attorney for the commissioner in all actions and proceedings brought by or against him or her under or pursuant to any of the provisions of this part or of Chapter 1 of Part 2.

(b) In the case of refusal by a licensee to obey a subpoena issued to that licensee, the commissioner may, by a noticed motion, apply to the superior court for, and the superior court may issue to the licensee, an order requiring the licensee to appear before the commissioner, or the representative designated by the commissioner, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure of the licensee to obey the order of the court may be punished by the court as a contempt.

Rules and Regulations
10080. The commissioner may adopt, amend, or repeal rules and regulations that are reasonably necessary for the enforcement of the provisions of this part and of Chapter 1 (commencing with Section 11000) of Part 2 of this division. The rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act.

Credit Reports
10080.5. In the event the commissioner employs the services of an agency engaged in the business of furnishing credit reports, such agency shall have been engaged in such business continuously in this State for a period of not less than five years prior to the time of such employment.

Citations and Fines
10080.9. (a) If, upon inspection, examination, or investigation, the commissioner has cause to believe that a person who does not possess a real estate license is engaged or has engaged in activities for which a real estate license is required, or that a person who does not possess a prepaid rental listing service license or a real estate broker license is engaged or has engaged in activities for which a license is required pursuant to Section 10167.2, or that a licensee is violating or has violated any provision of this division or any rule or order thereunder, the commissioner or his or her designated representative may issue a citation to that person in writing, describing with particularity the basis of the citation. Each citation may contain an order to correct the violation or violations identified and a reasonable time period or periods by which the violation or violations must be corrected. In addition, each citation may assess an administrative fine not to exceed two thousand five hundred dollars ($2,500), which shall be deposited into the Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470). In assessing a fine, the commissioner shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the person cited, and the history of previous violations. A citation issued and a fine assessed pursuant to this section, while constituting discipline for a violation of the law, shall be in lieu of other administrative discipline by the commissioner for the offense or offenses cited, and the citation against and payment of any fine by a licensee shall not be reported as disciplinary action taken by the commissioner.

(b) Notwithstanding subdivision (a), nothing in this section shall prevent the commissioner from issuing an order to desist and refrain from engaging in a specific business activity or activities or an order to suspend all business operations to a person who is engaged in or has engaged in continued or repeated violations of this part. In any of these circumstances, the sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal penalties.

(c) If, within 30 days from the receipt of the citation or the citation and fine, the person cited fails to notify the commissioner that he or she intends to request a hearing as described in subdivision (d), the citation or the citation and fine shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of any administrative penalty imposed pursuant to subdivision (a) and an order compelling the cited person to comply with the order of the commissioner. The application, which shall include a certified copy of the final order of the commissioner, shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(f) Failure of any person to comply with the terms of a citation or pay a fine assessed pursuant to this section, within a reasonable period specified by the commissioner, shall subject that person to disciplinary action by the

commissioner. In no event may a license be renewed if an unpaid fine remains outstanding or the terms of a citation have not been complied with.

Commissioner's Power to Enjoin

10081. (a) Whenever the commissioner believes from evidence satisfactory to him that any person has violated or is about to violate any of the provisions of this part or of Chapter 1 (commencing with Section 11000) of Part 2 or any order, license, permit, decision, demand or requirement, or any part or provision thereof, he or she may bring an action in the name of the people of the State of California in the superior court of the State of California against that person to enjoin him or her from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

In this action an order or judgment may be entered awarding such preliminary or final injunction as may be proper, but no preliminary injunction or temporary restraining order shall be granted without at least five days' notice to the defendant.

If the commissioner makes a showing satisfactory to the court that the violations or threatened violations jeopardize funds and properties of others in the custody or under the control of the defendant, the court may appoint a receiver for management of the business of the defendant, including, but not limited to, the funds and properties of others in his or her possession or may make any other order as it deems appropriate to protect and preserve those funds and properties.

The order appointing the receiver shall specify the source of the funds for payment of the fees of the receiver and the costs attributable to administering the receivership. Unless provided for in the order, the commissioner shall not be liable for payment of the fees or costs.

(b) The commissioner may include in any action authorized by subdivision (a), a claim for restitution on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the court shall have jurisdiction to award appropriate relief to such persons.

Injunction – Appointment of Receiver

10081.5. Whenever the commissioner believes from evidence satisfactory to him or her that any real estate licensee has violated or is about to violate, the provisions of Section 10145, the commissioner may bring an action in the name of the people of the State of California, in the superior court of the State of California, to enjoin the licensee from continuing the violation or engaging therein or doing any act or acts in furtherance thereof.

In the event the commissioner has conducted an audit which reflects commingling or conversion of trust funds in excess of ten thousand dollars ($10,000), the court may enter an order restraining the licensee from doing any act or acts in furtherance thereof, and from further exercising the privileges of his or her license pending further order of the court, provided that a hearing shall be held on the order within five days after the date thereof.

After such hearing in the manner provided by law, an order may be entered appointing a receiver, or such other order as the court may deem proper. The order appointing the receiver shall specify the source of the funds from which the fees of the receiver and the costs of administering the receivership are to be paid. Unless provided for in the order, the commissioner shall not be liable for payment of the fees or costs.

A receiver appointed by the court pursuant to this section may, with the approval of the court, exercise all of the powers of the licensee or its officers, directors, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy of the licensee.

Directory

10082. The commissioner may publish or cause to be published at appropriate intervals a directory or list of licensed brokers and salesmen and may publish therewith such matter as he may deem pertinent to this part and Chapter 1 (commencing with Section 11000) of Part 2. He shall furnish one copy of such directory to each

licensed broker upon his request and the payment of an appropriate charge based upon cost of publication. Such directory may contain copies of the Real Estate Law, Chapter 1 (commencing with Section 11000) of Part 2 of Division 4 of the Business and Professions Code, and the Rules and Regulations of the Real Estate Commissioner.

Bulletin

10083. The commissioner may periodically issue a bulletin containing matter relating to the department, and to the provisions of this part and of Chapter 1 (commencing with Section 11000) of Part 2, and the administration thereof, and may publish the same character of matter in any established periodical published in the state which in his opinion would be most likely to disseminate such matter and information to licensees under this part.

Website – License Status

10083.2. (a) The commissioner shall provide on the Internet information regarding the status of every license issued by the department in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the department and accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) relative to persons or businesses subject to licensure or regulation by the department. The information shall not include personal information, including home telephone number, date of birth, or social security number. The commissioner shall disclose a licensee's address of record. However, the commissioner shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude the commissioner from also requiring a licensee who has provided a post office box number or other alternative mailing address as his or her address of record to provide a physical business address or residence address only for the department's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) For purposes of this section, "Internet" has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

Information Brochures

10084. The commissioner may prepare a pamphlet or brochure dealing with disclosures of information in residential real estate transactions. The costs of preparation and distribution may be paid from such moneys as may from time to time be appropriated from the Real Estate Fund for education and research. The commissioner shall make copies of the pamphlet or brochure available upon request to sellers, buyers, and real estate licensees for a fee commensurate with the cost of preparation and distribution. Such fees as are collected shall be paid into the education and research account of the Real Estate Fund.

Environmental Hazards Booklet

10084.1. (a) Notwithstanding Section 10450.6, on or before January 1, 1991, the department, using funds appropriated from the Education and Research Account in the Real Estate Fund, shall develop a booklet to educate and inform consumers on all of the following:

(1) Common environmental hazards that are located on, and affect, real property. The types of common environmental hazards shall include, but not be limited to, asbestos, radon gas, lead-based paint, formaldehyde, fuel and chemical storage tanks, and water and soil contamination.

(2) The significance of common environmental hazards and what can be done to mitigate these hazards.

(3) What sources can provide more information on common environmental hazards for the consumer.

(b) The department shall seek the advice of the Office of Environmental Health Hazard

Assessment to assist it in determining the contents of the booklet prepared pursuant to this section, and shall seek the assistance of the Office of Environmental Health Hazard Assessment in the writing of the booklet.

Advance Fee Agreements and Materials

10085. The commissioner may require that any or all materials used in obtaining advance fee agreements, including but not limited to the contract forms, letters or cards used to solicit prospective sellers, and radio and television advertising be submitted to him or her at least 10 calendar days before they are used. Should the commissioner determine that any such matter, when used alone or with any other matter, would tend to mislead he or she may, within 10 calendar days of the date he or she receives same, order that it not be used, disseminated, nor published. Any person or entity using, disseminating, or publishing any matter which the commissioner has ordered, pursuant to this section, not to be used, published, or disseminated shall be guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred dollars ($2,500) or by imprisonment in the county jail not exceeding six months, or both, for each such use, dissemination, or publication.

The commissioner may determine the form of the advance fee agreements, and all material used in soliciting prospective owners and sellers shall be used in the form and manner which he or she determines is necessary to carry out the purposes and intent of this part.

Any violation of any of the provisions of this part or of the rules, regulations, orders or requirements of the commissioner thereunder shall constitute grounds for disciplinary action against a licensee, or for proceedings under Section 10081 of this code, or both. These sanctions are in addition to the criminal proceedings hereinbefore provided.

Payment of Advance Fee – Loan Secured by Lien on Real Property

10085.5. (a) It shall be unlawful for any person to claim, demand, charge, receive, collect, or contract for an advance fee (1) for soliciting lenders on behalf of borrowers or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, before the borrower becomes obligated to complete the loan or, (2) for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the provisions of this part.

(b) This section does not prohibit the acceptance or receipt of an advance fee by any bank, savings association, credit union, industrial loan company, or person acting within the scope of a license issued to that person pursuant to Division 9 (commencing with Section 22000) of the Financial Code, in connection with loans to be secured directly or collaterally by a lien on real property. This section does not apply to charges made by title insurers and controlled escrow companies pursuant to Chapter 1 (commencing with Section 12340) of Part 6 of Division 2 of the Insurance Code.

(c) A violation of this section is a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail for a term not to exceed six months, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars ($50,000).

Advance Fee Prohibited – Loan Modification/Forbearance

10085.6. (a) Notwithstanding any other provision of law, it shall be unlawful for any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other compensation paid by the borrower, to do any of the following:

(1) Claim, demand, charge, collect, or receive any compensation until after the licensee has fully performed each and every service the licensee contracted to perform or represented that he, she, or it would perform.

(2) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation.

(3) Take any power of attorney from the borrower for any purpose.

(b) A violation of this section by a natural person who is a licensee is a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars ($50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(c) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

Engaging in Prohibited Activity – Order to Desist and Refrain

10086. (a) If the commissioner determines through an investigation that (1) a person has engaged or is engaging in an activity which is a violation of a provision of this part, other than a provision of Article 8 (commencing with Section 10249) of Chapter 3, or which is a violation of a regulation of the commissioner adopted for the purpose of implementing any provision of this part, other than a regulation adopted pursuant to a provision of Article 8 (commencing with Section 10249) of Chapter 3, or (2) a real estate broker has engaged in or is engaging in an activity which is a violation of a provision of Division 6 (commencing with Section 17000) of the Financial Code, and which is not exempt pursuant to paragraph (4) of subdivision (a) of Section 17006, the commissioner may direct the person to desist and refrain from such activity by issuance of an order specifying the nature of the activity and the factual and legal basis for his or her determination. The respondent to whom the order is directed shall immediately, upon receipt of the order, cease the activity described in the order.

(b) The respondent may, within 30 days after service of the order to desist and refrain, file a request for a hearing. If, with the request for hearing, the respondent also files a written verification that the order of the commissioner precludes him or her from further engaging in a substantial proportion of his or her business, the commissioner shall, within 10 days thereafter, file an action in superior court to restrain the respondent from continuing the activity or doing any act in furtherance thereof pending the completion of a hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

If the commissioner fails to bring the action in superior court within the time prescribed by this section, or if the court refuses to restrain the respondent pending the decision of the commissioner following the administrative hearing, the respondent may resume the activities in question pending the rendering of the decision of the commissioner following the administrative hearing.

(c) The administrative hearing shall be commenced by the commissioner within 30 days after receipt of respondent's request unless the respondent agrees to a postponement. If the hearing is not commenced within 30 days after receipt of respondent's request or on the date to which continued with respondent's consent, or if the commissioner does not render a decision within 15 days after receipt of the proposed decision following the hearing, the order shall be deemed rescinded.

(d) The provisions of Section 11019, and not the provisions of this section, shall apply in the case of an activity which the commissioner determines to be in violation of Article 8 (commencing with Section 10249) of Chapter 3 or of a regulation of the commissioner for implementation of any provision of that article.

Bar Order

10087. (a) In addition to acting pursuant to the authority provided under Sections 10086, 10176, and 10177, the commissioner may, after appropriate notice and opportunity for a hearing, by order, suspend, bar from any position of employment, management, or control, or bar from participation in an examination for licensure, for a period not exceeding 36 months, a real estate salesperson or real estate broker, or an unlicensed person issued an order under Section 10086, if the commissioner finds either of the following:

(1) That the suspension or bar is in the public interest and that the person has committed or caused a violation of this division or rule or order of the commissioner, which violation was either known or should have been known by the person committing or causing it or has caused material damage to the public.

(2) That the person has been convicted of or pleaded nolo contendere to any crime, or has been held liable in any civil action by final judgment, or any administrative judgment by any public agency, if that crime or civil or administrative judgment involved any offense involving dishonesty, fraud, or deceit, or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the real estate business in accordance with the provisions of this division.

(b) Within 15 days from the date of a notice of intention to issue an order pursuant to subdivision (a), the person may request a hearing under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Division 3 of Title 2 of the Government Code). If no hearing is requested within 15 days after the mailing or service of that notice and none is ordered by the commissioner, the failure to request a hearing shall constitute a waiver of the right to a hearing.

(c) Upon receipt of a notice of intention to issue an order pursuant to this section, the person who is the subject of the proposed order is immediately prohibited from engaging in any business activity involving real estate that is subject to regulation under this division.

(d) Persons suspended or barred under this section are prohibited from participating in any business activity of a real estate salesperson or a real estate broker and from engaging in any real estate-related business activity on the premises where a real estate salesperson or real estate broker is conducting business. Persons suspended or barred under this section are also prohibited from participating in any real estate-related business activity of a finance lender, residential mortgage lender, bank, credit union, escrow company, title company, or underwritten title company. Persons suspended or barred from a position of employment, management, or control under this section are also barred from participating in examinations for licensure.

Public Disclosure of Investigations

10088. After the filing of a desist and refrain order or a bar order, or the commencement of a formal disciplinary action by the commissioner, and upon a finding by the commissioner that action is warranted for the protection of the public, and that failure to act is likely to result in grievous harm to the public, the commissioner may make information public confirming the fact of an investigation or proceeding regarding a licensee or unlicensed person believed to be engaging in activities for which a real estate license is required. Any release that contains the identity of a person or business under investigation shall include language explaining that the subject of the release is entitled to a public hearing on the merits of the desist and refrain order, bar order, or accusation or accusations against that person or business. The release may also clarify the procedural aspects and current status of the investigation or proceeding.

Article 3. Hearings

Disciplinary Procedure

10100. (a) Before suspending or revoking a license or license endorsement issued under the provisions of this part, the department shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted therein.

(b) Upon denial of an application for a license or license endorsement issuable under the provisions of this part, the department shall proceed under Sections 485 to 488, inclusive.

Voluntary Surrender of License

10100.2. A licensee against whom an investigation is pending or an accusation has been filed pursuant to Section 11503 of the Government Code may petition the commissioner to voluntarily surrender his or her

license. The surrender of a license shall become effective upon acceptance by the commissioner and thereafter, a surrendered licensee may be relicensed only by petitioning for reinstatement pursuant to Section 11522 of the Government Code. When deciding a petition for reinstatement, the commissioner may consider all relevant evidence, including affidavits.

Settlements

10100.4. (a) Notwithstanding Section 11415.60 of the Government Code, the department may enter into a settlement with a licensee or applicant instead of the issuance of an accusation or statement of issues against that licensee or applicant.

(b) The settlement shall identify the factual basis for the action being taken and the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or a petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement with a licensee executed pursuant to this section shall be considered discipline by the department.

Statute of Limitations – Real Estate Licensees

10101. The accusation provided for by Section 11503 of the Government Code shall be filed not later than three years from the occurrence of the alleged grounds for disciplinary action unless the acts or omissions with which the licensee is charged involves fraud, misrepresentation or a false promise in which case the accusation shall be filed within one year after the date of discovery by the aggrieved party of the fraud, misrepresentation or false promise or within three years after the occurrence thereof, whichever is later, except that in no case shall an accusation be filed later than 10 years from the occurrence of the alleged grounds for disciplinary action.

Jurisdiction Over a Lapsed or Suspended License

10103. The lapsing or suspension of a license by operation of law or by order or decision of the department or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the department of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee, or to render a decision suspending or revoking such license.

Cost Recovery of Investigations

10106. (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before the department, the commissioner may request the administrative law judge to direct a licensee found to have committed a violation of this part to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licensee that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the commissioner or the commissioner's designated representative, shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the commissioner to increase the cost award. The commissioner may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).

(e) Where an order for recovery of costs is made and timely payment is not made as directed in the commissioner's decision, the commissioner may enforce the order for repayment in any appropriate court. This right of enforcement

shall be in addition to any other rights the commissioner may have as to any licentiate to pay costs.

(f) In any action for recovery of costs, proof of the commissioner's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) (1) Except as provided in paragraph (2), the department shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section.

(2) The department may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licensee who demonstrates financial hardship and who enters into a formal agreement with the department to reimburse the department within that one-year period for the unpaid costs.

(h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the Real Estate Fund to be available, notwithstanding Section 10451, upon appropriation by the Legislature.

(i) Nothing in this section shall preclude the department from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.

CHAPTER 3. REAL ESTATE REGULATIONS

Article 1. Scope of Regulation

License Required

10130. It is unlawful for any person to engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson within this state without first obtaining a real estate license from the department, or to engage in the business of, act in the capacity of, advertise as, or assume to act as a mortgage loan originator within this state without having obtained a license endorsement.

The commissioner may prefer a complaint for violation of this section before any court of competent jurisdiction, and the commissioner and his or her counsel, deputies, or assistants may assist in presenting the law or facts at the trial.

Prosecution of Violations

It is the duty of the district attorney of each county in this state to prosecute all violations of this section in their respective counties in which the violations occur.

Broker Defined

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

(a) Sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale or exchange of real property or a business opportunity.

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

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

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

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

Some Managers and Employees Exempt

10131.01. (a) Subdivision (b) of Section 10131 does not apply to (1) the manager of a hotel,

motel, auto and trailer park, to the resident manager of an apartment building, apartment complex, or court, or to the employees of that manager, or (2) any person or entity, including a person employed by a real estate broker, who, on behalf of another or others, solicits or arranges, or accepts reservations or money, or both, for transient occupancies described in paragraphs (1) and (2) of subdivision (b) of Section 1940 of the Civil Code, in a dwelling unit in a common interest development, as defined in Section 4100 of the Civil Code, in a dwelling unit in an apartment building or complex, or in a single-family home, or (3) any person other than the resident manager or employees of that manager, performing the following functions, who is the employee of the property management firm retained to manage a residential apartment building or complex or court and who is performing under the supervision and control of a broker of record who is an employee of that property management firm or a salesperson licensed to the broker who meets certain minimum requirements as specified in a regulation issued by the commissioner:

(A) Showing rental units and common areas to prospective tenants.

(B) Providing or accepting preprinted rental applications, or responding to inquiries from a prospective tenant concerning the completion of the application.

(C) Accepting deposits or fees for credit checks or administrative costs and accepting security deposits and rents.

(D) Providing information about rental rates and other terms and provisions of a lease or rental agreement, as set out in a schedule provided by an employer.

(E) Accepting signed leases and rental agreements from prospective tenants.

(b) A broker or salesperson shall exercise reasonable supervision and control over the activities of nonlicensed persons acting under paragraph (3) of subdivision (a).

(c) A broker employing nonlicensed persons to act under paragraph (3) of subdivision (a) shall comply with Section 10163 for each apartment building or complex or court where the nonlicensed persons are employed.

Broker Definition Continued – Buying/Selling Notes, etc.

10131.1. (a) A real estate broker within the meaning of this part is also a person who engages as a principal in the business of making loans or buying from, selling to, or exchanging with the public, real property sales contracts or promissory notes secured directly or collaterally by liens on real property, or who makes agreements with the public for the collection of payments or for the performance of services in connection with real property sales contracts or promissory notes secured directly or collaterally by liens on real property.

(b) As used in this section:

(1) "In the business" means any of the following:

(A) The acquisition for resale to the public, and not as an investment, of eight or more real property sales contracts or promissory notes secured directly or collaterally by liens on real property during a calendar year.

(B) The sale to or exchange with the public of eight or more real property sales contracts or promissory notes secured directly or collaterally by liens on real property during a calendar year. However, no transaction negotiated through a real estate licensee shall be considered in determining whether a person is a real estate broker within the meaning of this section.

(C) The making of eight or more loans in a calendar year from the person's own funds to the public when those loans are held or resold and are secured directly or collaterally by a lien on residential real property consisting of a single dwelling unit in a condominium or cooperative or on any parcel containing only residential buildings if the total number of units on

the parcel is four or less. However, no transaction negotiated through a real estate broker who meets the criteria of subdivision (a) or (b) of Section 10232 shall be considered in determining whether a person is a real estate broker within the meaning of this section.

(2) "Sale," "resale," and "exchange" include every disposition of any interest in a real property sales contract or promissory note secured directly or collaterally by a lien on real property, except the original issuance of a promissory note by a borrower or a real property sales contract by a vendor, either of which is to be secured directly by a lien on real property owned by the borrower or vendor.

(3) "Own funds" means either of the following:

(A) Cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the person's financial statements, whether secured or unsecured.

(B) Cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the financial statement of an affiliate of the person, whether secured or unsecured.

(4) "Own funds" does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of the loan.

Broker Definition Continued – Advance Fees

10131.2. A real estate broker within the meaning of this part is also a person who engages in the business of claiming, demanding, charging, receiving, collecting or contracting for the collection of an advance fee in connection with any employment undertaken to promote the sale or lease of real property or of a business opportunity by advance fee listing, advertisement or other offering to sell, lease, exchange or rent property or a business opportunity, or to obtain a loan or loans thereon.

Broker Definition Continued – Securities

10131.3. A real estate broker within the meaning of this part is also a person who, for another or others, for compensation or in expectation of compensation, issues or sells, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of securities as specified in Section 25206 of the Corporations Code.

The provisions of this section do not apply to a broker-dealer or agent of a broker-dealer licensed by the Commissioner of Corporations under the provisions of the Corporate Securities Law of 1968.

Broker Definition Continued – Mineral, Oil, or Gas Property

10131.4. A real estate broker within the meaning of this part is also a person who acts for another or others for compensation or in expectation of compensation, to do one or more of the following acts:

(a) To sell or offer for sale, buy or offer to buy, solicit prospective sellers or purchasers, solicit or obtain listings, or negotiate the purchase, sale, or exchange of mineral, oil, or gas property.

(b) To solicit borrowers or lenders for or negotiate loans on mineral, oil, or gas property, or collect payments for lenders in connection with these loans.

(c) To lease or offer to lease or negotiate the sale, purchase, or exchange of leases on mineral, oil, or gas property.

(d) To rent or place for rent, mineral, oil, or gas property or to collect rent or royalties from mineral, oil, or gas property or improvements thereon.

(e) Other than as an officer or employee of the state or federal government, to assist or offer to assist another or others in filing an application for the purchase or lease of, or to locate or enter upon mineral, oil, or gas property owned by the state or federal government.

MOG Property – License Required as Principal
10131.45. A real estate broker within the meaning of this part is also a person who engages in the following businesses as a principal:

(a) Except as provided in subdivision (d) of Section 10133.35, buying or leasing, or taking an option on mineral, oil, or gas property for the purpose of sale, exchange, lease, sublease, or assignment of a lease of the property or any part of the property.

(b) Offering mining claims or any interest therein for sale or assignment.

Nonresident Licensees
10131.5. A nonresident of California may become a real estate broker by conforming to all of the provisions of this part.

Broker Definition Continued – Mobilehomes
10131.6. (a) Notwithstanding any other provision of law, a person licensed as a real estate broker may sell or offer to sell, buy or offer to buy, solicit prospective purchasers of, solicit or obtain listings of, or negotiate the purchase, sale, or exchange of any mobilehome only if the mobilehome has been registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(b) No real estate broker who engages in the activities authorized by this section shall maintain any place of business where two or more mobilehomes are displayed and offered for sale by the person, unless the broker is also licensed as a mobilehome dealer as provided for by Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(c) As used in this chapter, "mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than two dwelling units to be used with or without a foundation system. "Mobilehome" does not include a recreational vehicle, as defined in Section 18010 of the Health and Safety Code, a commercial coach, as defined in Section 18001.8 of the Health and Safety Code, or factory-built housing, as defined in Section 19971 of the Health and Safety Code.

(d) In order to carry out this section, the commissioner shall prescribe by regulation, after consultation with the Department of Housing and Community Development, methods and procedures to assure compliance with requirements of the Health and Safety Code pertaining to mobilehome registration, collection of sales and use taxes, and transaction documentation.

(e) Nothing in this section increases or decreases, or in any way preempts, consumer notice requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 and related regulations which are set forth in Section 5414 of Title 42 of the United States Code and Section 3282.255 of Title 24 of the Code of Federal Regulations.

Mobilehome Advertising
10131.7. It is unlawful for any real estate licensee acting under authority of Section 10131.6 to do any of the following:

(a) To advertise or offer for sale in any manner any mobilehome, unless it is either in place on a lot rented or leased for human habitation within an established mobilehome park as defined in Section 18214 of the Health and Safety Code and the advertising or offering for sale is not contrary to any terms of a contract between the seller of the mobilehome and the owner of the mobilehome park, or is otherwise located, pursuant to a local zoning ordinance or permit, on a lot where its presence has been authorized or its continued presence and that use would be authorized for a total and uninterrupted period of at least one year.

(b) To fail to withdraw any advertisement of a mobilehome for sale, lease, or exchange within 48 hours after the real estate licensee's receipt of notice that the mobilehome is no longer available for sale, lease, or exchange.

(c) To advertise or represent a mobilehome as a new mobilehome.

(d) To include as an added cost to the selling price of a mobilehome, an amount for licensing, as prescribed by Section 10751 of the Revenue and Taxation Code, except where the buyer and seller agree to the proration of the license fees

for the applicable license period, or transfer of title of the mobilehome as a vehicle, which amount is not due to the state unless, prior to the sale, the amount has been paid by the licensee to the state in order to avoid penalties that would have accrued because of late payment of the fees.

(e) To make any representation that a mobilehome is capable of being transported on California highways if the mobilehome does not meet all of the equipment requirements applicable to mobilehomes of Division 12 (commencing with Section 24000) of the Vehicle Code, or to fail to disclose any material fact respecting those equipment requirements.

(f) To advertise or otherwise represent, or knowingly to allow to be advertised or represented on the real estate licensee's behalf or at the real estate licensee's place of business, that no downpayment is required in connection with the sale of a mobilehome when downpayment is in fact required and the buyer is advised or induced to finance the downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the mobilehome.

(g) To fail or neglect properly to cause the endorsement, dating, and delivery (or fail to endorse, date, and deliver) of the certificate of ownership or certificate of title of the mobilehome, and, when having possession, to fail to deliver the registration card to a transferee who is lawfully entitled to a transfer of registration. Except when the certificate of ownership or certificate of title is demanded in writing by a purchaser, the licensee shall satisfy the delivery requirement of this subdivision by submitting appropriate documents and fees to the Department of Housing and Community Development for transfer of registration in accordance with Chapter 8 (commencing with Section 18075) of Part 2 of Division 13 of the Health and Safety Code and rules and regulations promulgated thereunder.

Salesman Defined

10132. A real estate salesman within the meaning of this part is a natural person who, for a compensation or in expectation of a compensation, is employed by a licensed real estate broker to do one or more of the acts set forth in Sections 10131, 10131.1, 10131.2, 10131.3, 10131.4, and 10131.6.

Exemptions from License Requirements

10133. (a) The acts described in Section 10131 are not acts for which a real estate license is required if performed by:

(1) A regular officer of a corporation or a general partner of a partnership with respect to real property owned or leased by the corporation or partnership, respectively, or in connection with the proposed purchase or leasing of real property by the corporation or partnership, respectively, if the acts are not performed by the officer or partner in expectation of special compensation.

(2) A person holding a duly executed power of attorney from the owner of the real property with respect to which the acts are performed.

(3) An attorney at law in rendering legal services to a client.

(4) A receiver, trustee in bankruptcy or other person acting under order of a court of competent jurisdiction.

(5) A trustee for the beneficiary of a deed of trust when selling under authority of that deed of trust.

(b) The exemptions in subdivision (a) are not applicable to a person who uses or attempts to use them for the purpose of evading the provisions of this part.

Brokers – Lenders – Exemptions from License

10133.1. (a) Subdivisions (d) and (e) of Section 10131, Section 10131.1, Article 5 (commencing with Section 10230), and Article 7 (commencing with Section 10240) of this code and Section 1695.13 of the Civil Code do not apply to any of the following:

(1) Any person or employee thereof doing business under any law of this state, any other state, or the United States relating to banks, trust companies, savings and loan associations, industrial loan companies,

pension trusts, credit unions, or insurance companies.

(2) Any nonprofit cooperative association organized under Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code, in loaning or advancing money in connection with any activity mentioned therein.

(3) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis, in loaning or advancing money to the members thereof or in connection with any business of that type.

(4) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of Congress entitled the "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured.

(5) Any person licensed to practice law in this state, not actively and principally engaged in the business of negotiating loans secured by real property, when that person renders services in the course of his or her practice as an attorney at law, and the disbursements of that person, whether paid by the borrower or other person, are not charges or costs and expenses regulated by or subject to the limitations of Article 7 (commencing with Section 10240), and the fees and disbursements are not shared, directly or indirectly, with the person negotiating the loan or the lender.

(6) Any person licensed as a finance lender when acting under the authority of that license.

(7) Any cemetery authority as defined by Section 7018 of the Health and Safety Code, that is authorized to do business in this state or its authorized agent.

(8) Any person authorized in writing by a savings institution to act as an agent of that institution, as authorized by Section 6520 of the Financial Code or comparable authority of the Office of Thrift Supervision of the United States Department of the Treasury by its regulations, when acting under the authority of that written authorization.

(9) Any person who is licensed as a securities broker or securities dealer under any law of this state, or of the United States, or any employee, officer, or agent of that person, if that person, employee, officer, or agent is acting within the scope of authority granted by that license in connection with a transaction involving the offer, sale, purchase, or exchange of a security representing an ownership interest in a pool of promissory notes secured directly or indirectly by liens on real property, which transaction is subject to any law of this state or the United States regulating the offer or sale of securities.

(10) Any person licensed as a residential mortgage lender or servicer when acting under the authority of that license.

(11) Any organization that has been approved by the United States Department of Housing and Urban Development pursuant to Section 106 (a)(1)(iii) of the federal Housing and Urban Development Act of 1968 (12 U.S.C. Sec. 1701x), to provide counseling services, or an employee of such an organization, when those services are provided at no cost to the borrower and are in connection with the modification of the terms of a loan secured directly or collaterally by a lien on residential real property containing four or fewer dwelling units.

(b) Persons described in paragraph (1), (2), or (3), as follows, are exempt from the provisions of subdivisions (d) and (e) of Section 10131 or Section 10131.1 with respect to the collection of payments or performance of services for lenders or on notes of owners in connection with loans secured directly or collaterally by liens on real property:

(1) The person makes collections on 10 or less of those loans, or in amounts of forty thousand dollars ($40,000) or less, in any calendar year.

(2) The person is a corporation licensed as an escrow agent under Division 6 (commencing with Section 17000) of the Financial Code and the payments are deposited and maintained in the escrow agent's trust account.

(3) An employee of a real estate broker who is acting as the agent of a person described in paragraph (4) of subdivision (b) of Section 10232.4.

For purposes of this subdivision, performance of services does not include soliciting borrowers, lenders, or purchasers for, or negotiating, loans secured directly or collaterally by a lien on real property.

(c) (1) Subdivision (d) of Section 10131 does not apply to an employee of a real estate broker who, on behalf of the broker, assists the broker in meeting the broker's obligations to its customers in residential mortgage loan transactions, as defined in Section 50003 of the Financial Code, where the lender is an institutional lender, as defined in Section 50003 of the Financial Code, provided the employee does not participate in any negotiations occurring between the principals.

(2) A broker shall exercise reasonable supervision and control over the activities of nonlicensed employees acting under this subdivision, and shall comply with Section 10163 for each location where the nonlicensed persons are employed.

This section does not restrict the ability of the commissioner to discipline a broker or corporate broker licensee or its designated officer, or both the corporate broker licensee and its designated officer, for misconduct of a nonlicensed employee acting under this subdivision, or, pursuant to Section 10080, to adopt, amend, or repeal rules or regulations governing the employment or supervision of an employee who is a nonlicensed person as described in this subdivision.

Other Exemptions

10133.15. The provisions of Article 5 (commencing with Section 10230) and Article 7 (commencing with Section 10240) do not apply to any person whose business is that of acting as an authorized representative, agent, or loan correspondent of any person or employee thereof doing business under any law of this state, any other state, or the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies or when making loans qualified for sale to any of the foregoing insofar as that business is concerned.

Clerical Exemptions

10133.2. The provisions of Sections 10131, 10131.1, 10131.2, and 10132 do not apply to any stenographer, bookkeeper, receptionist, telephone operator, or other clerical help in carrying out their functions as such.

Transactions Involving FCC-Regulated Enterprises

10133.3. The provisions of Sections 10131 and 10131.2 relating to business opportunities do not apply to any person, partnership, corporation, or other legal entity which for another or others sells or offers to sell, solicits prospective sellers or purchasers of, solicits or obtains listings of, advertises for sale, buys or offers to buy, or negotiates the purchase, sale, or exchange of radio, television, or cable enterprises which are licensed and regulated by the Federal Communications Commission, or any successor agency, pursuant to the Communications Act of 1934, as amended and which purchase, sale, or exchange is not in substance a transfer of real property.

MOG Property – Activities Not Requiring A License

10133.35. A real estate broker's license shall not be required to engage in any of the following activities with respect to a mineral, oil, or gas property:

(a) To act as a depository under an oil lease, gas lease, or oil and gas lease other than for purpose of sale.

(b) To engage in any transaction subject to an order of a court of competent jurisdiction.

(c) To engage in the business of drilling for or producing oil or gas or mining for or producing minerals.

(d) To negotiate leases or agreements between an owner of mineral, oil, or gas lands, leases, or mineral rights, and a person organized for or engaging in oil or gas or mineral or metal production, or to enter into leases or agreements with an owner of mineral, oil, or gas lands, leases, or mineral rights on behalf of a disclosed or undisclosed person organized for or engaging in oil or gas or mineral or metal production.

(e) To deal with mineral rights or land, other than oil or gas rights or land, as the owner of the rights or land.

Exemption – Film Location Representative

10133.4. (a) The provisions of subdivision (b) of Section 10131 do not apply to persons acting in the capacity of a film location representative in connection with a transaction which complies with the requirements of subdivision (c).

(b) As used in this section:

(1) "Film location representative" means an employee of a principal arranging for the use of real property for photographic purposes.

(2) "Principal" means the person who will use the real property for photographic purposes.

(c) In every transaction arranged by a film location representative, the principal shall maintain liability insurance insuring both that principal and the real property owner against death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the real property which is the subject of the transaction. The amount of the insurance coverage shall not be less than five hundred thousand dollars ($500,000) per person or one million dollars ($1,000,000) per occurrence for personal injury and five hundred thousand dollars ($500,000) for property damage. It must be issued by an insurance carrier authorized to sell such insurance in California.

Exemption from Article 5 – Certain Institutional Loans

10133.5. The provisions of Article 5 (commencing with Section 10230) do not apply to any person who is an approved lender, mortgagee, seller, or servicer for the Federal Housing Administration, United States Department of Veterans Affairs, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, when making loans to be sold to, or when servicing loans on behalf of and subject to audit by, any of the foregoing with respect to those loans.

Leasing

10135. When a lease or leasing is referred to in this article, it includes any lease, whether such lease is the sole transaction involved, or the principal or an incidental part of the transaction involved.

Action for Compensation

10136. No person engaged in the business or acting in the capacity of a real estate broker or a real estate salesman within this State shall bring or maintain any action in the courts of this State for the collection of compensation for the performance of any of the acts mentioned in this article without alleging and proving that he was a duly licensed real estate broker or real estate salesman at the time the alleged cause of action arose.

Unlawful Employment or Payment of Compensation – Penalty

10137. It is unlawful for any licensed real estate broker to employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this chapter who is not a licensed real estate broker, or a real estate salesperson licensed under the broker employing or compensating him or her, or to employ or compensate, directly or indirectly, any licensee for engaging in any activity for which a

mortgage loan originator license endorsement is required, if that licensee does not hold a mortgage loan originator license endorsement; provided, however, that a licensed real estate broker may pay a commission to a broker of another state.

No real estate salesperson shall be employed by or accept compensation from any person other than the broker under whom he or she is at the time licensed.

It is unlawful for any licensed real estate salesperson to pay any compensation for performing any of the acts within the scope of this chapter to any real estate licensee except through the broker under whom he or she is at the time licensed.

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee, in accordance with the provisions of this part relating to hearings.

Partnership – Acting Partners Must Be Licensed

10137.1. Nothing contained in this division shall preclude a partnership from performing acts for which a real estate broker license is required, provided every partner through whom the partnership so acts is a licensed real estate broker.

Penalties for Payment of Unlawful Compensation

10138. It is a misdemeanor, punishable by a fine of not exceeding one hundred dollars ($100) for each offense, for any person, whether obligor, escrowholder or otherwise, to pay or deliver to anyone a compensation for performing any of the acts within the scope of this chapter, who is not known to be or who does not present evidence to such payor that he is a regularly licensed real estate broker at the time such compensation is earned.

For a violation of any of the provisions of this section, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee in accordance with the provisions of this part relating to hearings.

Penalties for Unlicensed Person

10139. Any person acting as a real estate broker, real estate salesperson, or mortgage loan originator without a license or license endorsement, or who advertises using words indicating that he or she is a real estate broker, real estate salesperson, or mortgage loan originator without being so licensed or without having obtained a license endorsement, shall be guilty of a public offense punishable by a fine not exceeding twenty thousand dollars ($20,000), or by imprisonment in the county jail for a term not to exceed six months, or by both fine and imprisonment; or if a corporation, be punished by a fine not exceeding sixty thousand dollars ($60,000). If a Real Estate Fraud Prosecution Trust Fund, as described in Section 27388 of the Government Code, exists in the county where a person or corporation is convicted, any fine collected from the person in excess of ten thousand dollars ($10,000) or any fine collected from the corporation in excess of fifty thousand dollars ($50,000) shall be deposited in that Real Estate Fraud Prosecution Trust Fund.

False Advertising

10140. Every officer, agent or employee of any company, and every other person who knowingly authorizes, directs or aids in the publication, advertisement, distribution or circularization of any false statement or representation concerning any land or subdivision thereof, as defined in Chapter 1 (commencing at Section 11000) of Part 2 of this division, offered for sale or lease, or, if the land is owned by the State or Federal Government, which such person offers to assist another or others to file an application for the purchase or lease of, or to locate or enter upon, and every person who, with knowledge that any advertisement, pamphlet, prospectus or letter concerning any said land or subdivision, as defined in Chapter 1 (commencing at Section 11000) of Part 2 of this division, contains any written statement that is false or fraudulent, issues, circulates, publishes or distributes the same, or causes the same to be issued, circulated, published or distributed, or who, in any other respect, willfully violates or fails to

comply with any of the provisions of this section, or who in any other respect willfully violates or fails, omits or neglects to obey, observe or comply with any order, permit, decision, demand or requirement of the commissioner under this section, is guilty of a public offense, and shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment, and, if a real estate licensee, he shall be held to trial by the commissioner for a suspension or revocation of his license, as provided in the provisions of this part relating to hearings. The district attorney of each county in this State shall prosecute all violations of the provisions of this section in respective counties in which the violations occur.

Disclosure of Name

10140.5. Each advertisement or other statement which is published by a real estate broker or salesman offering to assist persons to file applications for the purchase or lease of, or to locate or enter upon, lands owned by the State or Federal Government shall, when published, indicate the name of the broker for whom it is published and state that he is licensed as a real estate broker by the State of California.

Disclosure of Licensed Status in Advertising

10140.6. (a) A real estate licensee shall not publish, circulate, distribute, or cause to be published, circulated, or distributed in any newspaper or periodical, or by mail, any matter pertaining to any activity for which a real estate license is required that does not contain a designation disclosing that he or she is performing acts for which a real estate license is required.

(b) (1) A real estate licensee shall disclose his or her license identification number and, if that licensee is a mortgage loan originator, the unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry, on all solicitation materials intended to be the first point of contact with consumers and on real property purchase agreements when acting as an agent in those transactions. The commissioner may adopt regulations identifying the materials in which a licensee must disclose a license identification number and, if that licensee is a mortgage loan originator, the unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry.

(2) For purposes of this section, "solicitation materials intended to be the first point of contact with consumers" includes business cards, stationery, advertising fliers, and other materials designed to solicit the creation of a professional relationship between the licensee and a consumer, and excludes an advertisement in print or electronic media and "for sale" signs.

(3) Nothing in this section shall be construed to limit or change the requirement described in Section 10236.4 as applicable to real estate brokers.

(c) The provisions of this section shall not apply to classified rental advertisements reciting the telephone number at the premises of the property offered for rent or the address of the property offered for rent.

(d) "Mortgage loan originator," "unique identifier," and "Nationwide Mortgage Licensing System and Registry" have the meanings set forth in Section 10166.01.

Sale Price Information Disclosure – Broker or Escrow

10141. Within one month after the closing of a transaction in which title to real property or in the sale of a business when real or personal property is conveyed from a seller to a purchaser through a licensed real estate broker, such broker shall inform or cause the information to be given to the seller and purchaser in writing of the selling price thereof and in event an exchange of real property or a business opportunity is involved, such information shall include a description of said property and amount of added money consideration, if any. If the transaction is closed through escrow and the escrow holder renders a closing statement which reveals such information, that shall be deemed compliance with this section on the part of the broker.

Broker's Responsibility – Recording Trust Deeds – Escrow Compliance

10141.5. Within one week after the closing of a transaction negotiated by a real estate broker in which title to real property is conveyed from a seller to a purchaser and a deed of trust secured by real property is executed, such broker shall cause such deed of trust to be recorded with the county recorder of the county in which the real property is located, or cause it to be delivered to the beneficiary with a written recommendation that it be recorded forthwith, unless written instructions not to record are received from the beneficiary. If the transaction is closed through escrow and the deed of trust is delivered to the escrow holder within the time prescribed by this section, that shall be deemed compliance with this section on the part of the broker. Nothing in this section shall affect the validity of a transfer of title to real property.

Notification of Escrow Activities

10141.6. (a) A real estate broker who engages in escrow activities for five or more transactions in a calendar year pursuant to the exemption from the Escrow Law contained in Section 17006 of the Financial Code, or whose escrow activities pursuant to that exemption equal or exceed one million dollars ($1,000,000) in a calendar year, shall file with the department a report, within 60 days following the completion of the calendar year, documenting the number of escrows conducted and the dollar volume escrowed during the calendar year in which the threshold was met. This report shall be made on a form acceptable to the commissioner.

(b) A real estate broker subject to this section and Section 10232.2 may file consolidated reports that include all of the information required under this section and Section 10232.2. Those consolidated reports shall clearly indicate that they are intended to satisfy the requirements of both sections.

(c) A real estate broker who fails to submit the report required pursuant to subdivision (a) shall be assessed a penalty of fifty dollars ($50) per day for each day the report has not been received by the department, up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day, the penalty shall be one hundred dollars ($100) per day, not to exceed a total penalty of ten thousand dollars ($10,000), regardless of the number of days, until the department receives the report.

(d) The commissioner may suspend or revoke the license of a real estate broker who fails to pay a penalty imposed pursuant to this section. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of that penalty.

(e) All penalties paid or collected under this section shall be deposited into the Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470).

(f) The reports described in this section are exempted from any requirement of public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code.

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

Delivery of Agreement

10142. When a licensee prepares or has prepared an agreement authorizing or employing such licensee to perform any of the acts for which he is required to hold a license, or when such licensee secures the signature of any person to any contract pertaining to such services or transaction, he shall deliver a copy of the agreement to the person signing it at the time the signature is obtained.

Report to Commissioner – Application for Government Land

10143.5. Any real estate broker who assists another or others, or whose real estate salesmen assist another or others, for a compensation, in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the State or Federal Government shall report to the commissioner the names and addresses of all persons he or his salesmen have assisted in filing applications for land owned by the State or Federal Government and the amount of compensation received from such persons. The report shall be filed quarterly within 10 days

after the end of each calendar quarter.

Contract or Agreement Provisions

10144. The commissioner may prescribe by regulation the information which shall be contained in contracts or other agreements by a real estate broker, or a real estate salesman, to assist another or others in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the State or Federal Government, including, but not limited to, information with regard to the services agreed to be performed and information with regard to the hazards which may prevent the person to be assisted in filing an application with the State or Federal Government ever receiving any state or federal land under the application.

Handling of Trust Funds – Interest-Bearing Accounts – Neutral Escrow Defined

10145.

(a) (1) A real estate broker who accepts funds belonging to others in connection with a transaction subject to this part shall deposit all those funds that are not immediately placed into a neutral escrow depository or into the hands of the broker's principal, into a trust fund account maintained by the broker in a bank or recognized depository in this state. All funds deposited by the broker in a trust fund account shall be maintained there until disbursed by the broker in accordance with instructions from the person entitled to the funds.

(2) Notwithstanding the provisions of paragraph (1), a real estate broker collecting payments or performing services for investors or note owners in connection with loans secured by a first lien on real property may deposit funds received in trust in an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, if the investor or note owner is any one of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, or insurance company doing business under the authority of, and in accordance with, the laws of this state, another state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) A licensed real estate broker selling all or part of the loan, note, or contract to a lender or purchaser specified in subparagraphs (A) to (G), inclusive.

(3) A real estate broker who deposits funds held in trust in an out-of-state depository institution in accordance with paragraph (2) shall make available, in this state, the books, records, and files pertaining to the trust accounts to the commissioner or the commissioner's representatives or pay the reasonable expenses for travel and lodging incurred by the commissioner or the commissioner's representatives in order to conduct an examination at an out-of-state location.

(b) A real estate broker acting as a principal pursuant to Section 10131.1 shall place all funds received from others for the purchase of real property sales contracts or promissory notes secured directly or collaterally by liens on real property in a neutral escrow depository unless delivery of the contract or note is made simultaneously with the receipt of the purchase funds.

(c) A real estate sales person who accepts trust funds from others on behalf of the broker under whom he or she is licensed shall immediately deliver the funds to the broker or, if so directed by the broker, shall deliver the funds into the custody of the broker's principal or a neutral escrow depository or shall deposit the funds into the broker's trust fund account.

(d) If not otherwise expressly prohibited by this part, a real estate broker may, at the request of the owner of trust funds or of the principals to a transaction or series of transactions from whom the broker has received trust funds, deposit the funds into an interest-bearing account in a bank, savings and loan association, credit union, or industrial loan company, the accounts of which are insured by the Federal Deposit Insurance Corporation, if all of the following requirements are met:

(1) The account is in the name of the broker as trustee for the designated beneficiary or principal of a transaction or series of transactions.

(2) All of the funds in the account are covered by insurance provided by an agency of the United States.

(3) The funds in the account are kept separate, distinct, and apart from funds belonging to the broker or to any other person for whom the broker holds funds in trust.

(4) The broker discloses to the person from whom the trust funds are received, and to a beneficiary whose identity is known to the broker at the time of establishing the account, the nature of the account, how interest will be calculated and paid under various circumstances, whether service charges will be paid to the depository and by whom, and possible notice requirements or penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Nothing in subdivision (d) shall preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section, "neutral escrow" means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in paragraph (1) or (3) of subdivision (a) of Section 17006 of that code.

Advance Fees to Be Deposited in Trust Account

10146. Any real estate broker who contracts for or collects an advance fee from any other person, hereinafter referred to as the "principal," shall deposit any such amount or amounts, when collected in a trust account with a bank or other recognized depository. Such funds are trust funds and not the funds of the agent. Amounts may be withdrawn therefrom for the benefit of the agent only when actually expended for the benefit of the principal or five days after the verified accounts mentioned hereinafter have been mailed to the principal. Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of the trust account in accordance with the procedures set forth in Section 7473 of the Government Code.

The commissioner may issue such rules and regulations as he or she deems necessary to regulate the method of accounting, and to accomplish the purpose of the provisions of this code relating to advance fees including, but not limited to, establishing forms for and determining information to be included in such accountings. Each principal shall be furnished a verified copy of such accountings at the end of each calendar quarter and when the contract has been completely performed by the licensee. The commissioner shall be furnished a verified copy of any account or all accounts on his or her demand therefor.

Where advance fees actually paid by or on behalf of any principal are not handled in accordance with the preceding paragraph, it shall be presumed that the agent has violated Sections 506 and 506a of the Penal Code. The principal may recover treble damages for amounts so misapplied and shall be entitled to reasonable attorney's fees in any action brought to recover the same.

Commercial Property Owner's Guide to Earthquake Safety

10147. (a) On or before January 1, 1993, the Seismic Safety Commission shall develop, adopt, and publish a Commercial Property Owner's Guide to Earthquake Safety for distribution to licensees for purposes of Section 2079.9 of the Civil Code and, upon request, to any member of the general public.

(b) In developing the guide, the Seismic Safety Commission shall consult with the Office of Emergency Services, the Division of Mines and Geology of the Department of Conservation, the Bureau of Real Estate, and other interested agencies and persons.

(c) The commission shall, to the extent possible, rely on currently available data to develop the guide. To the extent necessary, the commission may contract for the development and production of the guide. The commission shall update the contents of the guide whenever it determines that information within the guide is sufficiently inaccurate or incomplete so as to reduce the effectiveness of the guide. The commission shall charge a fee to cover the costs of production, distribution, development, and updating the guide.

(d) The guide shall include, but need not be limited to, all of the following:

(1) Maps and information on geologic and seismic hazard conditions in the state.

(2) Explanations of typical structural and nonstructural earthquake hazards.

(3) Recommendations for mitigating the hazards of an earthquake, including

references and explanations of what constitutes "adequate wall anchorage" as defined in Section 8893.1 of the Government Code.

(4) A statement that there are no guarantees of safety or damage prevention that can be made with respect to a major earthquake and that only precautions, such as retrofitting, can be taken to reduce the risk of various types of earthquake damage. For purposes of preparing the statement, the commission shall confer with insurers and design professional associations.

(5) Notice of the obligation to post a sign as required by Section 8875.8 of the Government Code.

Negotiability of Real Estate Commissions – Notice Requirement

10147.5. (a) Any printed or form agreement which initially establishes, or is intended to establish, or alters the terms of any agreement which previously established a right to compensation to be paid to a real estate licensee for the sale of residential real property containing not more than four residential units, or for the sale of a mobilehome, shall contain the following statement in not less than 10-point boldface type immediately preceding any provision of such agreement relating to compensation of the licensee:

Notice: The amount or rate of real estate commissions is not fixed by law. They are set by each broker individually and may be negotiable between the seller and broker.

(b) The amount or rate of compensation shall not be printed in any such agreement.

(c) Nothing in this section shall affect the validity of a transfer of title to real property.

(d) As used in this section, "alters the terms of any agreement which previously established a right to compensation" means an increase in the rate of compensation, or the amount of compensation if initially established as a flat fee, from the agreement which previously established a right to compensation.

Loan Modification – Notice of Free Services

10147.6. (a) Any licensee who negotiates, attempts to negotiate, arranges, attempts to arrange, or otherwise offers to perform a mortgage loan modification or other form of mortgage loan forbearance for a fee or other form of compensation paid by the borrower, shall provide the following to the borrower, as a separate statement, in not less than 14-point bold type, prior to entering into any fee agreement with the borrower:

It is not necessary to pay a third party to arrange for a loan modification or other form of forbearance from your mortgage lender or servicer. You may call your lender directly to ask for a change in your loan terms. Nonprofit housing counseling agencies also offer these and other forms of borrower assistance free of charge. A list of nonprofit housing counseling agencies approved by the United States Department of Housing and Urban Development (HUD) is available from your local HUD office or by visiting www.hud.gov.

(b) If loan modification or other mortgage loan forbearance services are offered or negotiated in one of the languages set forth in Section 1632 of the Civil Code, a translated copy of the statement in subdivision (a) shall be provided to the borrower in that foreign language.

(c) A violation of this section by a natural person who is a licensee is a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the county jail for a term not to exceed one year, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding fifty thousand dollars ($50,000). These penalties are cumulative to any other remedies or penalties provided by law.

(d) This section shall apply only to mortgages and deeds of trust secured by residential real property containing four or fewer dwelling units.

Retention of Records – Chargeable Audits – Cost Recovery – Penalties for Unlawful Destruction of Records

10148. (a) A licensed real estate broker shall retain for three years copies of all listings,

deposit receipts, canceled checks, trust records, and other documents executed by him or her or obtained by him or her in connection with any transactions for which a real estate broker license is required. The retention period shall run from the date of the closing of the transaction or from the date of the listing if the transaction is not consummated. After notice, the books, accounts, and records shall be made available for examination, inspection, and copying by the commissioner or his or her designated representative during regular business hours; and shall, upon the appearance of sufficient cause, be subject to audit without further notice, except that the audit shall not be harassing in nature.

(b) The commissioner shall charge a real estate broker for the cost of any audit, if the commissioner has found, in a final desist and refrain order issued under Section 10086 or in a final decision following a disciplinary hearing held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that the broker has violated Section 10145 or a regulation or rule of the commissioner interpreting Section 10145.

(c) If a broker fails to pay for the cost of an audit as described in subdivision (b) within 60 days of mailing a notice of billing, the commissioner may suspend or revoke the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the cost is paid or until the broker's right to renew a license has expired.

(d) The commissioner may maintain an action for the recovery of the cost of an audit in any court of competent jurisdiction. In determining the cost incurred by the commissioner for an audit, the commissioner may use the estimated average hourly cost for all persons performing audits of real estate brokers.

(e) The bureau may suspend or revoke the license of any real estate broker, real estate salesperson, or corporation licensed as a real estate broker, if the real estate broker, real estate salesperson, or any director, officer, employee, or agent of the corporation licensed as a real estate broker knowingly destroys, alters, conceals, mutilates, or falsifies any of the books, papers, writings, documents, or tangible objects that are required to be maintained by this section or that have been sought in connection with an investigation, audit, or examination of a real estate licensee by the commissioner.

Homeowner's Guide to Earthquake Safety

10149. (a) On or before July 1, 1992, the Seismic Safety Commission shall develop, adopt, and publish a Homeowner's Guide to Earthquake Safety for distribution to licensees for purposes of Section 2079.8 of the Civil Code and, upon request, to any member of the general public.

(b) In developing the guide, the Seismic Safety Commission shall consult with the Office of Emergency Services, the Division of Mines and Geology of the Department of Conservation, the Bureau of Real Estate, and other interested agencies and persons.

(c) The commission shall, to the extent possible, rely on currently available data to develop the guide. To the extent necessary, the commission may contract for the development and production of the guide. The commission shall update the contents of the guide whenever it determines that information within the guide is sufficiently inaccurate or incomplete so as to reduce the effectiveness of the guide. The commission shall charge a fee to cover the costs of production, distribution, development, and updating the guide.

(d) The guide shall include, but need not be limited to, all of the following:

(1) Maps and information on geologic and seismic hazard conditions for all areas of the state.

(2) Explanations of the related structural and nonstructural hazards.

(3) Recommendations for mitigating the hazards of an earthquake.

(4) A statement that there are no guarantees of safety or damage prevention that can be made with respect to a major earthquake and that only precautions, such as retrofitting,

can be taken to reduce the risk of various types of earthquake damage. For purposes of preparing the statement, the commission shall confer with insurers and design professional associations.

Article 2. Licenses

Broker Examination and License Applications

10150. (a) Application for the real estate broker license examination shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the broker examination application. The application for the broker examination shall be accompanied by the real estate broker license examination fee.

(b) Persons who have been notified by the commissioner that they passed the real estate broker license examination may apply for a real estate broker license. A person applying for the broker examination may also apply for a real estate broker license. However, a license shall not be issued until the applicant passes the real estate broker license examination. If there is any change to the information contained in a real estate broker license application after the application has been submitted and before the license has been issued, the commissioner may require the applicant to submit a supplement to the application listing the changed information.

(c) Application for the real estate broker license shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the broker license application. The application for the real estate broker license shall be accompanied by the appropriate fee.

(d) Application for an endorsement to act as a mortgage loan originator, as defined in Section 10166.01, shall be made either electronically or in writing as directed by the commissioner. The commissioner may prescribe the format and content of the mortgage loan originator endorsement application, which shall meet the minimum requirements for licensing of a mortgage loan originator, pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

Experience and Education Requirements for Broker License

10150.6. (a) In addition to satisfying the other requirements of this article, and except as provided in subdivisions (b) and (c), an applicant for an original real estate broker's license shall demonstrate to the Real Estate Commissioner that he or she has held a real estate salesperson's license for at least two years and qualified for the renewal of his or her real estate salesperson status, within the five-year period immediately prior to the date of his or her application for the broker's license, and during such time was actively engaged in the business of real estate salesperson.

(b) An applicant for a real estate broker's license having at least the equivalent of two years' general real estate experience may file a written petition with the Department of Real Estate setting forth his or her qualifications and experience, and, if the commissioner approves, he or she may be issued a real estate broker's license immediately upon passing the examination and satisfying the other requirements of this article.

(c) In considering a petition described in subdivision (b), the commissioner may treat a degree from a four-year college or university, which course of study included a major or minor in real estate, as the equivalent of two years' general real estate experience.

Salesperson Examination and License Applications

10151. (a) Application for the real estate salesperson license examination shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the salesperson examination application. The application for the salesperson examination shall be accompanied by the real estate salesperson license examination fee.

(b) Persons who have been notified by the commissioner that they passed the real estate salesperson license examination may apply for a real estate salesperson license. A person applying for the salesperson examination may also apply for a real estate salesperson license. However, a license shall not be issued until the

applicant passes the real estate salesperson license examination. If there is any change to the information contained in a real estate salesperson license application after the application has been submitted and before the license has been issued, the commissioner may require the applicant to submit a supplement to the application listing the changed information.

(c) An application for the real estate salesperson license examination or for both the examination and license that is received by the commissioner on or after October 1, 2007, shall include evidence or certification, satisfactory to the commissioner, of successful completion at an accredited institution of a three-semester unit course, or the quarter equivalent thereof, or successful completion of an equivalent course of study as defined in Section 10153.5, in real estate principles as well as the successful completion at an accredited institution of a course in real estate practice and one additional course set forth in Section 10153.2, other than real estate principles, real estate practice, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal. The applicant shall provide this evidence or certification to the commissioner prior to taking the real estate salesperson license examination.

(d) The commissioner shall waive the requirements of this section for the following applicants:

(1) An applicant who is a member of the State Bar of California.

(2) An applicant who has qualified to take the examination for an original real estate broker license by satisfying the requirements of Section 10153.2.

(e) Application for endorsement to act as a mortgage loan originator, as defined in Section 10166.01, shall be made either electronically or in writing as directed by the commissioner. The commissioner may prescribe the format and the content of the mortgage loan originator endorsement application, which shall meet the minimum requirements for licensing of a mortgage loan originator, pursuant to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

Nonresident Applicant – Eligibility by State of Residence – Consent to Service of Process

10151.5. (a) An applicant who is not a resident of this state shall be eligible for a real estate license provided (1) the applicant qualifies for licensure under this chapter, including Section 10162, and (2) the state or other jurisdiction that is the place of residence of the applicant permits a resident of California to qualify for and obtain a real estate license in that jurisdiction.

(b) A foreign corporation shall be exempt from the eligibility requirement set forth in clause (2) of subdivision (a) if, and for so long as, at least one of the officers of the corporation who is designated and licensed as a real estate broker pursuant to Section 10158 or 10211 is a resident of this state.

(c) Every nonresident applicant for a real estate license shall, along with his or her application, file with the Real Estate Commissioner an irrevocable consent that if in any action commenced against him or her in this state, personal service of process upon him or her cannot be made in this state after the exercise of due diligence, a valid service may thereupon be made upon the applicant by delivering the process to the Bureau of Real Estate.

Proof of Honesty - Fingerprints

10152. (a) The commissioner may require any other proof he or she may deem advisable concerning the honesty and truthfulness of an applicant for a real estate license or license examination, or of the officers, directors, or persons owning 10 percent or more of the stock, of a corporation making application therefor, before authorizing the issuance of a real estate license. For this purpose the commissioner may call a hearing in accordance with this part relating to hearings. To assist in his or her determination the commissioner shall require every original applicant to be fingerprinted prior to issuing a license. The commissioner may require the fingerprints to be submitted either with the application to take the license examination or with the application for a real estate license.

(b) The commissioner shall require a person who submits a petition for reinstatement of his or her license or reduction of a penalty pursuant to Section 11522 of the Government Code, in addition to meeting any other requirements imposed for purposes of the reinstatement or penalty reduction, to submit his or her fingerprints with the petition.

Examination – All Applicants

10153. In addition to the proof of honesty and truthfulness required of any applicant for a real estate license, the commissioner shall ascertain by written examination that the applicant, and in case of a corporation applicant for a real estate broker's license that each officer, or agent thereof through whom it proposes to act as a real estate licensee, has all of the following:

(a) An appropriate knowledge of the English language, including reading, writing, and spelling and of arithmetical computations common to real estate and business opportunity practices.

(b) An understanding of the principles of real estate and business opportunity conveyancing, the general purposes and general legal effect of agency contracts, deposit receipts, deeds, mortgages, deeds of trust, chattel mortgages, bills of sale, land contracts of sale and leases, and of the principles of business and land economics and appraisals.

(c) A general and fair understanding of the obligations between principal and agent, of the principles of real estate and business opportunity practice and the canons of business ethics pertaining thereto, of the provisions of this part, of Chapter 1 (commencing with Section 11000) of Part 2, and of the regulations of the Real Estate Commissioner as contained in Title 10 of the California Administrative Code.

Examinations – Cheating/Subversion

10153.01. (a) No person shall cheat on, subvert, or attempt to subvert a licensing examination given by the department. Cheating on, subverting, or attempting to subvert a licensing examination includes, but is not limited to, engaging in, soliciting, or procuring any of the following:

(1) Any communication between one or more examinees and any person, other than a proctor or examination official, while the examination is in progress.

(2) Copying answers from another examinee or permitting one's answers to be copied by another examinee.

(3) The taking of all or a part of the examination by a person other than the applicant.

(4) Removing from the examination room any examination materials without authorization.

(5) The unauthorized reproduction by any means of any portion of the actual licensing examination.

(6) Aiding by any means the unauthorized reproduction of any portion of the actual licensing examination.

(7) Possession or use at any time during the examination or while the examinee is on the examination premises of any device, material, or document that is not expressly authorized for use by examinees during the examination, including, but not limited to, notes, crib sheets, textbooks, and electronic devices.

(8) Failure to follow any examination instruction or rule related to examination security.

(9) Providing false, fraudulent, or materially misleading information concerning education, experience, or other qualifications as part of, or in support of, any application for admission to an examination.

(b) The commissioner may bar any candidate who willfully cheats on, subverts, or attempts to subvert an examination from taking any license examination and from holding an active real estate license under any provision of this code for a period of up to three years.

Identity of Examinee – Deception or Fraud Relating to Examination, Application or Examination Request

10153.1. It is unlawful for any person with respect to any examination under this part to practice any deception or fraud with regard to his or her identity in connection with any examination, application, or request to be examined.

Any person who willfully violates or knowingly participates in the violation of this section is guilty of a misdemeanor.

Real Estate Courses Required for Broker License Applicants – Waiver

10153.2. (a) An applicant to take the examination for an original real estate broker license shall also submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of:

(1) A three-semester unit course, or the quarter equivalent thereof, in each of the following:

(A) Real estate practice.

(B) Legal aspects of real estate.

(C) Real estate appraisal.

(D) Real estate financing.

(E) Real estate economics or accounting.

(2) A three-semester unit course, or the quarter equivalent thereof, in three of the following:

(A) Advanced legal aspects of real estate.

(B) Advanced real estate finance.

(C) Advanced real estate appraisal.

(D) Business law.

(E) Escrows.

(F) Real estate principles.

(G) Property management.

(H) Real estate office administration.

(I) Mortgage loan brokering and lending.

(J) Computer applications in real estate.

(K) On and after July 1, 2004, California law that relates to common interest developments, including, but not limited to, topics addressed in the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code) and in the Commercial and Industrial Common Interest Development Act (Part 5.3 (commencing with Section 6500) of Division 4 of the Civil Code).

(b) The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California and shall waive the requirements for which an applicant has successfully completed an equivalent course of study as determined under Section 10153.5.

(c) The commissioner shall extend credit under this section for any course completed to satisfy requirements of Section 10153.3 or 10153.4.

Real Estate Principles Course Required of Salesperson Applicants – Waiver

10153.3. (a) This section shall apply to an application for the real estate salesperson license examination, the real estate salesperson license, and for both the examination and license received by the commissioner prior to October 1, 2007.

(b) Application for the real estate salesperson license examination pursuant to this section shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the salesperson examination application. The application for the salesperson examination shall be accompanied by the real estate salesperson license examination fee.

(c) In order to take the examination for a real estate salesperson license, an applicant under this section shall submit evidence or certification satisfactory to the commissioner of enrollment in, or successful completion at, an accredited institution of a three-semester unit course, or the

quarter equivalent thereof, or successful completion of an equivalent course of study as defined in Section 10153.5, in real estate principles. Evidence of enrollment satisfactory to the commissioner may include a statement from the applicant made under penalty of perjury.

(d) An applicant under this section may take the real estate salesperson license examination within two years of the date his or her application was received by the commissioner. Notwithstanding subdivision (c), if the applicant fails to schedule an examination or to obtain a passing score on it within that time period, he or she shall be required to submit evidence or certification satisfactory to the commissioner of satisfactory completion at an accredited institution of the courses described in subdivision (c) of Section 10151 or satisfactory completion of an equivalent course of study as defined in Section 10153.5, before taking the examination.

(e) An applicant under this section shall, prior to issuance of the real estate salesperson license, submit evidence or certification satisfactory to the commissioner of successful completion of the real estate principles course as described in subdivision (c) and of successful completion at an accredited institution or successful completion of an equivalent course of study as defined in Section 10153.5, of a course in real estate practice and one additional course set forth in Section 10153.2 other than real estate principles, real estate practice, advanced legal aspects of real estate, advanced real estate finance, or advanced real estate appraisal.

(f) The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California, or who has completed an equivalent course of study, as determined under Section 10153.5, or who has qualified to take the examination for an original real estate broker license by satisfying the requirements of Section 10153.2.

Additional Courses Required of Salespersons – Continuing Education Required at First Renewal – Automatic Suspension – Waiver

10153.4. (a) This section shall apply to an application for the real estate salesperson license examination, the real estate salesperson license, and for both the examination and license received by the commissioner prior to October 1, 2007, if the applicant obtains a passing score on the real estate salesperson license examination and submits a license application prior to October 1, 2007.

(b) Application for the real estate salesperson license examination pursuant to this section shall be made in writing to the commissioner. The commissioner may prescribe the format and content of the salesperson examination application. The application for the salesperson examination shall be accompanied by the real estate salesperson license examination fee.

(c) An applicant under this section shall comply with the requirements of subdivision (c) of Section 10153.3 in order to take the real estate salesperson license examination.

(d) An applicant under this section who obtains a passing score on the real estate salesperson license examination prior to October 1, 2007, shall, prior to the issuance of the real estate salesperson license, submit evidence or certification satisfactory to the commissioner of successful completion at an accredited institution of a three-semester unit course, or the quarter unit equivalent thereof, or successful completion of an equivalent course of study as defined in Section 10153.5, in real estate principles as described in subdivision (c) of Section 10153.3. An applicant for an original real estate salesperson license under this section shall also, prior to the issuance of the license, or within 18 months after issuance, submit evidence or certification satisfactory to the commissioner of successful completion at an accredited institution or a private vocational school, as specified in Section 10153.5, of a course in real estate practice and one additional course set forth in Section 10153.2, other than real estate principles, real estate practice, advanced legal aspects of real estate, advanced

real estate finance, or advanced real estate appraisal.

(e) A salesperson who qualifies for a license pursuant to this section shall not be required for the first license renewal thereafter to complete the continuing education pursuant to Article 2.5 (commencing with Section 10170), except for the courses specified in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 10170.5 or, on and after July 1, 2007, except for the courses specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 10170.5.

(f) The salesperson license issued to an applicant who has satisfied only the requirements of subdivision (c) at the time of issuance shall be automatically suspended effective 18 months after issuance if the licensee has failed to satisfy the requirements of subdivision (d). The suspension shall not be lifted until the suspended licensee has submitted the required evidence of course completion and the commissioner has given written notice to the licensee of the lifting of the suspension.

(g) The original license issued to a salesperson shall clearly set forth the conditions of the license and shall be accompanied by a notice of the provisions of this section and of any regulations adopted by the commissioner to implement this section.

(h) The commissioner shall waive the requirements of this section for any person who presents evidence of admission to the State Bar of California, and the commissioner shall waive the requirement for any course for which an applicant has completed an equivalent course of study as determined under Section 10153.5.

"Equivalent Course of Study" – "Accredited Institution" Defined

10153.5. As used in Sections 10151, 10153.2, 10153.3, and 10153.4, "an equivalent course of study" consists of courses at a private vocational school that have been found by the commissioner, upon consideration of an application for approval, to be equivalent in quality to the real estate courses offered by the colleges and universities accredited by the Western Association of Schools and Colleges. As used in Sections 10151, 10153.2, 10153.3, and 10153.4, "accredited institution" shall mean a college or university that either:

(a) Is accredited by the Western Association of Schools and Colleges, or by any other regional accrediting agency recognized by the United States Department of Education.

(b) In the judgment of the commissioner, has a real estate curriculum equivalent in quality to that of the institutions accredited pursuant to subdivision (a).

Broker License – Four-year Term

10153.6. All real estate broker licenses issued by the commissioner shall be for a period of four years. Applicants shall qualify in the appropriate examination and satisfy all other requirements prior to issuance of the license. The four-year license may be renewed upon filing the required application and fee, and complying with the provisions of Article 2.5 (commencing with Section 10170).

Salesperson License – Four-year Term

10153.7. All real estate salesperson licenses issued by the commissioner shall be for a period of four years.

Applicants must qualify in the appropriate examination and satisfy all other requirements prior to issuance of the license.

The four-year license may be renewed upon filing the required application and fee, and complying with the provisions of Article 2.5 (commencing with Section 10170).

Reexamination for Real Estate License

10153.8. When an applicant for real estate license fails the qualifying examination, he may apply for reexamination by filing the appropriate application and fee.

The application and fee for reexamination shall be filed and the reexamination taken within the two-year period following the date the application for examination was filed.

Proper Renewal Application Entitles Continued Operation

10156.2. An application on the form prescribed by the commissioner for the renewal of a

license, filed before midnight of the last day of the period for which a previous license was issued, accompanied by the applicable renewal fee and good faith evidence of compliance with the provisions of Article 2.5 (commencing with Section 10170), entitles the applicant to continue operating under his or her existing license after its specified expiration date, if not previously suspended or revoked.

If the commissioner determines that the applicant has not complied with the continuing education requirements, he or she shall either (1) advise the applicant of the applicability of Section 10171.2 on an extended period for compliance; or (2) advise the applicant that his or her rights to operate under the prior license will expire five days from the date the notice is mailed, or on the date the license would normally expire, whichever is later; and the commissioner's reason for that determination, and the right of the applicant to request a hearing on the decision. Nothing in this section shall prevent the commissioner from delaying the renewal of the license of a licensee pursuant to Section 10177.

This section shall become operative on July 1, 2012.

Restricted License

10156.5. The commissioner may issue a restricted license to a person:

(a) Who is or has been licensed under this chapter and who has been found by the commissioner after a hearing to have violated provisions of Division 4 of this code where such violation would justify the suspension or revocation of the license.

(b) Who is applying for a license under this chapter, who has met the examination and experience requirements, but who has been found by the commissioner after a hearing to have failed to have made a satisfactory showing that he meets all of the other requirements for the license applied for, where such failure would justify the denial of the license applied for.

Restricted License – Restrictions Authorized

10156.6. A restricted license issued pursuant to Section 10156.5 as the commissioner in his or her discretion finds advisable in the public interest may be restricted:

(a) By term.

(b) To employment by a particular real estate broker, if a salesperson.

(c) By conditions to be observed in the exercise of the privileges granted.

(d) If a salesperson licensee or applicant has not complied with Section 10153. 4 within 18 months after issuance of the license.

Restricted License – Privileges – Suspension – No Renewal Rights

10156.7. (a) A restricted license issued pursuant to Section 10156.5 does not confer any property right in the privileges to be exercised thereunder, and the holder of a restricted license does not have the right to the renewal of the license.

(b) Except as provided in subdivision (c), the commissioner may without hearing issue an order suspending the licensee's right to further exercise any privileges granted under a restricted license pending final determination made after formal hearing.

(c) A restricted salesperson license containing a condition requiring compliance with Section 10153.4 shall be automatically suspended upon the licensee's failure to comply with the condition. The suspension shall not be lifted until the suspended licensee has submitted the required evidence of course completion and the commissioner has given written notice to the licensee of the lifting of the suspension.

Surety Bonds as Condition for Restricted License

10156.8. As one of the conditions to the issuance of a restricted license authorized by Section 10156.5 the commissioner may require the filing of surety bonds in such form and condition as he may require in respect to the restricted licensee for the protection of persons or classes of persons with whom said licensee may deal.

Authority of a License Specific to Person to Whom Issued

10157. No real estate license gives authority to

do any act specified in this chapter to any person, other than the person to whom the license is issued.

Corporation License – Additional Licenses
10158. When a real estate license is issued to a corporation, if it desires any of its officers other than the officer designated by it pursuant to Section 10211, to act under its license as a real estate broker, it shall procure an additional license to so employ each of such additional officers.

Corporations – Authority of Licensed Officer
10159. Each officer of a corporation through whom it is licensed to act as a real estate broker is, while so employed under such license, a licensed real estate broker, but licensed only to act as such for and on behalf of the corporation as an officer.

Responsibility of Corporate Officer in Charge
10159.2. (a) The officer designated by a corporate broker licensee pursuant to Section 10211 shall be responsible for the supervision and control of the activities conducted on behalf of the corporation by its officers and employees as necessary to secure full compliance with the provisions of this division, including the supervision of salespersons licensed to the corporation in the performance of acts for which a real estate license is required.

(b) A corporate broker licensee that has procured additional licenses in accordance with Section 10158 through officers other than the officer designated pursuant to Section 10211 may, by appropriate resolution of its board of directors, assign supervisory responsibility over salespersons licensed to the corporation to its broker-officers.

(c) A certified copy of any resolution of the board of directors assigning supervisory responsibility over real estate salespersons licensed to the corporation shall be filed with the Real Estate Commissioner within five days after the adoption or modification thereof.

Fictitious Name
10159.5. Every person applying for a license under this chapter who desires to have such license issued under a fictitious business name shall file with his application a certified copy of his fictitious business name statement filed with the county clerk pursuant to Chapter 5 (commencing with Section 17900) of Part 3 of Division 7.

Possession and Inspection of Salesman's License
10160. The real estate salesman's license shall remain in the possession of the licensed real estate broker employer until canceled or until the salesman leaves the employ of the broker, and the broker shall make his license and the licenses of his salesman available for inspection by the commissioner or his designated representative.

License Holder in Government Office – Relinquishment/Reinstatement of License
10161.5. When the holder of a real estate broker's or salesman's license is required to relinquish his license to assume an office in local, state, or federal government, he may have it reinstated at any time within six months of termination of his service in office upon payment of the appropriate renewal fee, and compliance with the provisions of Article 2.5 (commencing with Section 10170) of this chapter, if the relinquished license was issued four or more years prior to his application for reinstatement.

Salesman Employment and Termination
10161.8. (a) Whenever a real estate salesman enters the employ of a real estate broker, the broker shall immediately notify the commissioner thereof in writing.

(b) Whenever employment of a real estate salesman is terminated, the broker shall immediately notify the commissioner thereof in writing.

(c) Whenever a licensee acquires a business address different from the address shown on his license he shall mark out the former address on the face of the license and type or write the new main office address in ink on the reverse side, and date and initial same.

(d) Whenever a real estate salesman enters the employ of a new real estate broker he shall mark out the name of his former broker on the face of

the license and type or write the name of the new employing broker in ink on the reverse side, and date and initial same.

Place of Business
10162. Every licensed real estate broker shall have and maintain a definite place of business in the State of California which shall serve as his office for the transaction of business. This office shall be the place where his license is displayed and where personal consultations with clients are held.

No real estate license authorizes the licensee to do business except from the location stipulated in the real estate license as issued or as altered pursuant to Section 10161.8.

Branch Offices
10163. If the applicant for a real estate broker's license maintains more than one place of business within the State he shall apply for and procure an additional license for each branch office so maintained by him. Every such application shall state the name of the person and the location of the place or places of business for which such license is desired. The commissioner may determine whether or not a real estate broker is doing a real estate brokerage business at or from any particular location which requires him to have a branch office license.

Branch or Division Managers – Appointment
10164. (a) An employing broker or corporate designated broker officer may appoint a licensee as a manager of a branch office or division of the employing broker's or employing corporate designated broker officer's real estate business and delegate to the appointed manager the responsibility to oversee day-to-day operations, supervise the licensed activities of licensees, and supervise clerical staff employed in the branch office or division.

(b) Notwithstanding subdivision (a), nothing in this section shall be construed to limit the responsibilities of an employing broker or a corporate designated broker officer pursuant to subdivision (h) of Section 10177. A licensee accepting appointment as a manager shall be subject to disciplinary action pursuant to Section 10165 for failure to properly supervise licensed activity pursuant to subdivision (a).

(c) Appointment of a manager shall only be made by means of a written contract in which the manager accepts the delegated responsibility. The appointing employing broker or corporate designated broker officer shall retain a copy of the contract and send a notice to the department, in a form approved by the commissioner, identifying the appointed manager and the branch office or division the manager is appointed to supervise.

(d) A licensee shall not be appointed as a manager if any of the following apply:

(1) The licensee holds a restricted license.

(2) The licensee is or has been subject to an order of debarment.

(3) The licensee is a salesperson with less than two years of full-time real estate experience within five years preceding the appointment.

(e) Whenever an appointment of a branch manager is terminated or changed, the employing broker or corporate designated broker officer shall immediately notify the commissioner thereof in writing.

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

Penalties
10165. For a violation of any of the provisions of Section 10160, 10161.8, 10162, 10163, or subdivision (b) of Section 10164, the commissioner may temporarily suspend or permanently revoke the license of the real estate licensee in accordance with the provisions of this part relating to hearings.

Article 2.1. Secure and Fair Enforcement for Mortgage Licenses

Definitions
10166.01. For purposes of this article, the following definitions shall apply:

(a) "SAFE Act" means the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Public Law 110-289).

(b) (1) "Mortgage loan originator" means an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for compensation or gain.

(2) Mortgage loan originator does not include any of the following:

(A) An individual who performs purely administrative or clerical tasks on behalf of a person meeting the definition of a mortgage loan originator, except as otherwise provided in subdivision (c) of Section 10166.03. The term "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(B) An individual that only performs real estate brokerage services, as defined in subdivision (a) or (b) of Section 10131, unless that person is compensated by a lender, other mortgage loan originator, or by any agent of any lender or other mortgage loan originator.

(C) An individual who solely renegotiates terms for existing mortgage loans held or serviced by his or her employer and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the SAFE Act requires such an employee to be licensed as a mortgage loan originator under state laws implementing the SAFE Act.

(D) An individual that is solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101 (53D) of Title 11 of the United States Code.

(E) An individual licensed or registered as a mortgage loan originator pursuant to the provisions of the Financial Code and the SAFE Act.

(c) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

(d) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or residential real estate upon which is constructed or intended to be constructed a dwelling. "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobilehome, or trailer, if it is used as a residence.

(e) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

(f) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a mortgage loan originator.

Notice of Loan Activity

10166.02. (a) A real estate broker who acts pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131, and who makes, arranges, or services loans secured by real property containing one to four residential units, and any salesperson who acts in a similar capacity under the supervision of that broker, shall notify the department by January 31, 2010, or within 30 days of commencing that activity, whichever is later. The notification shall be made in writing, as directed, on a form that is acceptable to the commissioner.

(b) No individual may engage in business as a mortgage loan originator under this article without first doing both of the following:

(1) Obtaining and maintaining a real estate license pursuant to Article 2 (commencing with Section 10150).

(2) Obtaining and maintaining a real estate license endorsement pursuant to this article identifying that individual as a licensed mortgage loan originator.

(c) License endorsements shall be valid for a period of one year and shall expire on the 31st of December each year.

(d) Applicants for a mortgage loan originator license endorsement shall apply in a form prescribed by the commissioner. Each form shall contain content as set forth by rule, regulation, instruction, or procedure of the commissioner.

(e) In order to fulfill the purposes of this article, the commissioner may establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this article.

(f) A real estate broker or salesperson who fails to notify the department pursuant to subdivision (a), or who fails to obtain a license endorsement required pursuant to paragraph (2) of subdivision (b), shall be assessed a penalty of fifty dollars ($50) per day for each day written notification has not been received or a license endorsement has not been obtained, up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day, the penalty is one hundred dollars ($100) per day, not to exceed a total penalty of ten thousand dollars ($10,000), regardless of the number of days, until the department receives the written notification or the licensee obtains the license endorsement. Penalties for violations of subdivisions (a) and (b) shall be additive.

(g) The commissioner may suspend or revoke the license of a real estate broker or salesperson who fails to pay a penalty imposed pursuant to this section. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of that penalty.

(h) All penalties paid or collected under this section shall be deposited into the Consumer Recovery Account of the Real Estate Fund and shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470).

Loan Processor, Underwriter or Independent Contractor - Endorsement

10166.03. (a) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator shall not be required to obtain a license endorsement as a mortgage loan originator.

(b) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(c) An independent contractor who is employed by a mortgage loan originator may not engage in the activities of a loan processor or underwriter for a residential mortgage loan unless the independent contractor loan processor or underwriter obtains and maintains an endorsement as a mortgage loan originator under this article. Each independent contractor loan processor or underwriter who obtains and maintains an endorsement as a mortgage loan originator under this article shall have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

Mortgage Loan Originator - Endorsement

10166.04. (a) In connection with an application to the commissioner for a license endorsement as a mortgage loan originator, every applicant shall furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including the following:

(1) Fingerprint images and related information, for purposes of performing a federal, or both a state and federal, criminal history background check.

(2) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain both of the following:

(A) An independent credit report from a consumer reporting agency.

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(b) The commissioner may ask the Nationwide Mortgage Licensing System and Registry to obtain state criminal history background check information on applicants described in subdivision (a) using the procedures set forth in subdivisions (c) and (d).

(c) If the Nationwide Mortgage Licensing System and Registry electronically submits fingerprint images and related information, as required by the Department of Justice, for an applicant for a mortgage loan originator license endorsement, to the Department of Justice for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests, and as to the existence and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal, the Department of Justice shall provide an electronic response to the Nationwide Mortgage Licensing System and Registry pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code, and shall provide the same electronic response to the department.

(d) The Nationwide Mortgage Licensing System and Registry may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in subdivision (a). The Department of Justice shall provide the same electronic response to the department.

(e) The Department of Justice shall charge a fee sufficient to cover the cost of processing the requests described in this section.

Denial of Mortgage Loan Originator Endorsement

10166.05. Notwithstanding any other provision of law, the commissioner shall not issue a license endorsement to act as a mortgage loan originator to an applicant unless the commissioner makes all of the following findings:

(a) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of a revocation shall not be deemed a revocation.

(b) (1) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing, or at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. Whether a particular crime is classified as a felony shall be determined by the law of the jurisdiction in which an individual is convicted.

(2) For purposes of this subdivision, an expunged or pardoned felony conviction shall not require denial of an application. However, the commissioner may consider the underlying crime, facts, or circumstances of an expunged or pardoned felony conviction when determining the eligibility of an applicant for licensure under this subdivision or subdivision (c).

(c) The applicant has demonstrated such financial responsibility, character, and general fitness as to command the confidence of the community and warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of the article.

(d) The applicant has complied with the education and written testing requirements in Section 10166.06.

Grounds for Denial, Suspension or Revocation
10166.051. In addition to any penalties authorized by regulations adopted pursuant to Section 10166.15, the commissioner may do one or more of the following, after appropriate notice and opportunity for hearing:

(a) Deny, suspend, revoke, restrict, or decline to renew a mortgage loan originator license endorsement for a violation of this article, or any rules or regulations adopted hereunder.

(b) Deny, suspend, revoke, condition, or decline to renew a mortgage loan originator license endorsement, if an applicant or endorsement holder fails at any time to meet the requirements of Section 10166.05 or 10166.09, or withholds information or makes a material misstatement in an application for a license endorsement or license endorsement renewal.

(c) Issue orders or directives to licensees who hold mortgage loan originator license endorsements, as follows:

(1) Order or direct persons subject to this article to desist and refrain from conducting business, including immediate temporary orders to desist and refrain.

(2) Order or direct persons subject to this article to cease any harmful activities or violations of this article, including immediate temporary orders to desist and refrain.

(3) Enter immediate temporary orders to cease business under a license endorsement if the commissioner determines that the license endorsement was erroneously granted or the endorsement holder is currently in violation of this article.

(4) Order or direct any other affirmative action the commissioner deems necessary.

Mortgage Loan Originator Endorsement – Prerequisites
10166.06. (a) In addition to the requirements of Section 10153, an applicant for a license endorsement as a mortgage loan originator shall complete at least 20 hours of education courses, which shall include at least the following:

(1) Three hours of federal law and regulations.

(2) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues.

(3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of this section, education courses are only acceptable if they have been reviewed and approved, or otherwise deemed acceptable, by the Nationwide Mortgage Licensing System and Registry, in accordance with the SAFE Act. Education may be offered in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System and Registry, in accordance with the SAFE Act.

(c) A person who successfully completes the education requirements approved by the Nationwide Mortgage Licensing System and Registry in any state other than California shall be granted credit by the commissioner toward completion of the education requirements of this section.

(d) Before being issued a license endorsement to act as a mortgage loan originator, an individual shall pass a qualified written test developed or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved or otherwise deemed acceptable by the Nationwide Mortgage Licensing System and Registry.

(e) A written test shall not be treated as a qualified written test for purposes of this section, unless the test adequately measures the applicant's knowledge and comprehension in the

following subject areas: ethics, federal law and regulation pertaining to mortgage origination, state law and regulation pertaining to mortgage origination, and federal and state law and regulation relating to fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(f) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(g) An individual shall not be considered to have passed a qualified written test administered pursuant to this section unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(h) An individual who fails the qualified written test may retake the test, although at least 30 days must pass between each retesting, except as provided in subdivision (i).

(i) An applicant who fails three consecutive tests shall wait at least six months before retesting.

(j) A mortgage loan originator who fails to maintain a valid license endorsement for a period of five years or longer or who fails to register as a mortgage loan originator shall retake the qualified written test.

Mortgage Loan Business Activity Reports

10166.07. (a) A real estate broker who acts pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131, and who makes, arranges, or services one or more loans in a calendar year that are secured by real property containing one to four residential units, shall annually file a business activities report, within 90 days after the end of the broker's fiscal year or within any additional time as the commissioner may allow for filing for good cause. The report shall contain within its scope all of the following information for the fiscal year, relative to the business activities of the broker and those of any other brokers and real estate salespersons acting under that broker's supervision:

(1) Name and license number of the supervising broker and names and license numbers of the real estate brokers and salespersons under that broker's supervision. The report shall include brokers and salespersons who were under the supervising broker's supervision for all or part of the year.

(2) A list of the real estate-related activities in which the supervising broker and the brokers and salespersons under his or her supervision engaged during the prior year. This listing shall identify all of the following:

(A) Activities relating to mortgages, including arranging, making, or servicing.

(B) Other activities performed under the real estate broker's or salesperson's license.

(C) Activities performed under related licenses, including, but not limited to, a license to engage as a finance lender or a finance broker under the California Finance Lenders Law (Division 9 (commencing with Section 22000) of the Financial Code), or a license to engage as a residential mortgage lender or residential mortgage loan servicer under the California Residential Mortgage Lending Act (Division 20 (commencing with Section 50000) of the Financial Code).

(3) A list of the forms of media used by the broker and those under his or her supervision to advertise to the public, including print, radio, television, the Internet, or other means.

(4) For fixed rate loans made, brokered, or serviced, all of the following:

(A) The total number, aggregate principal amount, lowest interest rate, highest interest rate, and a list of the institutional lenders of record. If the

loan was funded by any lender other than an institutional lender, the broker shall categorize the loan as privately funded.

(B) The total number and aggregate principal amount of covered loans, as defined in Section 4970 of the Financial Code.

(C) The total number and aggregate principal amount of loans for which Bureau of Real Estate form RE Form 885 or an equivalent is required.

(5) For adjustable rate loans made, brokered, or serviced, all of the following:

(A) The total number, aggregate principal amount, lowest beginning interest rate, highest beginning interest rate, highest margin, and a list of the institutional lenders of record. If the loan was funded by any lender other than an institutional lender, the broker shall categorize the loan as privately funded.

(B) The total number and aggregate principal amount of covered loans, as defined in Section 4970 of the Financial Code.

(C) The total number and aggregate principal amount of loans for which Bureau of Real Estate form RE Form 885 or an equivalent is required.

(6) For all loans made, brokered, or serviced, the total number and aggregate principal amount of loans funded by institutional lenders, and the total number and aggregate principal amount of loans funded by private lenders.

(7) For all loans made, brokered, or serviced, the total number and aggregate principal amount of loans that included a prepayment penalty, the minimum prepayment penalty length, the maximum prepayment penalty length, and the number of loans with prepayment penalties whose length exceeded the length of time before the borrower's loan payment amount could increase.

(8) For all loans brokered, the total compensation received by the broker, including yield spread premiums, commissions, and rebates, but excluding compensation used to pay fees for third-party services on behalf of the borrower.

(9) For all mortgage loans made or brokered, the total number of loans for which a mortgage loan disclosure statement was provided in a language other than English, and the number of forms provided per language other than English.

(10) For all mortgage loans serviced, the total amount of funds advanced to be applied toward a payment to protect the security of the note being serviced.

(11) For purposes of this section, an institutional lender has the meaning specified in paragraph (1) of subdivision (c) of Section 10232.

(b) A broker subject to this section and Section 10232.2 may file consolidated reports that include all of the information required under this section and Section 10232.2. Those consolidated reports shall clearly indicate that they are intended to satisfy the requirements of both sections.

(c) If a broker subject to this section fails to timely file the report required under this section, the commissioner may cause an examination and report to be made and may charge the broker one and one-half times the cost of making the examination and report. In determining the hourly cost incurred by the commissioner for conducting an examination and preparing the report, the commissioner may use the estimated average hourly cost for all department audit staff performing audits of real estate brokers. If a broker fails to pay the commissioner's cost within 60 days of the mailing of a notice of billing, the commissioner may suspend the broker's license or deny renewal of that license. The suspension or denial shall remain in effect until the billed amount is paid or the broker's right to renew a license has expired. The

commissioner may maintain an action for the recovery of the billed amount in any court of competent jurisdiction.

(d) The report described in this section is exempted from any requirement of public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code.

(e) The commissioner may waive the requirement to submit certain information described in paragraphs (1) to (10), inclusive, of subdivision (a) if the commissioner determines that this information is duplicative of information required by the Nationwide Mortgage Licensing System and Registry, pursuant to Section 10166.08.

Reports to NMLS & R

10166.08. Each mortgage loan originator shall submit reports of condition to the Nationwide Mortgage Licensing System and Registry reports of condition, and those reports shall be in the form and shall contain information as the Nationwide Mortgage Licensing System and Registry may require.

Endorsement Renewal

10166.09. The minimum standards for renewal of an endorsement as a mortgage loan originator shall include the following:

(a) The mortgage loan originator continues to meet the minimum standards for obtaining an endorsement as a mortgage loan originator.

(b) The mortgage loan originator satisfies the annual continuing education requirements described in Section 10166.10.

Mortgage Loan Originator – Continuing Education

10166.10. (a) A mortgage loan originator shall complete at least eight hours of continuing education annually, which shall include at least three hours relating to federal law and regulations, two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues, and two hours related to lending standards for the nontraditional mortgage product marketplace.

(b) For purposes of subdivision (a), continuing education courses and course providers shall be reviewed and approved by the commissioner and the Nationwide Mortgage Licensing System and Registry.

(c) The commissioner shall have the authority to substitute any of the courses described in subdivision (a) for the course requirements of Section 10170.5, subject to a finding that the course requirements in subdivision (a) and the course completion standards in subdivision (g) of Section 10166.06 are substantially equivalent to, and meet the intent of, Section 10170.5.

(d) Nothing in this section shall preclude any education course, as approved by the commissioner and the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

(e) Continuing education may be offered either in a classroom, online, or by any other means approved by the commissioner and the Nationwide Mortgage Licensing System and Registry.

(f) A mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken.

(g) A mortgage loan originator may not take the same approved course in the same or successive years to meet the requirements of this section for continuing education.

(h) A mortgage loan originator who is an instructor of an approved continuing education course may receive credit for his or her own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(i) A person who successfully completes the education requirements approved by the Nationwide Mortgage Licensing System and Registry in any state other than California shall be granted credit by the commissioner towards completion of continuing education requirements in this state.

(j) A mortgage loan originator whose license endorsement lapses, expires, or is suspended or

revoked, and who wishes to regain his or her license endorsement, shall complete continuing education requirements for the last year in which the endorsement was held, prior to issuance of a new or renewed endorsement.

Record Retention – Mortgage Loan Brokers

10166.11. (a) A real estate broker who acts pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131 and who makes, arranges, or services loans secured by real property containing one to four residential units, shall keep documents and records that will properly enable the commissioner to determine whether the residential mortgage brokerage, servicing, and lending functions performed by the broker comply with this division and with all applicable rules and orders made by the commissioner. These documents shall include, at a minimum, the documents described in Section 10148. Upon request of the commissioner, a real estate broker shall file an authorization for disclosure to the commissioner of financial records of his or her licensed business pursuant to Section 7473 of the Government Code.

(b) Notwithstanding subdivision (a) of Section 10148, the business documents and records of real estate brokers described in subdivision (a) and real estate salespersons acting under those brokers are subject to inspection and examination or audit by the commissioner, at his or her discretion, after reasonable notice. That real estate broker or salesperson shall, upon request by the commissioner and within the time period specified in that request, allow the commissioner, or his or her authorized representative, to inspect and copy any business documents and records. The commissioner may suspend or revoke the license of the broker or salesperson if he or she fails to produce documents or records within the time period specified in the request.

(c) Inspection and examination or audit reports prepared by the commissioner's duly designated representatives pursuant to this section are not public records. Those reports may be disclosed to the officers or directors of a licensee that is the subject of the report for the purpose of corrective action. That disclosure shall not operate as a waiver of the exemption specified in subdivision (d) of Section 6254 of the Government Code.

Examination of Books and Records

10166.12. (a) As often as the commissioner deems necessary and appropriate, the commissioner shall examine the affairs of each real estate broker who is required to notify the commissioner or obtain a license endorsement pursuant to Section 10166.02 for compliance with this part. These examinations shall also include a review of the affairs of all real estate brokers and real estate salespersons acting under the supervision of each real estate broker who is required to file reports with the department pursuant to Section 10166.07. The commissioner shall appoint suitable persons to perform these examinations. The commissioner and his or her appointees may examine the books, records, and documents of the licensee, and may examine the licensee's officers, directors, employees, or agents under oath regarding the licensee's operations. The commissioner may cooperate with any agency of the state or federal government, other states, agencies, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation. The commissioner may accept an examination conducted by one of these entities in place of an examination by the commissioner under this section, unless the commissioner determines that the examination does not provide information necessary to enable the commissioner to fulfill his or her responsibilities under this division.

(b) The commissioner may impose a penalty against a real estate broker or real estate salesperson whose affairs are examined or reviewed pursuant to subdivision (a) based on the findings of the examination or review. The commissioner may suspend or revoke the license or license endorsement of a real estate broker or real estate salesperson who fails to pay that penalty. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of the penalty.

(c) Penalties collected pursuant to subdivision (b) shall be deposited into the Consumer Recovery Account of the Real Estate Fund and

shall, upon appropriation by the Legislature, be available for expenditure for the purposes specified in Chapter 6.5 (commencing with Section 10470).

(d) The statement of the findings of an examination conducted pursuant to this section shall belong to the commissioner and shall not be disclosed to anyone other than the licensee, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement. Reports required of licensees by the commissioner under this division and results of examinations performed by the commissioner under this division are the property of the commissioner.

Call Reports

10166.13. A real estate broker who acts pursuant to Section 10131.1 or subdivision (d) or (e) of Section 10131 and who makes, arranges, or services loans secured by real property containing one to four residential units shall make any special reports to the commissioner that the commissioner may, from time to time, require.

Termination and Reporting

10166.14. A real estate broker shall notify the department when he or she is no longer subject to this part. If a broker has already made reports required by Sections 10166.07 and 10166.08 within the year, he or she shall continue reports for that year, but shall notify the department prior to the expiration of that year that he or she will no longer be subject to this part in the succeeding year.

Reporting of Violations to NMLS & R

10166.15. (a) The commissioner shall regularly report violations of this article, as well as enforcement actions taken against any mortgage loan originator to whom an endorsement has been issued, and enforcement actions taken against any individual for failure to obtain an endorsement as a mortgage loan originator, to the Nationwide Mortgage Licensing System and Registry.

(b) The commissioner shall establish a process that may be used by mortgage loan originators to challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner.

(c) The commissioner is authorized to promulgate regulations specifying (1) the recordkeeping requirements that mortgage loan originators shall satisfy and (2) the penalties that shall apply to mortgage loan originators for violations of this article.

Confidentiality of Reports

10166.16. (a) Except as otherwise provided in Section 1512 of the SAFE Act, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

(b) For these purposes, the commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or other associations representing governmental agencies as established by rule, regulation or order of the commissioner.

(c) Information or material that is subject to a privilege or confidentiality under subdivision (a) shall not be subject to either of the following:

(1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the state.

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry

with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(d) This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

Authority to Establish Regulations

10166.17. In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the commissioner may establish by rule, regulation, or order, requirements as necessary, including, but not limited to, the following:

(a) Background checks for the following:

(1) Criminal history through fingerprint or other databases.

(2) Civil or administrative records.

(3) Credit history.

(4) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

(b) The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry.

(c) The setting or resetting as necessary of renewal or reporting dates.

(d) Requirements for amending or surrendering a license or any other activities as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

Article 2.3 Prepaid Rental Listing Service

Definitions

10167. The definitions used in this section shall govern the construction and terms as used in this article:

(a) "Prepaid rental listing service" means the business of supplying prospective tenants with listings of residential real properties for tenancy, by publication or otherwise, pursuant to an arrangement under which the prospective tenants are required to pay an advance or contemporaneous fee (1) specifically to obtain listings or (2) to purchase any other product or service in order to obtain listings, but which does not otherwise involve the negotiation of rentals by the person conducting the service. "Prepaid rental listing service" does not include the business of providing roommate referral information designed to assist persons in locating a roommate who meets various selection criteria related to the prospective roommate's personal traits, characteristics, habits or preferences, and selection criteria related to the residential real property occupied by the prospective roommate.

(b) "Licensee" means a person licensed to conduct a prepaid rental listing service or a person engaged in the business of a prepaid rental listing service under a real estate broker license.

(c) "Location" means the place, other than the main or branch office of a real estate broker, where a prepaid rental listing service business is conducted.

(d) "Designated agent" means the person who is in charge of the business of a prepaid rental listing service at a given location.

(e) "Fee" means the charge required by a licensee (1) to obtain listings of residential real properties for tenancy or (2) to purchase any other product or service in order to obtain listings.

(f) "Service charge" means the amount of the fee that a licensee may retain if a prospective tenant finds housing through a source other than the listings supplied by the licensee.

Newspapers of General Circulation Excluded
10167.1. This article shall not apply to a newspaper of general circulation.

License Required
10167.2. (a) It is unlawful for any person to engage in the business of a prepaid rental listing service unless licensed in that capacity or unless licensed as a real estate broker.

(b) (1) The requirements of this article apply only to the provision of listings of residential real properties for tenancy by prepaid rental listing services. Except if expressly provided otherwise in this article, the requirements of this article do not apply to any other goods or services sold by a prepaid rental listing service as long as the purchase of those goods or services is not required to obtain those listings, and as long as the purchase of those goods or services is not included in the same contract as the contract to provide those listings, and as long as the contract to provide those listings clearly specifies that the purchase of any other goods and services is optional, and as long as the price charged for any other goods and services is fair and reasonable.

(2) In an action alleging that the price charged for any other goods and services is not fair and reasonable, the burden shall be on the commissioner to demonstrate that the price charged unreasonably exceeds the fee customarily charged for the same or comparable goods or services in the community in which the prepaid rental listing service operates. The fact that the price charged for goods or services exceeds the cost incurred by the prepaid rental listing service shall not render the price charged for the goods or services to be unfair or unreasonable, so long as the price charged does not unreasonably exceed the fee customarily charged for the same or comparable goods or services in the community in which the prepaid rental listing service operates.

Separate Application for Each Location – Broker May Provide Service
10167.3. (a) A separate application for a license as a prepaid rental listing service shall be made in writing for each location to be operated by a licensee other than a real estate broker. Each application shall be on forms provided by the bureau, shall be signed by the applicant, and shall be accompanied by a one-hundred-twenty-five-dollar ($125) application fee for the first location, and a fifty-dollar ($50) application fee for each additional location of the applicant.

Applications to add or eliminate locations during the term of a license shall be on forms prescribed by the bureau. A fifty-dollar ($50) application fee for the remainder of a license term for each location to be added shall accompany the application. Twenty-five dollars ($25) of each application fee shall be credited to the Consumer Recovery Account.

(b) A real estate broker may provide a prepaid rental listing service at a licensed office for the conduct of his or her real estate brokerage business if the business at the office is conducted under the immediate supervision of the broker or of a real estate salesperson licensed to, and acting on behalf of, the broker.

Application Hearing
10167.4. The commissioner may require such proof as he or she may deem advisable concerning the honesty and truthfulness of (a) any applicant for a license as a prepaid rental listing service, (b) the designated agents of the applicant, (c) the officers, directors, and any persons owning 25 percent or more of the shares of any corporation making such an application, or (d) any person owning or controlling a beneficial ownership interest of 25 percent or more in the entity making application before authorizing the issuance of a license for a location. For this purpose, the commissioner may hold a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and may refuse to issue a license to an applicant who does not furnish satisfactory proof of his or her honesty and truthfulness or of the honesty and truthfulness of the corporate officers,

directors, and shareholders. To assist in this determination, the commissioner shall require the fingerprinting of every original applicant including designated agents, officers, directors, and persons owning 25 percent or more of the shares of the corporate applicant.

Supervision – Termination of Designated Agent – License Expiration

10167.5. The business at a location licensed pursuant to subdivision (a) of Section 10167.3 shall be conducted under the immediate supervision of the licensee or a designated agent who is not a designated agent at any other location. Whenever a designated agent ceases permanently to be a designated agent at any location because of death, termination of employment, or any other reason, the licensee, within five days thereafter, shall give written notice to the department. A license issued for a particular location shall automatically expire 60 days after the time the business conducted at such location ceases for any reason to be under the charge of and managed by the designated agent of record with the department, unless within such 60-day period the licensee submits written notice of the new designated agent to the department.

A designated agent of the licensed service may serve as designated agent for the location in question as well as for the location for which he or she is the designated agent of record during the period of 60 days.

Nonresident Licensees

10167.6. Every applicant for a prepaid rental listing service license who is not a resident of this state shall file with the application for a license an irrevocable consent that in any action arising out of the activities of the prepaid rental listing service commenced against him or her in this state, if personal service of process upon him or her cannot be made in this state in the exercise of due diligence, a valid service may be made upon him or her by delivering the process to the Secretary of State.

Insofar as possible, the provisions of Section 1018 of the Code of Civil Procedure relating to service of process on the Secretary of State are applicable to this section.

Bond Requirement – Each Location

10167.7. Except as provided in Section 10167.8, each licensee shall provide to the department, and at all times maintain in force, a bond in the amount of ten thousand dollars ($10,000) for each location. The bond may be in the form of a corporate surety bond, or a cash deposit. A cash deposit may be deposited by the licensee in an interest-bearing account assigned to the commissioner, with interest earned thereon payable to the licensee. The bond or cash deposit may be utilized by the commissioner for the benefit of any unsatisfied judgment creditor in an action pursuant to subdivision (e) of Section 10167.10.

Bond Exemptions

10167.8. The requirement of Section 10167.7 shall not apply to any prepaid rental listing service operated by:

(a) a person exempt from the payment of federal and state income taxes;

(b) an agency of the federal, state, or local government; or

(c) a real estate broker conducting a prepaid rental listing service pursuant to a real estate license.

PRLS Contract Requirements – CalBRE Approval of Contract Required

10167.9. (a) Prior to the acceptance of a fee, a licensee shall offer the prospective tenant a written contract, either on paper or in electronic form, which shall include at least the following:

(1) The name and license number of the licensee and the addresses and telephone numbers of the principal office or location of the licensee and of the location, or branch office of a real estate broker, providing the listing to the prospective tenant.

(2) Acknowledgment of receipt of the fee, including the amount.

(3) A description of the service to be performed by the licensee, including significant conditions, restrictions, and limitations where applicable.

(4) The prospective tenant's specifications for the rental property, including, but not limited to:

(A) Type of structure, including, but not limited to, detached single-family home, apartment, or duplex.

(B) Location by commonly accepted residential area name, by designation of boundary streets, or by any other manner affording a reasonable means of identifying locations acceptable to the prospective tenant.

(C) Furnished or unfurnished.

(D) Number of bedrooms required.

(E) Maximum acceptable monthly rental.

(5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.

(6) A clause setting forth the right to a full or partial refund of the fee paid as provided in Section 10167.10.

(7) The signature and printed full name of the licensee or of the designated agent, real estate salesperson, or employee acting on behalf of the licensee. The signature of any person, including any signature required by the terms of the contract to be provided by the prospective tenant, may be provided in any electronic form that provides a reasonable method of indicating that the individual whose signature is required authorized the contract to be signed in that electronic form.

(8) A clause in bold type letters outlining the small claims court remedy available to the prospective tenant.

(9) A clause in boldface type letters clearly stating that the purchase of any goods and services other than the provision of listings of residential real properties for tenancy is optional.

(b) (1) The original of each contract, any separate contracts for required goods or services, refund claims, receipts and any other relevant documents shall be retained by the licensee for a period of not less than three years from the date of termination of the contract during which time the contract shall be subject to examination by a duly authorized representative of the commissioner. Any records retained pursuant to this subdivision that are stored in the ordinary course of business in digital media shall, upon request of a duly authorized representative of the commissioner, be provided on diskette, CD-ROM or similar portable digital storage medium. For purposes of this subdivision, the "original" of a contract executed in electronic form shall be either the copy of the contract stored in digital media or a paper printout of that contract.

(2) Any licensee, or employee thereof, shall dispose of the documents required to be kept pursuant to paragraph (1) by shredding or other appropriate means so that the identity of the prospective tenant may not be determined from the disposed information alone or in combination with other publicly available information.

(c) The form of contract proposed to be used by a licensee to effect compliance with this section shall be filed with the bureau prior to use. Any modification of a form previously filed with the bureau, including a change in the name or business address of the licensee, shall also be filed prior to use. The bureau shall withhold the issuance or renewal of a license until the bureau has approved the contract. If a proposed modification to a contract has not been approved or disapproved within 15 working days of being filed with the bureau, the proposed modification shall be deemed approved. If a proposed modification or contract provision is disapproved, the bureau shall communicate that disapproval in writing to the licensee within 15 working days of being filed with the bureau, accompanied by a written justification of why the modification or contract provision is contrary to the requirements of this article.

(d) Notwithstanding any other provision of law, a contract for prepaid rental listing services executed in electronic form, and signed in any electronic form that provides a reasonable method of indicating that the individual whose signature is required authorized the contract to be signed in electronic form, shall be valid to the same extent as an executed written contract. Upon request by the customer, the licensee shall deliver an executed paper copy to the customer within five working days of receiving the request.

Notice of Right to Refund

10167.95. Prior to the acceptance of a fee, and in addition to the contract required pursuant to Section 10167.9, a licensee shall provide the prospective tenant with the following written notice, in a type size of at least 12-point type:

YOU MAY BE ENTITLED TO A REFUND IF YOU DO NOT RECEIVE THE SERVICES YOU HAVE BEEN PROMISED. COMPLETE TERMS AND CONDITIONS GOVERNING THE REFUND TO WHICH YOU MAY BE ENTITLED ARE CONTAINED IN YOUR CONTRACT. THE FOLLOWING IS A SIMPLIFIED SUMMARY OF SOME OF THE RIGHTS DESCRIBED IN YOUR CONTRACT:

If (name of licensee) does not provide you with at least three available rental properties meeting the specifications of your contract within five days after you pay the fee charged by (name of licensee), you are entitled to a full refund. To obtain this refund, you must request it from (name of licensee) in writing within 15 days of paying your fee.

If you do not obtain a rental through the services of (name of licensee) during the term of your contract, you are entitled to a refund of your fee, minus a service charge, which may not exceed ____ dollars ($____). To obtain this refund, you must provide (name of licensee) with written documentation or a signed statement that you obtained a rental without the assistance of (name of licensee) or that you did not move. This documentation or signed statement must be provided to (name of licensee) with a written request for refund, within 10 days following the expiration of your contract.

If (name of licensee) fails to refund your money, as required by your contract, you may sue (name of licensee) in a small claims court. The court may award you the refund you failed to receive, plus additional damages, up to $1,000.

If you wish to file a complaint about (name of licensee) or if you cannot collect on a court award, you should contact the Bureau of Real Estate at 1-877-373-4542 or www.bre.ca.gov.

Refund of Advance Fee Paid

10167.10. (a) (1) A licensee shall refund in full the fee paid by a prospective tenant if the licensee does not, within five days after execution of the contract, supply at least three rental properties then available to the prospective tenant and meeting the specifications of the contract, unless the prospective tenant obtains a rental through the services of the licensee.

(2) A licensee will be deemed to have supplied information meeting the specifications of the prospective tenant if the information supplied meets the contract specifications with reference to: (i) type of structure; (ii) designated area; (iii) furnished or unfurnished; (iv) number of bedrooms; (v) maximum rental; and (vi) any other specification expressly set forth in the contract. A demand for the return of the fee shall be made by or on behalf of the prospective tenant within 10 days following the expiration of the five-day period referred to above by delivery or by mailing by registered or certified mail to the address of a location, or branch office of a real estate broker, set forth in the contract.

(b) (1) Except as provided in paragraph (3), a licensee shall refund any fee paid over and above the sum of a fifty dollar ($50) service charge to the prospective tenant if the prospective tenant obtains a rental other than through the services of the licensee during the term of the contract or does not obtain a rental, provided that the prospective tenant demands a return of that part of the fee

within 10 days after the expiration of the contract.

(2) The licensee shall refund any fee paid over and above the sum of a fifty dollar ($50) service charge to the prospective tenant within 10 days of receipt from the prospective tenant of either the documentation specified in subparagraph (A) or the written statement specified in subparagraph (B), as applicable:

(A) Except as specified in subparagraph (B), a prospective tenant demanding a refund shall provide to the licensee reasonable documentation of the prospective tenant's new rental or of the fact that the prospective tenant did not move, such as a lease, rental agreement, or utility bill, with sufficient information to verify that the new rental was not obtained through the services of the licensee or that the prospective tenant did not move.

(B) If the prospective tenant is unable to locate or provide the documentation specified in subparagraph (A), the prospective tenant may, at his or her option, fill out and sign a written statement, supplied by the licensee, in the following form:

I, _____, do
(name of prospective tenant)
swear or affirm the following:

I currently live at _____
(street address)

The following statement is true (check one):

____ I have rented a unit at the above address. I did not obtain this rental through the services of
_____
(name of licensee)
during the time of our contract.

____ I did not find a new rental and did not move. I still live at the above address.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

_____
(date)

_____
(location)

_____
(signature)

(3) On or after January 1, 2002, the department may, from time to time, by regulation, adjust the amount of the allowable service charge to reflect the rate of inflation from the previous date that the amount of the allowable service charge was established, as measured by the Consumer Price Index or other method of measuring the rate of inflation which the department determines is reliable and generally accepted.

(c) Each contract shall contain provisions that shall read as follows unless different language shall have been approved in writing by the department prior to use:

RIGHT TO REFUND
(Full capital letters, in 12-point type or greater, boldface or italicized)

"IF, WITHIN FIVE DAYS AFTER PAYMENT OF A FEE, THE LICENSEE HAS NOT SUPPLIED THE PROSPECTIVE TENANT WITH AT LEAST THREE AVAILABLE RENTAL PROPERTIES MEETING THE SPECIFICATIONS OF THE CONTRACT AS TO (I) TYPE OF STRUCTURE; (II) DESIGNATED AREA; (III) FURNISHED OR UNFURNISHED; (IV) NUMBER OF BEDROOMS; (V) MAXIMUM RENTAL; AND (VI) ANY OTHER SPECIFICATION EXPRESSLY SET FORTH IN THE CONTRACT, THE FULL AMOUNT OF THE FEE PAID SHALL BE REFUNDED TO THE PROSPECTIVE TENANT UPON PRESENTATION OF EVIDENCE OF THAT FAILURE WITHIN 10 DAYS AFTER THE EXPIRATION OF THE FIVE-DAY PERIOD. THE PROSPECTIVE TENANT IS NOT ENTITLED TO A REFUND IF THE PROSPECTIVE TENANT OBTAINS A RENTAL THROUGH THE SERVICES OF THE LICENSEE.

IF THE PROSPECTIVE TENANT OBTAINS A RENTAL OTHER THAN THROUGH THE SERVICES OF THE LICENSEE DURING THE

TERM OF THIS CONTRACT OR IF THE PROSPECTIVE TENANT DOES NOT OBTAIN A RENTAL THROUGH THE SERVICES OF THE LICENSEE DURING THE TERM OF THE CONTRACT, THE LICENSEE SHALL REFUND THE FEE RECEIVED IN EXCESS OF A (INSERT APPLICABLE LIMIT PURSUANT TO SUBDIVISION (B) OF SECTION 10167.10 OF THE BUSINESS AND PROFESSIONS CODE) SERVICE CHARGE TO THE PROSPECTIVE TENANT WITHIN 10 DAYS AFTER THE PROSPECTIVE TENANT SUPPLIES EITHER (I) REASONABLE DOCUMENTATION OF THE PROSPECTIVE TENANT'S NEW RENTAL OR OF THE FACT THAT THE PROSPECTIVE TENANT DID NOT MOVE, SUCH AS A LEASE, RENTAL AGREEMENT, OR UTILITY BILL, WITH SUFFICIENT INFORMATION TO VERIFY THAT THE NEW RENTAL WAS NOT OBTAINED THROUGH THE SERVICES OF THE LICENSEE OR THAT THE PROSPECTIVE TENANT DID NOT MOVE, OR (II) IF THE PROSPECTIVE TENANT IS UNABLE TO LOCATE OR PROVIDE THAT DOCUMENTATION, THE PROSPECTIVE TENANT MAY, AT HIS OR HER OPTION, FILL OUT A WRITTEN FORM PROVIDED BY THE LICENSEE AND SIGNED BY THE PROSPECTIVE TENANT UNDER PENALTY OF PERJURY STATING THAT HE OR SHE DID NOT OBTAIN A RENTAL THROUGH THE SERVICES OF THE LICENSEE DURING THE TIME OF THE CONTRACT.

TO BE ENTITLED TO A REFUND IN EXCESS OF THE SERVICE CHARGE, THE PROSPECTIVE TENANT MUST MAIL OR DELIVER THE DEMAND FOR REFUND NOT LATER THAN 10 DAYS AFTER EXPIRATION OF THIS CONTRACT, AND MUST SUPPLY EITHER (I) REASONABLE DOCUMENTATION OF THE PROSPECTIVE TENANT'S NEW RENTAL OR OF THE FACT THAT THE PROSPECTIVE TENANT DID NOT MOVE, SUCH AS A LEASE, RENTAL AGREEMENT, OR UTILITY BILL, WITH SUFFICIENT INFORMATION TO VERIFY THAT THE NEW RENTAL WAS NOT OBTAINED THROUGH THE SERVICES OF THE LICENSEE OR THAT THE PROSPECTIVE TENANT DID NOT MOVE, OR (II) A WRITTEN FORM PROVIDED BY THE LICENSEE AND SIGNED BY THE PROSPECTIVE TENANT UNDER PENALTY OF PERJURY STATING THAT HE OR SHE DID NOT OBTAIN A RENTAL THROUGH THE SERVICES OF THE LICENSEE DURING THE TIME OF THE CONTRACT. THE DOCUMENTATION MAY BE SUPPLIED AFTER THE DEMAND FOR A REFUND IS MAILED OR DELIVERED, PROVIDED THAT IT IS SUPPLIED WITHIN A REASONABLE TIME AFTER IT BECOMES AVAILABLE."

(d) This section shall not apply to a person purchasing rental information for a purpose other than that of locating a rental unit for personal use or the use of a designated person.

(e) If the licensee fails to make a refund as provided in this section and if the denial or delay in making the refund is found to have been done in bad faith, a court of appropriate jurisdiction, including a small claims court, shall be empowered to award damages to the plaintiff in an amount not to exceed one thousand dollars ($1,000) in addition to actual damages sustained by the plaintiff. If the licensee refuses or is unable to pay the damages awarded by the court, the award may be satisfied out of the security required under Section 10167.7.

Violations

10167.11. It shall be a violation of this article for any licensee or any employee or agent of a licensee to do the following:

(a) Make, or cause to be made, any false, misleading, or deceptive advertisements or representations concerning the services that the licensee will provide to prospective tenants.

(b) Refer a property to a prospective tenant knowing or having reason to know that:

(1) The property does not exist or is unavailable for tenancy.

(2) The property has been described or advertised by or on behalf of the licensee in a false, misleading, or deceptive manner.

(3) The licensee has not confirmed the availability of the property for tenancy during the four-day period immediately preceding dissemination of the listing information. However, it shall not be a violation to refer a property to a prospective tenant during a period of from five to seven days after the most recent confirmation of the availability of the property for rental if

the licensee has made a good faith effort to confirm availability within the stated four-day period, and if the most recent date of confirmation of availability is set forth in the referral.

(4) The licensee has not obtained written or oral permission to list the property from the property owner, manager, or other authorized agent.

License Suspension or Revocation
10167.12. (a) The commissioner may suspend, deny, or revoke the license of a licensee or the license of the licensee to operate at one or more locations for either of the following:

(1) A violation of this article by a licensee or by an employee or agent, including a designated agent, of the licensee.

(2) A conviction of a licensee, or a designated agent, or of an officer, director, or owner of 25 percent or more of the shares of a corporate licensee for a crime which is substantially related to the qualifications, functions, or duties of a prepaid rental listing service licensee.

(b) For the purpose of determining whether grounds exist for suspending, denying, or revoking the license of a licensee, the commissioner shall hold a hearing in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Two-year License Term
10167.13. A prepaid rental listing service license issued by the department shall be for a period of two years. An application and fee for renewal filed with the department before midnight of the last day of the period for which a previous license was issued entitles the licensee to continue operating at all locations specified in the previous license for which a renewal fee is paid.

Injunction
10167.14. Whenever any person has engaged or threatens to engage in any acts or practices which constitute, or will constitute a violation of a provision of the article, the superior court of the county in which the acts or practices have taken place, or are about to take place, on complaint of the commissioner, the attorney general, district attorney, or city attorney, may enjoin such acts or practices by appropriate order. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required.

Misdemeanor
10167.15. Any person, including an officer, director, or employee of a corporation who willfully violates any provision of this article is guilty of a misdemeanor.

Applicable Laws
10167.16. A person or corporation licensed pursuant to this article and not engaging in acts for which a real estate license is required under Article 1 (commencing with Section 10130) of Chapter 3 of Part 1 of Division 4, shall be subject, in addition to the provisions of this article, to the provisions of Chapter 1 (commencing with Section 10000) and Chapter 2 (commencing with Section 10050) of Part 1 of Division 4, and to Sections 10450, 10452, 10453, and 10454.

Provisions of Licensure
10167.17. The commissioner shall, by regulation, make prepaid rental listing service licensees and applicants for prepaid rental listing service licenses subject to the same provisions respecting licensure as are applicable to real estate licenses under Sections 10151.5, 10156.5, 10156.6, 10156.7, 10200, and 10201.

Article 2.5. Continuing Education

Legislative Determination
10170. The Legislature has determined that it is in the public interest of consumer protection and consumer service that all real estate licensees licensed under the provisions of this part comply with continuing education requirements adopted by the commissioner pursuant to this article as a prerequisite to the renewal of real estate licenses on and after January 1, 1981.

Advisory Committee
10170.2. The commissioner may appoint a committee comprised of licensees under this part and persons with expertise in real estate education to advise him with respect to his responsibilities under this article.

Regulations to Be Adopted
10170.4. The commissioner shall adopt regulations pursuant to Section 10080, to prescribe all of the following:

(a) A definition of basic requirements for continuing education of 45 clock hours of attendance at approved educational courses, seminars, workshops, or conferences, or their equivalent, achieved during a four-year period preceding license renewal application.

(b) A basis and method of qualifying educational programs, the successful completion of which, will satisfy the requirements of this article.

(c) A procedure for evaluation of petitions based on a claim of equivalency with the requirements of subdivision (a), and a reasonable standard by which an activity would be judged equivalent, including, but not limited to, instruction in real estate subjects, publication of professional articles or books, or development of real estate educational programs, law or research.

(d) A system of control and reporting qualifying attendance.

(e) An appropriate form of testing, examination or evaluation by the sponsor of each approved correspondence or homestudy educational program, or equivalent, of the student.

(f) A statement of the conditions of exemption from the continuing education requirements established under this article, as well as a method of applying and qualifying for these exemptions, for reasons of health, military service, or other compelling cause.

In exercising the authority under this article, the commissioner shall establish standards which will assure reasonable currency of knowledge as a basis for a level of real estate practice which will provide a high level of consumer protection and of competence in achieving the objectives of members of the public who engage the services of licensees. The standards shall permit a variety of alternatives of subject material to licensees taking cognizance of specialized areas of practice, and alternatives in sources of programs considering availability in area and time. The standards shall include, where qualified, generally accredited educational institutions, private vocational schools, correspondence institutions, educational programs, workshops, and seminars of professional societies and organizations, other organized educational programs on technical subjects, or equivalent offerings.

Required Courses
10170.5. (a) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45-clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing.

(5) A three-hour course in risk management that shall include, but need not be limited to, principles, practices, and procedures calculated to avoid errors and omissions in the practice of real estate licensed activities.

(6) Not less than 18-clock hours of courses or programs related to consumer protection,

and designated by the commissioner as satisfying this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace, land use regulation and control, pertinent consumer disclosures, agency relationships, capital formation for real estate development, fair practices in real estate, appraisal and valuation techniques, landlord-tenant relationships, energy conservation, environmental regulation and consideration, taxation as it relates to consumer decisions in real estate transactions, probate and similar disposition of real property, governmental programs such as revenue bond activities, redevelopment, and related programs, business opportunities, mineral, oil, and gas conveyancing, and California law that relates to managing community associations that own, operate, and maintain property within common interest developments, including, but not limited to, management, maintenance, and financial matters addressed in the Davis-Stirling Common Interest Development Act.

(7) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational and management techniques that will significantly contribute to this goal.

(b) Except as otherwise provided in Section 10170.8, no real estate license shall be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45-clock hours of education provided for in Section 10170.4, including an eight-hour update survey course that covers the subject areas specified in paragraphs (1) to (5), inclusive, of subdivision (a).

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

(d) For purposes of this section, "successful completion" of a course described in paragraphs (1) to (5), inclusive, of subdivision (a) means the passing of a final examination.

Licensee Right

10170.6. The commissioner may amend or repeal any regulation adopted pursuant to this article in the same manner as provided for adoption of such regulations, except that no amendment or repeal shall operate to deprive any licensee of the right to submit qualifying education completed pursuant to such amended or repealed regulation during his current license term, as a basis for license renewal.

Exemption Conditions – 30 Years as Licensee – 70 Years or Older

10170.8. The provisions of this article shall not apply to any real estate licensee who submits proof satisfactory to the commissioner that he or she has been a real estate licensee in good standing for 30 continuous years in this state and is 70 years of age or older.

A licensee in good standing is one who holds an active license which has not been suspended, revoked, or restricted as a result of disciplinary action.

License Grace Period

10171.2. If an applicant for a license has submitted, in good faith, evidence of completion of continuing education which he had reason to believe would qualify him for license renewal, but the commissioner finds that the evidence submitted does not qualify under standards adopted pursuant to this article, the commissioner may, nonetheless, extend the license for 90 days in order to allow the applicant to submit additional evidence of compliance, which satisfies the requirements of this article. When the license is issued during or at the end of the grace period provided for in this section it shall expire four years from the date otherwise applicable if no grace period had been granted.

License Reinstatement After Disciplinary Action

10171.3. On and after January 1, 1981, a real estate license, which has been revoked as the result of disciplinary action by the commissioner, shall not be reinstated, nor shall a restricted real estate license be issued to an applicant in connection with a petition for reinstatement, unless the applicant presents evidence of completion of the continuing education required by this article. This requirement of evidence of continuing education shall not be imposed upon an applicant for reinstatement who has been required under Section 10182 to pass a qualifying examination as a condition to reinstatement.

Temporary License Issuance

10171.4. Any licensee who applies for renewal of his or her license under Section 10461, or for reinstatement of his or her license under Section 10161.5 or 10463, shall, if the previous active license issued to him or her was issued four or more years prior to his or her application for renewal or reinstatement, present evidence of compliance with this article. If no such qualifying evidence is presented, the commissioner may issue a temporary license for a period of 90 days.

If the applicant presents evidence within 90 days of compliance with this article and is otherwise qualified, the commissioner shall issue a regular license without additional fee. It shall expire four years from the date which would otherwise have been applicable if a temporary license under this section had not been issued.

Corporate Broker-Officer

10171.5. A person who is licensed as a real estate broker only as an officer of a corporate broker pursuant to Section 10158 or 10211 shall not be eligible for the renewal of such license nor for the issuance of a license in an individual capacity or as an officer of a corporate broker licensed pursuant to Section 10158 or 10211, unless and until such person has completed the continuing education requirements of this article.

Article 3. Disciplinary Action

Powers

10175. Upon grounds provided in this article and the other articles of this chapter, the license of any real estate licensee may be revoked or suspended in accordance with the provisions of this part relating to hearings.

Monetary Penalty in Lieu of Suspension

10175.2. (a) If the Real Estate Commissioner determines that the public interest and public welfare will be adequately served by permitting a real estate licensee to pay a monetary penalty to the department in lieu of an actual license suspension, the commissioner may, on the petition of the licensee, stay the execution of all or some part of the suspension on the condition that the licensee pay a monetary penalty and the further condition that the licensee incur no other cause for disciplinary action within a period of time specified by the commissioner.

(b) The commissioner may exercise the discretion granted under subdivision (a) either with respect to a suspension ordered by a decision after a contested hearing on an accusation against the licensee or by stipulation with the licensee after the filing of an accusation, but prior to the rendering of a decision based upon the accusation. In either case, the terms and conditions of the disciplinary action against the licensee shall be made part of a formal decision of the commissioner.

(c) If a licensee fails to pay the monetary penalty in accordance with the terms and conditions of the decision of the commissioner, the commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the licensee shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the department under the terms of the decision.

(d) The amount of the monetary penalty payable under this section shall not exceed two hundred fifty dollars ($250) for each day of suspension stayed nor a total of ten thousand dollars ($10,000) per decision regardless of the number of days of suspension stayed under the decision.

(e) Any monetary penalty received by the department pursuant to this section shall be credited to the Consumer Recovery Account of the Real Estate Fund.

Grounds for Revocation or Suspension

10176. The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade, or induce.

(c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.

(d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.

(e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.

(f) Claiming, demanding, or receiving a fee, compensation, or commission under any exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination.

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission, or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee's compensation, commission, or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.

(h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing the licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when the licensee prior to or coincident with election to exercise the option to purchase reveals in writing to the employer the full amount of the licensee's profit and obtains the written consent of the employer approving the amount of the profit.

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(j) Obtaining the signature of a prospective purchaser to an agreement which provides that the prospective purchaser shall either transact the purchasing, leasing, renting, or exchanging of a business opportunity property through the broker obtaining the signature, or pay a compensation to the broker if the property is purchased, leased, rented, or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer the property for sale, lease, exchange, or rent.

(k) Failing to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant when the real estate broker represents to the applicant that the broker is either of the following:

(1) The lender.

(2) Authorized to issue the commitment on behalf of the lender or lenders in the mortgage loan transaction.

(l) Intentionally delaying the closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

(m) Violating any section, division, or article of law which provides that a violation of that section, division, or article of law by a licensed

person is a violation of that person's licensing law, if it occurs within the scope of that person's duties as a licensee.

Escrow Services – Notification of Enforcement or Disciplinary Actions Taken

10176.1. (a) (1) Whenever the commissioner takes any enforcement or disciplinary action against a licensee, and the enforcement or disciplinary action is related to escrow services provided pursuant to paragraph (4) of subdivision (a) of Section 17006 of the Financial Code, upon the action becoming final the commissioner shall notify the Insurance Commissioner and the Commissioner of Business Oversight of the action or actions taken. The purpose of this notification is to alert the departments that enforcement or disciplinary action has been taken, if the licensee seeks or obtains employment with entities regulated by the departments.

(2) The commissioner shall provide the Insurance Commissioner and the Commissioner of Business Oversight, in addition to the notification of the action taken, with a copy of the written accusation, statement of issues, or order issued or filed in the matter and, at the request of the Insurance Commissioner or the Commissioner of Business Oversight, with any underlying factual material relevant to the enforcement or disciplinary action. Any confidential information provided by the commissioner to the Insurance Commissioner or the Commissioner of Business Oversight shall not be made public pursuant to this section. Notwithstanding any other provision of law, the disclosure of any underlying factual material to the Insurance Commissioner or the Commissioner of Business Oversight shall not operate as a waiver of confidentiality or any privilege that the commissioner may assert.

(b) The commissioner shall establish and maintain, on the Web site maintained by the Bureau of Real Estate, a database of its licensees, including those who have been subject to any enforcement or disciplinary action that triggers the notification requirements of this section. The database shall also contain a direct link to the databases, described in Section 17423.1 of the Financial Code and Section 12414.31 of the Insurance Code and required to be maintained on the Web sites of the Department of Corporations and the Department of Insurance, respectively, of persons who have been subject to enforcement or disciplinary action for malfeasance or misconduct related to the escrow industry by the Insurance Commissioner and the Commissioner of Business Oversight.

(c) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the State of California, the Bureau of Real Estate, the Real Estate Commissioner, any other state agency, or any officer, agent, employee, consultant, or contractor of the state, for the release of any false or unauthorized information pursuant to this section, unless the release of that information was done with knowledge and malice, or for the failure to release any information pursuant to this section.

Real Estate Transfer Disclosure Statement Violations

10176.5. (a) The commissioner may, upon his or her own motion, and shall upon receiving a verified complaint in writing from any person, investigate an alleged violation of Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code by any real estate licensee within this state. The commissioner may suspend or revoke a licensee's license if the licensee acting under the license has willfully or repeatedly violated any of the provisions of Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code.

(b) Notwithstanding any other provision of Article 1.5 (commencing with Section 1102) of Chapter 2 of Title 4 of Part 4 of Division 2 of the Civil Code, and in lieu of any other civil remedy, subdivision (a) of this section is the only remedy available for violations of Section 1102.6b of the Civil Code by any real estate licensee within this state.

Further Grounds for Disciplinary Action

10177. The commissioner may suspend or revoke the license of a real estate licensee, delay the renewal of a license of a real estate licensee, or deny the issuance of a license to an applicant, who has done any of the following, or may suspend or revoke the license of a corporation, delay the renewal of a license of a corporation, or deny the issuance of a license to a corporation, if an officer, director, or person owning or controlling 10 percent or more of the corporation's stock has done any of the following:

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

(b) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a real estate licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under Section 1203.4 of the Penal Code allowing that licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or dismissing the accusation or information.

(c) Knowingly authorized, directed, connived at, or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning his or her designation or certification of special education, credential, trade organization membership, or business, or concerning a business opportunity or a land or subdivision, as defined in Chapter 1 (commencing with Section 11000) of Part 2, offered for sale.

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

(e) Willfully used the term "realtor" or a trade name or insignia of membership in a real estate organization of which the licensee is not a member.

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

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

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

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

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

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

(l) (1) Solicited or induced the sale, lease, or listing for sale or lease of residential property on the ground, wholly or in part, of loss of value, increase in crime, or decline of the quality of the schools due to the present or prospective entry into the neighborhood of a person or persons having a characteristic listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those characteristics are defined in Sections 12926 and 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 4760 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

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

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

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

(p) Violated Article 6 (commencing with Section 10237).

(q) Violated or failed to comply with Chapter 2 (commencing with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code, related to mortgages.

If a real estate broker that is a corporation has not done any of the foregoing acts, either directly or through its employees, agents, officers, directors, or persons owning or controlling 10 percent or more of the corporation's stock, the commissioner may not deny the issuance or delay the renewal of a real estate license to, or suspend or revoke the real estate license of, the corporation, provided that any offending officer, director, or stockholder, who has done any of the foregoing acts individually and not on behalf of the corporation, has been completely disassociated from any affiliation or ownership in the corporation. A decision by the commissioner to delay the renewal of a real estate license shall toll the expiration of that license until the results of any pending disciplinary actions against that licensee are final, or until the licensee voluntarily surrenders his, her, or its license, whichever is earlier.

This section shall become operative on July 1, 2012.

Suspension without Hearing for Fraud, etc., in Obtaining a License

10177.1. The commissioner may, without a hearing, suspend the license of any person who procured the issuance of the license to himself by fraud, misrepresentation, deceit, or by the making of any material misstatement of fact in his application for such license.

The power of the commissioner under this section to order a suspension of a license shall expire 90 days after the date of issuance of said license and the suspension itself shall remain in effect only until the effective date of a decision

of the commissioner after a hearing conducted pursuant to Section 10100 and the provisions of this section.

A statement of issues as defined in Section 11504 of the Government Code shall be filed and served upon the respondent with the order of suspension. Service by certified or registered mail directed to the respondent's current address of record on file with the commissioner shall be effective service.

The respondent shall have 30 days after service of the order of suspension and statement of issues in which to file with the commissioner a written request for hearing on the statement of issues filed against him. The commissioner shall hold a hearing within 30 days after receipt of the request therefor unless the respondent shall request or agree to a continuance thereof. If a hearing is not commenced within 30 days after receipt of the request for hearing or on the date to which continued with the agreement of respondent, or if the decision of the commissioner is not rendered within 30 days after completion of the hearing, the order of suspension shall be vacated and set aside.

A hearing conducted under this section shall in all respects, except as otherwise expressly provided herein, conform to the substantive and procedural provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code applicable to a hearing on a statement of issues.

Grounds for Disciplinary Action – Mobilehome Sales Violations

10177.2. The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any licensee, and he or she may suspend or revoke a real estate license at any time where the licensee in performing or attempting to perform any of the acts within the scope of Section 10131.6 has been guilty of any of the following acts:

(a) Has used a false or fictitious name, knowingly made any false statement, or knowingly concealed any material fact, in any application for the registration of a mobilehome, or otherwise committed a fraud in that application.

(b) Failed to provide for the delivery of a properly endorsed certificate of ownership or certificate of title of a mobilehome from the seller to the buyer thereof.

(c) Has knowingly participated in the purchase, sale, or other acquisition or disposal of a stolen mobilehome.

(d) Has submitted a check, draft, or money order to the Department of Housing and Community Development for any obligation or fee due the state and it is thereafter dishonored or refused payment upon presentation.

Price Opinions

10177.3. (a) No licensee shall knowingly or intentionally misrepresent the value of real property.

(b) No licensee that offers or provides an opinion of value of residential real property that is used as the basis for the origination of a mortgage loan shall have a prohibited interest in that property, within the meaning of Section 226.42(d) of Title 12 of the Code of Federal Regulations and the accompanying commentary contained in Volume 75 of the Federal Register, page 66554, dated October 28, 2010.

Referral of Customers for Compensation

10177.4. (a) Notwithstanding any other provision of law, the commissioner may, after hearing in accordance with this part relating to hearings, suspend or revoke the license of a real estate licensee who claims, demands, or receives a commission, fee, or other consideration, as compensation or inducement, for referral of customers to any escrow agent, structural pest control firm, home protection company, title insurer, controlled escrow company, or underwritten title company. A licensee may not be disciplined under any provision of this part for reporting to the commissioner violations of this section by another licensee, unless the licensee making the report had guilty knowledge of, or committed or participated in, the violation of this section.

(b) The term "other consideration" as used in this section does not include any of the following:

(1) Bona fide payments for goods or facilities actually furnished by a licensee or for services actually performed by a licensee, provided these payments are reasonably related to the value of the goods, facilities, or services furnished;

(2) Furnishing of documents, services, information, advertising, educational materials, or items of a like nature that are customary in the real estate business and that relate to the product or services of the furnisher and that are available on a similar and essentially equal basis to all customers or the agents of the customers of the furnisher.

(3) Moderate expenses for food, meals, beverages, and similar items furnished to individual licensees or groups or associations of licensees within a context of customary business, educational, or promotional practices pertaining to the business of the furnisher.

(4) Items of a character and magnitude similar to those in paragraphs (2) and (3) that are promotional of the furnisher's business customary in the real estate business, and available on a similar and essentially equal basis to all customers, or the agents of the customers, of the furnisher.

(c) Nothing in this section shall relieve any licensee of the obligation of disclosure otherwise required by this part.

Fraud in a Civil Action

10177.5. When a final judgment is obtained in a civil action against any real estate licensee upon grounds of fraud, misrepresentation, or deceit with reference to any transaction for which a license is required under this division, the commissioner may, after hearing in accordance with the provisions of this part relating to hearings, suspend or revoke the license of such real estate licensee.

Disclosure of Roles when Arranging Financing

10177.6 When an agent undertakes to arrange financing in connection with a sale, lease, or exchange of real property, or when a person or entity arranging financing in connection with the sale, lease, or exchange of real property undertakes to act as an agent with respect to that property, that agent, person, or entity shall, within 24 hours, make a written disclosure of those roles to all parties to the sale, lease, or exchange, and any related loan transaction. For purposes of this section, "agent" has the same meaning as defined in subdivision (a) of Section 2079.13 of the Civil Code.

Broker Must Report Discharge of Salesperson for Violation

10178. When any real estate salesman is discharged by his employer for a violation of any of the provisions of this article prescribing a ground for disciplinary action, a certified written statement of the facts with reference thereto shall be filed forthwith with the commissioner by the employer and if the employer fails to notify the commissioner as required by this section, the commissioner may temporarily suspend or permanently revoke the real estate license of the employer, in accordance with the provisions of this part relating to hearings.

Effect of Violation by Salesperson on Broker

10179. No violation of any of the provisions of this part relating to real estate or of Chapter 1 of Part 2 by any real estate salesman or employee of any licensed real estate broker shall cause the revocation or suspension of the license of the employer of the salesman or employee unless it appears upon a hearing by the commissioner that the employer had guilty knowledge of such violation.

Corporate Officer or Agent Revocation

10180. The commissioner may deny, suspend or revoke the real estate license of a corporation as to any officer or agent acting under its license without revoking the license of the corporation.

Reinstatement Examination

10182. As a condition to the reinstatement of a revoked or suspended license, the commissioner

may require the applicant to take and pass a qualifying examination.

Violations Are Misdemeanors

10185. Any person, including officers, directors, agents or employees of corporations, who willfully violates or knowingly participates in the violation of this division shall be guilty of a misdemeanor punishable by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the county jail not exceeding six months, or by a fine and imprisonment.

Monetary Costs Associated with Monitoring Licensed Activity of Restricted Licensees

10186. (a) Following an administrative proceeding, or in connection with a stipulation, when the commissioner grants the right to a license applicant or a licensee to apply for or to obtain a restricted license or restricted mortgage loan originator license endorsement, the commissioner may, in addition to any other terms and conditions placed upon the restricted licensee, require the restricted licensee to pay the monetary costs associated with monitoring the licensed activities conducted by and pursuant to the restricted license or restricted mortgage loan originator license endorsement.

(b) The commissioner may also require, as a condition precedent to the issuance of a restricted license or restricted mortgage loan originator license endorsement, that the licensee pay monetary restitution to any person who sustained damages by reason of the act or acts that led to the discipline imposed by the commissioner.

(c) The commissioner shall not renew a license or a mortgage loan originator license endorsement, and may deny an application for the removal of license restrictions or for the reinstatement of an unrestricted license, if the licensee fails to pay all of the costs he or she is ordered to pay pursuant to this section.

(d) The commissioner shall not reinstate an unrestricted license or unrestricted mortgage loan originator license endorsement, or remove restrictions from a license or license endorsement, if the petitioner has failed to pay any costs he or she was ordered to pay pursuant to this section.

(e) The commissioner may require a holder of a restricted or revoked license, who petitions the commissioner for reinstatement of his or her license pursuant to Section 11522 of the Government Code, to pay the reasonable costs of processing the petition request.

(f) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the Real Estate Fund to be available, notwithstanding Section 10451, upon appropriation by the Legislature.

License Suspensions − Incarceration

10186.1. (a) A license or an endorsement of the department shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The department shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license or endorsement has been automatically suspended by virtue of the licensee's incarceration, and if so, the duration of that suspension. The department shall notify the licensee of the suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) If after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the commissioner upon receipt of the certified copy of the record of conviction, shall suspend the license or endorsement until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the department.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be

conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the commissioner may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the department.

(d) (1) Discipline may be ordered against a licensee in accordance with the laws and regulations of the department when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be held until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence, except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the department from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license or endorsement issued by the department shall not apply to proceedings conducted pursuant to this section.

Reporting of Convictions, Indictments and License Disciplinary Actions

10186.2. (a) (1) A licensee shall report any of the following to the department:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, the conviction, or the disciplinary action.

(b) Failure to make a report required by this section shall constitute a cause for discipline.

Oversight Hearings

10186.9. Notwithstanding any other provision of law, on and after January 1, 2015, the department shall be subject to review by the appropriate policy committees of the Legislature.

Article 4. Fees

When Payable – Expiration of Licenses

10200. All real estate license fees shall be payable in advance of issuing the licenses and at the time of filing the application.

Unless otherwise provided, all licenses expire at midnight of the last day of the period for which issued.

Late Renewal
10201. The holder of a license who fails to renew it prior to the expiration of the period for which it was issued and who has otherwise qualified for such license, may renew it within two years from such expiration upon proper application and the payment of a late renewal fee in an amount equal to one and one-half times the regular renewal fee in effect at the time the license is reinstated.

Filing Application and Fee
10201.6. Any person who has qualified in an examination for a real estate license shall file the required application and fee for the license within one year thereafter.

Definitions – Applicability
10202. The definitions contained in this article are solely for the purposes of this article.

Amount – Fees Not Refundable
10207. The amount of the real estate fees prescribed for an examination or for a license under this chapter is that fixed by the following provisions of this article. No part of any fee paid in accordance with the provisions of this chapter is refundable. It is deemed earned by the department upon its receipt.

Broker License Examination Fee
10208.5. The real estate broker license examination fee is ninety-five dollars ($95). The real estate broker license reexamination fee is ninety-five dollars ($95).

If an applicant fails to appear for the examination within two years from the date of filing his or her application and fee for the examination, his or her application shall thereupon lapse and no further proceedings thereon shall be taken.

This section shall remain in effect unless it is superseded pursuant to subdivision (a) of Section 10226.5.

Application for Approval of Equivalent Course of Study – Fee
10209. (a) The commissioner shall, by regulation, establish fees for applications for approval of equivalent courses of study as defined in Section 10153.5 in an amount sufficient to cover the cost of administration. The fee for an application for approval of each course given by a private vocational school, including any branch school which gives the same course, shall not exceed one hundred fifty dollars ($150).

(b) The commissioner shall notify every applicant of his decision on the application no later than 60 days after receipt by the commissioner of a completed application. The application shall be on a form to be supplied by the commissioner.

Continuing Education Course Application Fee
10209.2. The commissioner shall, by regulation, establish fees for applications for approval of educational courses, seminars, workshops, conference, or their equivalent, or for the evaluation of petition based on a claim of equivalency, as authorized by Section 10170.4 in an amount sufficient to cover the cost of processing such applications or petitions.

Restricted Broker License Fee
10209.5. The fee for a restricted broker license shall be the same as that for an unrestricted license as provided in Section 10210.

Broker License Fee
10210. (a) The fee for a real estate broker license shall not exceed three hundred dollars ($300). In the case of an original applicant, the fee is payable upon filing the real estate broker license application.

(b) If an applicant fails to pass the real estate broker license examination within two years from the date of filing his or her broker license application, his or her broker license application shall lapse and no further proceedings thereon shall be taken.

(c) This section shall remain in effect unless it is superseded pursuant to Section 10226 or subdivision (a) of Section 10226.5, whichever is applicable.

Corporation License – Fee for Additional Officer(s)
10211. If the licensee is a corporation, the license issued to it entitles one officer thereof, on behalf of the corporation, to engage in the business of real estate broker without the payment of any further fee, such officer to be designated in the application of the corporation for a license. For each officer other than the officer so designated, through whom it engages in the business of real estate broker, the appropriate original or renewal fee is to be paid in addition to the fee paid by the corporation.

Salesperson License Examination Fee
10213.5. The real estate salesperson license examination fee is sixty dollars ($60). The real estate salesperson license reexamination fee is sixty dollars ($60).

If an applicant fails to appear for the examination within two years from the date of filing his or her application and fee for the examination, his or her application shall thereupon lapse and no further proceedings thereon shall be taken.

This section shall remain in effect unless it is superseded pursuant to subdivision (a) of Section 10226.5.

Rescheduling an Examination
10213.6. If an applicant for any examination fails to take the examination on the date scheduled, he or she may make application in writing to the principal office of the department in Sacramento for a new date. A fee of twenty dollars ($20) shall accompany the written request for applying for the first new examination date in the case of a broker applicant, and a fee of fifteen dollars ($15) shall accompany the written request for the first new examination date in the case of a salesperson applicant. A fee of thirty dollars ($30) shall accompany the written request for all subsequent new examination dates for both broker and salesperson applicants.

This section shall remain in effect unless it is superseded pursuant to subdivision (a) of Section 10226.5.

Restricted Salesperson License Fee
10214.5. The fee for a restricted salesperson license shall be the same as that for an unrestricted license as provided in Section 10215.

Salesperson License Fee
10215. (a) The fee for a real estate salesperson license shall not exceed two hundred forty-five dollars ($245), except that for an applicant qualifying pursuant to Section 10153.4 who has not satisfied all of the educational requirements prior to issuance of the license, the fee shall not exceed two hundred seventy-five dollars ($275). In the case of an original applicant, the fee is payable upon filing the real estate salesperson license application.

(b) If an applicant fails to pass the real estate salesperson license examination within two years from the date of filing his or her salesperson license application, his or her salesperson license application shall lapse and no further proceedings thereon shall be taken.

(c) This section shall remain in effect unless it is superseded pursuant to Section 10226 or subdivision (a) of Section 10226.5, whichever is applicable.

Other Examination Fees
10222. For any examination required under any order issued pursuant to the provisions of the Administrative Procedure Act, the fee shall be the same as for a salesperson or broker license examination, as appropriate.

Filing Fee and Inspection Costs for Real Property Securities Permit
10225. An application for a permit to sell real property securities secured by liens on real property situated outside the State of California shall be accompanied by the filing fee together with an amount equivalent to twenty-five cents ($0.25) a mile for each mile going and returning, or where public transportation is available the actual round trip fare pertaining thereto, estimated by the commissioner to be traveled from the office of the Department of Real Estate where the application is filed to the location of the property, and the amount estimated to be necessary to cover the expense of the inspection

and appraisal of the property, not to exceed seventy-five dollars ($75) a day for each day actually spent in the inspection and appraisal of the property or properties.

License Fees Lower than Prescribed

10226. (a) The commissioner may periodically by regulation prescribe fees lower than the maximum fees provided in Sections 10209.5, 10210, 10214.5, 10215, and 10250.3 whenever he or she determines those lower fees are sufficient to offset the costs and expenses incurred in the administration of Part 1 (commencing with Section 10000) of this division. The commissioner shall hold at least one regulation hearing each calendar year, to determine if lower fees should be prescribed.

(b) If, as of June 30 of any fiscal year, the balance of funds in the Real Estate Fund exceeds an amount equal to 150 percent of the department's authorized budget for the following year, then within 30 days thereafter the commissioner shall, notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), issue regulations reducing real estate license and subdivision fees so that as of June 30 of the next fiscal year the balance of funds in the Real Estate Fund shall not exceed an amount equal to 150 percent of the department's authorized budget for that year.

(c) If the commissioner fails to reduce these fees within the timeframe specified in subdivision (b), then fees shall automatically be reduced to the levels as indicated in subdivision (b) of Section 10226.5. That reduction shall be effective no later than September 1 of the fiscal year wherein the commissioner is obliged to issue regulations pursuant to subdivision (b).

Transfer of Funds – Reduction of Fees

10226.5. (a) If at any time funds are transferred or loaned from the Real Estate Fund to the General Fund by the Budget Act, then 30 days from and after the date of the transfer or loan, fees shall be reduced as indicated in subdivision (b), irrespective of any provisions of the Budget Act precluding that reduction.

(b) Fees shall be reduced pursuant to paragraph (a) to the following maximum amounts:

(1) Real estate broker examination or reexamination: Fifty dollars ($50).

(2) First reschedule of broker examination: Fifteen dollars ($15); subsequent reschedules: Twenty-five dollars ($25).

(3) Real estate broker license, original or renewal: One hundred sixty-five dollars ($165).

(4) Real estate salesperson examination or reexamination: Twenty-five dollars ($25).

(5) First reschedule of salesperson examination: Ten dollars ($10); subsequent reschedules: Twenty-five dollars ($25).

(6) Real estate salesperson license, original or renewal: One hundred twenty dollars ($120).

(7) Real estate salesperson license without all educational requirements: One hundred forty-five dollars ($145).

(8) A notice of intention without a completed questionnaire: One hundred fifty dollars ($150).

(9) An original public report for subdivision interests described in Section 11004.5: One thousand six hundred dollars ($1,600) plus ten dollars ($10) for each subdivision interest to be offered.

(10) An original public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500) plus ten dollars ($10) for each interest to be offered.

(11) A conditional public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500).

(12) A conditional public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500).

(13) A preliminary public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500).

(14) A preliminary public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500).

(15) A renewal public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500).

(16) A renewal public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500).

(17) An amended public report for subdivision interests described in Section 11004.5: Three hundred dollars ($300) plus ten dollars ($10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(18) An amended public report to offer subdivision interests other than those described in Section 11004.5: Three hundred dollars ($300) plus ten dollars ($10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(19) An application for an original, renewal, or amended registration as required by Section 10249: One hundred dollars ($100).

(20) The filing fee for an application for a permit to be issued pursuant to Article 8.5 (commencing with Section 10250) for each subdivision or phase of the subdivision in which interests are to be offered for sale or lease shall be as follows:

(A) One thousand six hundred dollars ($1,600) plus ten dollars ($10) for each subdivision interest to be offered for an original permit application.

(B) Five hundred dollars ($500) plus ten dollars ($10) for each subdivision interest to be offered that was not permitted to be offered under the permit to be renewed for a renewal permit application.

(C) Three hundred dollars ($300) plus ten dollars ($10) for each subdivision interest to be offered under the amended permit for which a fee has not previously been paid for an amended permit application.

(D) Five hundred dollars ($500) for a conditional permit application.

Article 5. Transactions in Trust Deeds and Real Property Sales Contracts

Exception

10230. (a) The provisions of this article do not apply to the negotiation of a loan by or on behalf of a real estate broker in connection with a qualifying sale or exchange of real property in which the broker acted as the agent of one or more of the parties to the sale or exchange, nor to the sale or exchange by or on behalf of the broker of a promissory note created for the purpose of financing a qualifying real property sale or exchange transaction in which the broker acted as the agent of one or more of the parties to the qualifying real property sale or exchange regardless of the time of the sale or exchange of the promissory note. For the purposes of this subdivision, a "qualifying" sale or exchange of real property is one that is subject to the requirements of Article 3 (commencing with Section 2956) of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code.

(b) Subdivision (a) shall not apply to the negotiation of loans nor to sales or exchanges of promissory notes in connection with the financing of a real property sale or exchange transaction in which the broker had a direct or indirect monetary interest as a party.

Acceptance of Loan Funds

10231. Except as authorized by permit issued pursuant to the applicable provisions of the Corporate Securities Law of 1968 (Section 25000 et seq. of the Corporations Code), no person in doing any of the acts set forth in subdivision (d) of Section 10131, subdivision (e) of Section 10131, and Section 10131.1 shall accept any purchase or loan funds or other

consideration from a prospective purchaser or lender, or directly or indirectly cause such funds or other consideration to be deposited in an escrow except as to a specific loan or a specific real property sales contract or promissory note secured directly or collaterally by a lien on real property on which loan, contract or note the person has a bona fide authorization to negotiate or to sell or which has been bought and completely paid for by the licensee, or has an unconditional written contract which obligates him to purchase a specific real property sales contract or promissory note secured directly or collaterally by a deed of trust.

Retention of Funds

10231.1. No person in doing any of the acts set forth in subdivision (d) of Section 10131, subdivision (e) of Section 10131, and Section 10131.1 shall, as agent or principal, retain funds payable according to the terms of a promissory note or real property sales contract secured directly or collaterally by a lien on real property, for a period longer than 25 days, except pursuant to a written agreement with the purchaser or lender.

Solicitation and Acceptance of Funds Other than for Services – Specified Statement and Its Use

10231.2. (a) A real estate broker who, through express or implied representations that the broker or any salesperson acting on the broker's behalf is engaging in acts for which a real estate license is required by subdivision (d) or (e) of Section 10131, proposes to solicit and accept funds, or to cause the solicitation and acceptance of funds, to be applied to a purchase or loan transaction in which the broker will directly or indirectly obtain the use or benefit of the funds other than for commissions, fees, and costs and expenses as provided by law for the broker's services as an agent, shall, prior to the making of any representation, solicitation, or presentation of the statement described in subdivision (b), submit the following to the Bureau of Real Estate:

(1) A true copy of the statement described in subdivision (b) complete except for the signature of the prospective lender or purchaser.

(2) A statement that the submittal is being made to the bureau pursuant to Section 10231.2.

(b) A broker making a solicitation pursuant to subdivision (a) shall deliver, or cause to be delivered, to the person solicited, the applicable completed statement described in Section 10232.5 not less than 24 hours before the earlier of the acceptance of any funds from that person by or on behalf of the broker or the execution of any instrument obligating the person to make the loan or purchase. The statement shall be signed by the prospective lender or purchaser and by the real estate broker or, on the broker's behalf, by a real estate salesperson licensed to the broker. When so executed, an exact copy of the executed statement shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of four years.

(c) None of the provisions of subdivision (a) or (b) shall apply in the case of an offering of a security authorized pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

(d) In the case of a solicitation by a corporate real estate broker, the provisions of subdivisions (a) and (b) shall apply if the funds solicited are intended for the direct or indirect use or benefit of an officer or director of the corporation or of a person with a 10-percent or greater ownership interest in the corporation.

Application of Sections 10232.2, 10232.25, 10233 and 10236.6

10232. (a) Except as otherwise expressly provided, Sections 10232.2, 10232.25, 10233, and 10236.6 are applicable to every real estate broker who intends or reasonably expects in a successive 12 months to do any of the following:

(1) Negotiate a combination of 10 or more of the following transactions pursuant to subdivision (d) or (e) of Section 10131 or Section 10131.1 in an aggregate amount of more than one million dollars ($1,000,000):

(A) Loans secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(B) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property or on business opportunities as agent for another or others.

(C) Sales or exchanges of real property sales contracts or promissory notes secured directly or collaterally by liens on real property as the owner of those notes or contracts.

(2) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars ($250,000) or more on behalf of owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.

(3) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars ($250,000) or more on behalf of obligors of promissory notes secured directly or collaterally by liens on real property, lenders of real property sales contracts, or both. Persons under common management, direction, or control in conducting the activities enumerated above shall be considered as one person for the purpose of applying the above criteria.

(b) The negotiation of a combination of two or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than two hundred fifty thousand dollars ($250,000) in any three successive months or a combination of five or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than five hundred thousand dollars ($500,000) in any successive six months shall create a rebuttable presumption that the broker intends to negotiate new loans and sales and exchanges of an aggregate amount that will meet the criteria of subdivision (a).

(c) In determining the applicability of Sections 10232.2, 10232.25, 10233, and 10236.6, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is any of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the United States Department of Veterans Affairs.

(B) A bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, finance lender, or insurer doing business under the authority of, and in accordance with, the laws of this state, any other state, or the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurers, as evidenced by a license, certificate, or charter issued by the United States or a state, district, territory, or commonwealth of the United States.

(C) Trustees of a pension, profit-sharing, or welfare fund, if the pension, profit-sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) A corporation with outstanding securities registered under Section 12 of

the Securities Exchange Act of 1934 or a wholly owned subsidiary of that corporation.

(E) A syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) that is organized to purchase the promissory note.

(F) The California Housing Finance Agency or a local housing finance agency organized under the Health and Safety Code.

(G) A licensed residential mortgage lender or servicer acting under the authority of that license.

(H) An institutional investor that issues mortgage-backed securities, as specified in paragraph (11) of subdivision (i) of Section 50003 of the Financial Code.

(I) A licensed real estate broker selling all or part of the loan, the note, or the contract to a lender or purchaser specified in subparagraphs (A) to (H), inclusive.

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

(3) The transaction is subject to the requirements of Article 3 (commencing with Section 2956) of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code.

(d) If two or more real estate brokers who are not under common management, direction, or control cooperate in the negotiation of a loan or the sale or exchange of a promissory note or real property sales contract and share in the compensation for their services, the dollar amount of the transaction shall be allocated according to the ratio that the compensation received by each broker bears to the total compensation received by all brokers for their services in negotiating the loan or sale or exchange.

(e) A real estate broker who meets any of the criteria of subdivision (a) or (b) shall notify the department in writing within 30 days after that determination is made.

Proposed Advertising – Submission – Fee – Regulations – Duration of Approval

10232.1. (a) A real estate broker, prior to the use of any proposed advertisement in connection with the conduct of activities described in subdivisions (d) and (e) of Section 10131 and Section 10131.1, may submit a true copy thereof to the Bureau of Real Estate for approval. The submission shall be accompanied by a fee of not more than forty dollars ($40). The commissioner shall by regulation prescribe the amount of the fee. If disapproval of the proposed advertisement is not communicated by the bureau to the broker within 15 calendar days after receipt of the copy of the proposed advertisement by the bureau, the proposed advertisement shall be deemed approved, but the bureau shall not be precluded from disapproving a later publication or other use of the same or similar advertising.

The commissioner shall adopt regulations pertaining to the submittal and clearance of that advertising and establishing criteria for approval to ensure that the public will be protected against false or misleading representations.

Except as provided in subdivision (b), "advertisement" includes dissemination in any newspaper, circular, form letter, brochure or similar publication, display, sign, radio broadcast or telecast, which concerns (1) the use, terms, rates, conditions, or the amount of any loan or sale referred to in subdivisions (d) and (e) of Section 10131 or Section 10131.1 or (2) the security, solvency, or stability of any person carrying on the activities described in those sections.

(b) "Advertisement" does not include a letter or brochure that meets both of the following criteria:

(1) It is restricted in distribution to other real estate brokers and to persons for whom the broker has previously acted as an agent in

arranging a loan secured by real property or in the purchase, sale, or exchange of a deed of trust or real property sales contract.

(2) It is restricted in content to the identification and a description of the terms of loans, mortgages, deeds of trust, real property sales contracts, or any combination thereof offered for funding or purchase through the broker as agent.

(c) Subdivision (a) is not applicable to advertising that is used exclusively in connection with an offering authorized by permit issued pursuant to the applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

(d) All advertising approvals shall be for a period of five years after the date of approval. The approval period applies to all advertising, including that which was previously submitted on a mandatory basis.

Filing Fiscal Year Reports – Accounting Criteria

10232.2. A real estate broker who meets the criteria of subdivision (a) of Section 10232 shall annually file the reports referred to in subdivisions (a) and (c) with the Bureau of Real Estate within 90 days after the end of the broker's fiscal year or within any additional time as the Real Estate Commissioner may allow for filing for good cause:

(a) The report of a review by a licensed California independent public accountant of trust fund financial statements, conducted in accordance with generally accepted accounting practices, which shall include within its scope the following information for the fiscal year relative to the business activities of the broker described in subdivisions (d) and (e) of Section 10131:

(1) The receipt and disposition of all funds of others to be applied to the making of loans and the purchasing of promissory notes or real property sales contracts.

(2) The receipt and disposition of all funds of others in connection with the servicing by the broker of the accounts of owners of promissory notes and real property sales contracts including installment payments and loan or contract payoffs by obligors.

(3) A statement as of the end of the fiscal year which shall include an itemized trust fund accounting of the broker and confirmation that the trust funds are on deposit in an account or accounts maintained by the broker in a financial institution.

(b) A broker who meets the criteria of Section 10232, but who, in carrying on the activities described in subdivisions (d) and (e) of Section 10131, has not during a fiscal year, accepted for the benefit of a person to whom the broker is a trustee, any payment or remittance in a form convertible to cash by the broker, need not comply with the provisions of subdivision (a). In lieu thereof, the broker shall submit to the commissioner within 30 days after the end of the broker's fiscal year or, within any additional time as the commissioner may allow for a filing for good cause, a notarized statement under penalty of perjury on a form provided by the bureau attesting to the fact that the broker did not receive any trust funds in cash or convertible to cash during the fiscal year.

(c) A report of all of the following aspects of the business conducted by the broker while engaging in activities described in subdivisions (d) and (e) of Section 10131 and in Section 10131.1:

(1) Number and aggregate dollar amount of loan, trust deed sales, and real property sales contract transactions negotiated.

(2) Number and aggregate dollar amount of promissory notes and contracts serviced by the broker or an affiliate of the broker.

(3) Number and aggregate dollar amount of late payment charges, prepayment penalties, and other fees or charges collected and retained by the broker under servicing agreements with beneficiaries and obligees.

(4) Default and foreclosure experience in connection with promissory notes and contracts subject to servicing agreements

between the broker and beneficiaries or obligees.

(5) Commissions received by the broker for services performed as agent in negotiating loans and sales of promissory notes and real property sales contracts.

(6) Aggregate costs and expenses as referred to in Section 10241 paid by borrowers to the broker.

(d) The commissioner shall adopt regulations prescribing the form and content of the report referred to in subdivision (c) with appropriate categories to afford a better understanding of the business conducted by the broker.

(e) If the broker fails to file either of the reports required under subdivisions (a) and (c) within the time permitted herein, the commissioner may cause an examination and report to be made and may charge the broker one and one-half times the cost of making the examination and report. In determining the hourly cost incurred by the commissioner for conducting an examination and preparing the report, the commissioner may use the estimated average hourly cost for all department audit staff performing audits of real estate brokers. If a broker fails to pay the above amount within 60 days of the mailing of a notice of billing, the commissioner may suspend the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the above amount is paid or the broker's right to renew a license has expired. The commissioner may maintain an action for the recovery of the above amount in any court of competent jurisdiction.

(f) The reports referred to in subdivisions (a) and (c) are exempted from any requirement of public disclosure by paragraph (2) of subdivision (d) of Section 6254 of the Government Code. The commissioner shall annually make and file as a public record, a composite of the annual reports and any comments thereon which are deemed to be in the public interest.

Trust Funds Status Report – Contents

10232.25. (a) A real estate broker who meets the criteria of subdivision (a) of Section 10232 shall, within 30 days after the end of each of the first three fiscal quarters of the broker's fiscal year, or within any additional time as the Real Estate Commissioner may allow for good cause, file with the commissioner a trust funds status report as of the last day of the fiscal quarter which shall include the following:

(1) A representation that the form and content of the trust account records of the broker are in compliance with the regulations of the commissioner.

(2) A representation that the broker's trust fund bank account is maintained in compliance with the regulations of the commissioner.

(3) A statement of the broker's aggregate accountability for trust funds.

(4) A report of trust funds in the broker's custody consisting of the trust account bank statements as of the bank's accounting date immediately preceding the end of the fiscal quarter and a schedule of withdrawals and deposits adjusting the account to its true balance as of the end of the fiscal quarter.

(5) A statement explaining any difference in amount between the broker's total accountability under paragraph (3) above and the adjusted trust account bank balance under paragraph (4) above.

(b) Each report made pursuant to subdivision (a) shall include the following:

(1) The name, address, and position or capacity of the person who prepared the report.

(2) A declaration under penalty of perjury by the broker that the information and representations in the report are true, complete, and correct to the best of the broker's knowledge and belief. The declaration in a report submitted on behalf of a corporate broker shall be signed by a broker-officer through whom the corporation is licensed as a real estate broker and by the chief executive officer of the corporation if he or she is not the signing broker-officer.

(c) If a broker fails to file a report required under subdivision (a) within the time permitted, the commissioner may cause an examination and report to be made and may charge the broker one and one-half times the cost of making the examination and report. In determining the hourly cost incurred by the commissioner for conducting an examination and preparing the report, the commissioner may use the estimated average hourly cost for all department audit staff performing audits of real estate brokers. If a broker fails to pay the above amount within 60 days of the mailing of a notice of billing, the commissioner may suspend the broker's license or deny renewal of the broker's license. The suspension or denial shall remain in effect until the above amount is paid or the broker's right to renew a license has expired. The commissioner may maintain an action for the recovery of the above amount in any court of competent jurisdiction.

(d) A broker who meets the criteria of Section 10232, but who, in carrying on the activities described in subdivisions (d) and (e) of Section 10131, did not during a fiscal quarter, accept for the benefit of a person to whom the broker is trustee, any payment or remittance in a form convertible to cash by the broker, need not comply with the provisions of subdivision (a). In lieu thereof, the broker shall submit to the commissioner within 30 days after the end of the fiscal quarter or within any additional time as the commissioner may allow for good cause, a statement under penalty of perjury on a form provided by the department attesting to the fact that the broker did not receive any trust funds in cash or convertible to cash during the fiscal quarter.

(e) Any real estate broker who engages in any of the activities specified in subdivision (d) or (e) of Section 10131, but who is not required by this section to file trust funds status reports with the commissioner and who is not exempt therefrom under subdivision (d), shall complete trust funds status reports in accordance with either (1) the requirements of subdivisions (a) and (b) applicable to trust funds status reports filed with the commissioner, or (2) the requirements established by the lender or note owner, if the lender or note owner does all of the following: (i) requires monthly reconciliations of trust account balances; (ii) requires annual, CPA-audited financial statements; and (iii) maintains a contractual right to audit the trust accounts held by the broker on behalf of the lender or note owner.

The broker shall retain all trust funds status reports prepared under this subdivision on file at the broker's offices, where they shall be subject to inspection by representatives of the commissioner upon 24 hours' notice.

Loan to Value and Other Requirements

10232.3. (a) Any transaction that involves the sale of or offer to sell a note secured directly by an interest in one or more parcels of real property or the sale of an undivided interest in a note secured directly by one or more parcels of real property shall adhere to all of the following:

(1) Except as provided in paragraph (2), the aggregate principal amount of the note or interest 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 note or interest 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 and income-producing properties..... 65%

(D) Single-family residentially zoned lot or parcel which 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 has been zoned for (and if required, approved for subdivision as) commercial or residential development ……..... 50%

(F) 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 note or interest 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 Section 10232.5.

(3) A copy of the appraisal or the broker's evaluation, for each parcel of real property securing the note or interest, shall be delivered to the purchaser. The broker shall advise the purchaser of his or her right to receive a copy. 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 the person so employed is qualified on the basis of special training, preparation, or experience.

(4) For construction or rehabilitation loans, where the amount withheld for construction or rehabilitation at the start of the project exceeds one hundred thousand dollars ($100,000), the term "current market value" may be deemed to be the value of the completed project if all of the following safeguards are met:

(A) An independent neutral third-party escrow holder is used for all deposits and disbursements relating to the construction or rehabilitation of the secured property.

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

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

(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) The documentation includes a detailed description of the 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) For construction or rehabilitation loans, where the amount withheld for construction or rehabilitation at the start of the project is one hundred thousand dollars ($100,000) or less, the term "current market value" may be deemed to be the value of the completed project if all of the following safeguards are met:

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

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

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

(D) The documentation includes a detailed description of the 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.

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

(6) 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 which shall not exceed the percentage of current market value determined by, and in accordance with, the provisions of paragraphs (1) and (2).

(b) The note or interest shall not be sold, unless the purchaser 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"

Disclosure Statement – Delivery – Exception – Funds Handling

10232.4. (a) In making a solicitation to a particular person and in negotiating with that person to make a loan secured by real property or to purchase a real property sales contract or a note secured by a deed of trust, a real estate broker shall deliver to the person solicited the applicable completed statement described in Section 10232.5 as early as practicable before he or she becomes obligated to make the loan or purchase and, except as provided in subdivision (c), before the receipt by or on behalf of the broker of any funds from that person. The statement shall be signed by the prospective lender or purchaser and by the real estate broker, or by a real estate salesperson licensed to the broker, on the broker's behalf. When so executed, an exact copy shall be given to the prospective lender or purchaser, and the broker shall retain a true copy of the executed statement for a period of three years.

(b) The requirement of delivery of a disclosure statement pursuant to subdivision (a) shall not apply with respect to the following persons:

(1) The prospective purchaser of a security offered under authority of a permit issued pursuant to applicable provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) that require that each prospective purchaser of a security be given a prospectus or other form of disclosure statement approved by the department issuing the permit.

(2) The seller of real property who agrees to take back a promissory note of the purchaser as a method of financing all or a part of the purchase of the property.

(3) The prospective purchaser of a security offered pursuant to and in accordance with a regulation duly adopted by the Commissioner of Corporations granting an exemption from qualification under the Corporate Securities Law of 1968 for the offering if one of the conditions of the exemption is that each prospective purchaser of the security be given a disclosure statement prescribed by the regulation before the prospective purchaser becomes obligated to purchase the security.

(4) A prospective lender or purchaser, if that lender or purchaser is any of the following:

(A) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or corporate or other instrumentality of any one or more of the foregoing, including the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the Veteran's Administration.

(B) Any bank or subsidiary thereof, bank holding company or subsidiary thereof, trust company, savings bank or savings and loan association or subsidiary thereof, savings bank or savings association holding company or subsidiary thereof, credit union, industrial bank or industrial loan company, finance lender, or insurance company doing business under the authority of, and in accordance with, the laws of this state, any other state, or of the United States relating to banks, trust companies, savings banks or savings associations, credit unions, industrial banks or industrial loan companies, commercial finance lenders, or insurance companies, as evidenced by a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(C) Trustees of pension, profit sharing, or welfare fund, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars ($15,000,000).

(D) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation.

(E) Any syndication or other combination of any of the entities specified in subparagraph (A), (B), (C), or (D) which is organized to purchase the promissory note.

(F) A licensed real estate broker engaging in the business of selling all or part of the loan, note, or contract to a lender or purchaser to whom no disclosure is required pursuant to this subdivision.

(G) A licensed residential mortgage lender or servicer when acting under the authority of that license.

(c) When the broker has custody of funds of a prospective lender or purchaser which were received and are being maintained with the express permission of the owner and in accordance with law, and the broker retains the funds in an escrow depository or a trust fund account pending receipt of the owner's express written instructions to disburse the funds for a loan or purchase, the broker shall cause the disclosure statement to be delivered to the owner and shall obtain the owner's written consent to the proposed disbursement before making the disbursement. Unless the broker has a written agreement with the owner as provided in Section 10231.1, the broker shall transmit to the owner not later than 25 days after receipt, all funds then in the broker's custody for which the owner has not given written instructions authorizing disbursement.

Investor Questionnaire/Suitability

10232.45. (a) Any broker subject to the provisions of Section 10232.3 or Article 6 (commencing with Section 10237) shall make reasonable efforts to ensure all of the following with respect to the offer or sale of notes or interest in notes to be secured by a lien on real property or a business opportunity:

(1) All persons to whom notes or interests are sold can be reasonably assumed to have the capacity to understand the fundamental aspects of the investment, by reason of their educational, business, or financial experience.

(2) All persons to whom notes or interests are sold can bear the economic risk of the investment.

(3) The investment in the notes or interests is suitable and appropriate for the purchaser, given the purchaser's investment objectives, portfolio structure, and financial situation.

(b) A broker shall make this determination on the basis of information he or she obtains from the purchaser. Relevant information for this purpose includes, at least, the age, investment objective, investment experience, income, net worth, financial situation, and other investments of the prospective purchaser, as well as any other pertinent factors the commissioner shall establish through regulation.

(c) A broker shall maintain records of the information used to determine that an investment is suitable and appropriate for each purchaser and shall retain these records for at least four years.

(d) A broker that complies with all of the following shall be deemed to have complied with subdivision (a):

(1) Obtains from each person to whom notes and deeds of trust or interests therein are offered or sold a completed investor questionnaire in a form approved by the commissioner.

(2) Uses the responses in that questionnaire as an aid in complying with subdivision (a).

(3) On an annual basis, obtains from each person to whom notes and deeds of trust or interests therein are offered or sold, or on whose behalf they are serviced, an updated investor questionnaire, which reflects any material changes that may have occurred with respect to any of the responses to questions in the questionnaire.

(e) Nothing in this section shall be construed to require a broker to utilize an investor questionnaire to ensure compliance with subdivision (a). Reliance of a broker on an investor questionnaire in a form approved by the commissioner shall not prohibit that broker from utilizing additional information to ensure compliance with subdivision (a).

Disclosure Statement Content

10232.5. (a) If the real estate broker is performing acts described in subdivision (d) of Section 10131 in negotiating a loan to be secured by a lien on real property or on a business opportunity, the statement required to be given to the prospective lender shall include, but shall not necessarily be limited to, the following information:

(1) Address or other means of identification of the real property that is to be the security for the borrower's obligation.

(2) Estimated fair market value of the securing property as determined by an appraisal, a copy of which shall be provided to the lender. However, a lender may waive the requirement of an independent appraisal in writing, on a case-by-case basis, in which case, the real estate broker shall provide the broker's written estimated fair market value of the securing property, which shall include the objective data upon which the broker's estimate is based.

(3) Age, size, type of construction, and a description of improvements to the property if contained in the appraisal or as represented to the broker by the prospective borrower.

(4) Identity, occupation, employment, income, and credit data about the prospective borrower or borrowers as represented to the broker by the prospective borrower or borrowers.

(5) Terms of the promissory note to be given to the lender.

(6) Pertinent information concerning all encumbrances which constitute liens against the securing property and, to the extent of actual knowledge of the broker, pertinent information about other loans that the borrower expects or anticipates will result in a lien being recorded against the property securing the promissory note to be created in favor of the prospective lender.

As used in this paragraph, actual knowledge with respect to any anticipated or expected loan, means knowledge gained by the broker through arranging that other loan or receipt of written notification of that other loan. In this regard, the broker shall also provide to the prospective lender the option to apply to purchase a title insurance policy or an endorsement to an existing title insurance policy covering the securing property, and a copy of a written loan application, and a credit report.

(7) Provisions for servicing of the loan, if any, including disposition of the late charge and prepayment penalty fees paid by the borrower.

(8) Detailed information concerning any proposed arrangement under which the prospective lender along with persons not otherwise associated with him or her will be joint beneficiaries or obligees.

(9) If the solicitation is subject to the provisions of Section 10231.2, a detailed statement of the intended use and disposition of the funds being solicited including an explanation of the nature and extent of the benefits to be directly or indirectly derived by the broker.

(10) If the broker is subject to the provisions of Section 10232 or Article 6 (commencing with Section 10237), a statement that the broker has a responsibility to make reasonable efforts to determine that the loan is a suitable and appropriate investment for the lender, based on information provided by the lender regarding the lender's financial situation and investment objectives.

(b) If the real estate broker is performing acts described in subdivision (e) of Section 10131 or in Section 10131.1 in negotiating the sale of a real property sales contract or promissory note secured directly or collaterally by a lien on real property, the statement required to be given to the prospective purchaser by Section 10232.4 shall include, but shall not necessarily be limited to, the following information:

(1) Address or other means of identification of the real property that is the security for the trustor's or vendee's obligation.

(2) Estimated fair market value of the real property as determined by an appraisal, a copy of which shall be provided to the prospective purchaser.

However, a purchaser may waive the requirement of an independent appraisal in writing, on a case-by-case basis, in which case, the real estate broker shall provide the broker's written estimated fair market value of the securing property, which shall include

the objective data upon which the broker's estimate is based.

(3) Age, size, type of construction, and a description of improvements to the real property if known by the broker.

(4) Information available to the broker relative to the ability of the trustor or vendee to meet his or her contractual obligations under the note or contract including the trustor's or vendee's payment history under the note or contract.

(5) Terms of the contract or note including the principal balance owing.

(6) Provisions for servicing of the note or contract, if any, including disposition of late charge, prepayment penalty or other fees or charges paid by the trustor or vendee.

(7) Detailed information concerning any proposed arrangement under which the prospective purchaser along with persons not otherwise associated with him or her will be joint beneficiaries or obligees. In this regard, the broker shall also provide to the prospective purchaser the option to apply to purchase a title insurance policy or an endorsement to an existing title insurance policy covering the real property and, if available from the seller of the note or contract or from the original lender, a copy of a written loan application, and a credit report.

(8) A statement as to whether the dealer is acting as a principal or as an agent in the transaction with the prospective purchaser.

(9) If the broker is subject to the provisions of Section 10232 or Article 6 (commencing with Section 10237), a statement that the broker has a responsibility to make reasonable efforts to determine that the purchase is a suitable and appropriate investment for the purchaser, based on information provided by the purchaser regarding the purchaser's financial situation and investment objectives.

Appraisal – Disclosure of Fair Market Value in Loan Transactions

10232.6. (a) A real estate broker, acting within the course and scope of his or her license, who arranges for or engages the services of an appraiser licensed or certified by the Office of Real Estate Appraisers for the applicable transaction, and delivers the resulting appraisal to the prospective lender and prospective purchaser as required by Section 10232.5, has met the broker's obligation of full and complete disclosure solely pursuant to paragraph (2) of subdivision (a) of Section 10232.5 and paragraph (2) of subdivision (b) of Section 10232.5, and is not required to provide a separate estimate of fair market value under Section 10232.5.

(b) This section shall not apply in instances where the licensed or certified appraiser is an employee of the broker. However, the duty of disclosure shall not be deemed met where the broker knew or should have known that the referral was negligently made or that the fair market value provided by the appraiser was inaccurate.

(c) Nothing in this section is intended to relieve the broker of any obligation or requirement to disclose what he or she knows about the value of the property.

(d) This section shall apply only to loan transactions and shall have no effect on a real estate broker's duties of disclosure in purchase or sales transactions.

Authorization Required to Service Promissory Note

10233. A real estate licensee who undertakes to service a promissory note secured directly or collaterally by a lien on real property or a real property sales contract shall comply with each of the following requirements: (a) The licensee shall have a written authorization from the borrower, the lender, or the owner of the note or contract, that is included within the terms of a written servicing agreement that satisfies the requirements of paragraphs (1), (2), (4), and (5) of subdivision (k) of Section 10238.

(b) The licensee shall provide the lender or the owner of the note or contract with at least the following accountings: (1) An accounting of the unpaid principal balance at the end of each year. (2) An accounting of collections and disbursements received and made during each year. (3) Each accounting required under this subdivision shall identify the person who holds the original note or contract and the deed of trust evidencing and securing the debt or obligation for which the accounting has been provided.

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

(1) The recording of a notice of default.

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

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

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

Broker Advancing Other than Obligor's Funds

10233.1. If a real estate broker in servicing a real property sales contract or a promissory note secured directly or collaterally by a lien on real property for the mortgagee, beneficiary, or owner of the note or contract, causes funds other than funds received from the obligor of the note or contract to be applied toward a payment to protect the security of the note or contract being serviced, including the payment of debt service on an obligation secured by the same real property having priority over the mortgage or deed of trust securing the promissory note that the broker is servicing, the broker shall, not later than 10 days after making any such payment, give written notice to the mortgagee, beneficiary, or owner of the date and amount of payment, the name of the person to whom payment was made, the source of funds, and the reason for making the payment.

Loan Servicing – Delivery by Recordation Provided Note Payable to Lender or Endorsed or Assigned to Loan Purchaser

10233.2. For the purposes of Division 3 (commencing with Section 3101) and Division 9 (commencing with Section 9101) of the Commercial Code, when a broker, acting within the meaning of subdivision (d) or (e) of Section 10131 or Section 10131.1, has arranged a loan or sold a promissory note or any interest therein, and thereafter undertakes to service the promissory note on behalf of the lender or purchaser in accordance with Section 10233, delivery, transfer, and perfection shall be deemed complete even if the broker retains possession of the note or collateral instruments and documents, provided that the deed of trust or an assignment of the deed of trust or collateral documents in favor of the lender or purchaser is recorded in the office of the county recorder in the county in which the security property is located, and the note is made payable to the lender or is endorsed or assigned to the purchaser.

Recordation of Trust Deeds, Assignments

10234. (a) Except as provided in subdivision (d), every real estate licensee who negotiates a loan secured by a trust deed on real property shall cause the trust deed to be recorded, naming as beneficiary the lender or his or her nominee (who shall not be the licensee or the licensee's nominee), with the county recorder of the county in which the real property is located prior to the time that any funds are disbursed, except when the lender has given written authorization for prior release.

(b) If funds are released on the lender's written authorization as described in subdivision (a), the trust deed shall be recorded, or delivered to the lender or beneficiary with a written recommendation that it be recorded forthwith, within 10 days following release.

(c) Every real estate licensee who sells, exchanges, or negotiates the sale or exchange of a real property sales contract or a promissory note secured by a trust deed on real property

shall cause a proper assignment of the real property sales contract or trust deed to be executed and shall cause the assignment to be recorded, naming as assignee the purchaser or his or her nominee (who shall not be the licensee or the licensee's nominee), with the county recorder of the county in which the real property is located within 10 working days after the licensee or seller receives any funds from the buyer or after close of escrow; or shall deliver the real property sales contract or trust deed to the purchaser with a written recommendation that the assignment thereof be recorded forthwith.

(d) A trust deed may be recorded in the name of the real estate broker negotiating the loan if all of the following apply: (1) the lender or purchaser is any person or entity set forth in paragraph (1) of subdivision (c) of Section 10232, (2) the trust deed is recorded with the county recorder of the county in which the real property is located, and (3) the real property securing the loan as described in the trust deed is not a dwelling as defined in Section 10240.2 or unimproved real property.

Delivery of Copies of Deed of Trust
10234.5. In addition to the requirements of Section 10234, in the placing of any loan, a broker shall deliver or cause to be delivered conformed copies of any deed of trust to both the investor or lender and the borrower within a reasonable amount of time from the date of recording.

Misleading Advertising
10235. No real estate licensee shall knowingly advertise, print, display, publish, distribute, telecast or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, televised or broadcast, in any manner any statement or representation with regard to the rates, terms, or conditions for making, purchasing or negotiating loans or real property sales contracts which is false, misleading or deceptive.

Indicating or otherwise implying any specific yield or return on any note other than the interest rate specified in said note shall be prima facie evidence that such advertisement is misleading or deceptive unless the advertisement sets forth the actual interest rate specified in the note and the discount from the outstanding principal balance at which it is being offered for sale.

Advertising of Loan – License Disclosure
10235.5. (a) No real estate licensee or mortgage loan originator shall place an advertisement disseminated primarily in this state for a loan unless there is disclosed within the printed text of that advertisement, or the oral text in the case of a radio or television advertisement, the Bureau of Real Estate number and the unique identifier assigned to that licensee by the Nationwide Mortgage Licensing System and Registry under which the loan would be made or arranged.

(b) "Mortgage loan originator," "unique identifier," and "Nationwide Mortgage Licensing System and Registry" have the meanings set forth in Section 10166.01.

Requests for Interpretive Opinions
10236. The commissioner in his or her discretion may honor requests from interested persons for interpretive opinions with respect to any provision of this article or with respect to any regulation for implementation of provisions of this article.

No provision of this article imposing any liability applies in the case of an act done or omitted in good faith in conformity with a written interpretive opinion of the commissioner or an opinion of the Attorney General, notwithstanding that the opinion may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Inducement Prohibited
10236.1. No real estate licensee shall advertise to give or to offer to give to a prospective purchaser or lender any premium, gift or any other object of value as an inducement for making a loan, or purchasing a promissory note secured directly or collaterally by a lien on real property or a real property sales contract.

Penalties for Noncompliance with Section 10232

10236.2. (a) A real estate broker who satisfies the criteria of subdivision (a) or (b) of Section 10232 and who fails to notify the Bureau of Real Estate, in writing, of that fact within 30 days thereafter as required by subdivision (e) of Section 10232 shall be assessed a penalty of fifty dollars ($50) per day for each additional day written notification has not been received up to and including the 30th day after the first day of the assessment penalty. On and after the 31st day the penalty is one hundred dollars ($100) per day, not to exceed a total penalty of ten thousand dollars ($10,000), regardless of the number of days, until the bureau receives the written notification.

(b) The commissioner may suspend or revoke the license of any real estate broker who fails to pay a penalty imposed under this section. In addition, the commissioner may bring an action in an appropriate court of this state to collect payment of the penalty.

(c) All penalties paid or collected under this section shall be deposited into the Consumer Recovery Account of the Real Estate Fund.

Disclosure of License Number in Advertisement; License Number and CalBRE License Information Telephone Number in Disclosure Statements

10236.4. (a) In compliance with Section 10235.5, every licensed real estate broker shall also display his or her license number on all advertisements where there is a solicitation for borrowers or potential investors. Every mortgage loan originator, as defined in Section 10166.01, shall also display the unique identifier assigned to that individual by the Nationwide Mortgage Licensing System and Registry on all advertisements where there is a solicitation for borrowers.

(b) The disclosures required by Sections 10232.4 and 10240 shall include the licensee's license number, the mortgage loan originator's unique identifier, if applicable, and the department's license information telephone number.

(c) "Mortgage loan originator," "unique identifier," and "Nationwide Mortgage Licensing System and Registry" have the meanings set forth in Section 10166.01.

Notification of End of Section 10232 Reporting Status

10236.5. A real estate broker shall notify the department when he or she is no longer servicing or arranging loans subject to the reporting requirements of Section 10232. If a broker has already made reports required by this article within the year, he or she shall continue reports for that year, but shall notify the department prior to the expiration of that year that he or she will no longer be servicing or arranging loans for which reports are required. The department's records, including those which may be disclosed by calling the license information telephone number of the department, may then be appropriately updated.

Audit – After Reasonable Notice

10236.6. (a) The commissioner, in his or her discretion, may audit any broker who conducts transactions subject to the provisions of this article. The audit shall be conducted after reasonable notice to the broker and shall include an examination of both of the following:

(1) Trust accounts under the control of the broker or in any manner affiliated with the broker.

(2) Nontrust accounts under the control of the broker or in any manner affiliated with the broker to which funds from trust accounts have been deposited other than for the payment of commissions, fees, costs, or expenses due to or incurred by the broker.

(b) The authority to audit these nontrust accounts shall be limited to instances where either an annual review or audit conducted by an independent certified public accountant or a departmental audit reveals unauthorized transfers of money to those accounts.

Article 6. Claim of Exemption From Securities Qualification

10236.7. (a) A real estate broker, when engaging in acts for which a license is required, who arranges a transaction pursuant to Article 6 (commencing with Section 10237) or one or more provisions of the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code), shall clearly indicate in the real estate broker's transaction file the provision or provisions of this code or the Corporate Securities Law of 1968 pertaining to qualification or exemption from qualification under which the transaction is being conducted. The real estate broker shall retain this information for the period specified in subdivision (a) of Section 10148.

(b) The real estate broker shall submit a copy of the information described in subdivision (a) to any investor from whom the real estate broker obtains funds in connection with the transaction, either directly or through an agent or affiliate, within 10 days of receipt of those funds.

Applicability

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.

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
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Sections 10237 and 10238 of the Business and Professions Code.

( ) Original Notice ( ) Amended Notice

1. Name of 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 Street City

   _____

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

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

(d) 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 ensuring the priority of the security as against mechanic's and materialmen's liens or for the final disbursement of at least 10 percent of the loan funds after the expiration of the period for the filing of mechanic's and materialmen's liens.

(e) The notes or interests shall be sold by or through a real estate broker, as principal or agent. At the time the interests are originally sold or assigned, neither the broker nor an affiliate of the broker shall have an interest as owner, lessor, or developer of the property 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 (1) 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) A husband and wife 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 and income-producing properties 65%

(D) Single-family residentially zoned lot or parcel which 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 has been zoned for (and if required, approved for subdivision as) commercial or residential development 50%

(F) 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. The broker shall advise purchasers of their right to receive a copy. 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 the person so employed 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 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 which 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 that (1) a default upon any interest or note is a default upon all interests or notes and (2) the holders of more than 50 percent of the 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 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, and (B) 10 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 subdivision (j) 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 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 interest 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 interest 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 include the transactions subject to that section as well. This report shall be confidential pursuant to subdivision (f) of Section 10232.2.

Corporations Commissioner
10239. The jurisdiction of the Commissioner of Corporations 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.

Fiduciary Duty
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.

Definitions
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.

Maintenance of Records by Persons Other than the Broker
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.

Article 7. Real Property Loans

Written Disclosure Statement
10240. (a) Every real estate broker, upon acting within the meaning of subdivision (d) of Section 10131, who negotiates a loan to be secured directly or collaterally by a lien on real property shall, within three business days after receipt of

a completed written loan application or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower a statement in writing, containing all the information required by Section 10241. It shall be personally signed by the borrower and by the real estate broker negotiating the loan or by a real estate licensee acting for the broker in negotiating the loan. When so executed, an exact copy thereof shall be delivered to the borrower at the time of its execution. The real estate broker negotiating the loan shall retain on file for a period of three years a true and correct copy of the statement as signed by the borrower.

No real estate licensee shall permit the statement to be signed by a borrower if any information required by Section 10241 is omitted.

(b) For the purposes of applying the provisions of this article, a real estate broker is acting within the meaning of subdivision (d) of Section 10131 if he or she solicits borrowers, or causes borrowers to be solicited, through express or implied representations that the broker will act as an agent in arranging a loan, but in fact makes the loan to the borrower from funds belonging to the broker.

(c) In a federally regulated residential mortgage loan transaction in which the principal loan amount exceeds the principal loan levels set forth in Section 10245, a real estate broker satisfies the requirements of this section if the borrower receives (1) a "good faith estimate" that satisfies the requirements of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. 2601 et seq.), and that sets forth the broker's real estate license number and a clear and conspicuous statement on the face of the document stating that the "good faith estimate" does not constitute a loan commitment, (2) all applicable disclosures required by the Truth in Lending Act (15 U.S.C.A. 1601 et seq.), and (3) if the loan contains a balloon payment provision, the disclosure described in subdivision (h) of Section 10241, the balloon disclosure required for that loan by Fannie Mae or Freddie Mac, or an alternative disclosure determined by the commissioner to satisfy the requirements of the Truth in Lending Act.

Prior to becoming obligated on the loan the borrower shall acknowledge, in writing, receipt of the "good faith estimate" and all applicable disclosures required by the Truth in Lending Act. The real estate broker shall retain on file for a period of three years a true and correct copy of the signed acknowledgment and a true and correct copy of the "good faith estimate" and all applicable disclosures required by the Truth in Lending Act as acknowledged by the borrower.

Application of Provisions

10240.1. The provisions of this article, exclusive of the provisions of Section 10240, apply only to loans secured by a dwelling.

"Dwelling" Defined

10240.2. As used in this article, "dwelling" means any of the following units which are owned by a signatory to the mortgage or deed of trust secured by the dwelling unit at the time of execution of the mortgage or deed of trust:

(a) A single dwelling unit in a condominium or cooperative.

(b) Any parcel containing only residential buildings if the total number of units on the parcel is four or less.

Nontraditional Mortgages and Subprime Lending

10240.3. (a) The commissioner shall apply the guidance on nontraditional mortgage product risks published on November 14, 2006, by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, and the Statement on Subprime Mortgage Lending published on July 17, 2007, by the aforementioned entities and the National Association of Consumer Credit Administrators, to real estate brokers acting within the meaning of Section 10131.1 or subdivision (d) of Section 10131.

(b) The commissioner may adopt emergency and final regulations to clarify the application of this section as soon as possible.

(c) A real estate broker acting within the meaning of Section 10131.1 or subdivision (d) of Section 10131 shall adopt and adhere to policies and procedures that are reasonably

intended to achieve the objectives set forth in the documents described in subdivision (a).

Statement Content

10241. The statement required by Section 10240, the form of which shall be approved by the commissioner, shall set forth separately the following items:

(a) The estimated maximum costs and expenses of making the loan, which are to be paid by the borrower, including but not limited to, the following:

(1) Appraisal fees.

(2) Escrow fees.

(3) Title charges.

(4) Notary fees.

(5) Recording fees.

(6) Credit investigation fees.

If a real estate licensee performs or is to perform any of the services for which costs and expenses are disclosed pursuant to this subdivision, the licensee shall be entitled to those costs and expenses in addition to the charges specified in subdivision (b).

(b) The total of the brokerage or commissions contracted for, or to be received by, the real estate broker for services performed as an agent in negotiating, procuring, or arranging the loan or the total of loan origination fees, points, bonuses, and other charges in lieu of interest to be received by the broker if he or she elects to act as a lender rather than agent in the transaction.

(c) Any liens against the real property, as disclosed by the borrower, the approximate amount thereof, and whether each lien will remain senior, or will be subordinate, to the lien that will secure the loan.

(d) The estimated amounts to be paid on the order of the borrower, as disclosed by the borrower, including, but not limited to:

(1) Fire insurance premiums.

(2) Amounts due on prior liens, including interest or other charges arising in connection with the payment, release, reconveyance, extinction, or other removal of record of the prior liens.

(3) Amounts due other creditors.

(4) Assumption, transfer, forwarding, and beneficiary statement fees.

(e) The estimated balance of the loan funds to be paid to the borrower after deducting the total of amounts disclosed pursuant to subdivisions (a), (b), and (d).

(f) The principal amount of the loan.

(g) The rate of interest.

(h) The term of the loan, the number of installments, the amount of each installment, and the approximate balance due at maturity, and the following notice in 10-point bold typeface:

"NOTICE TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN IT COMES DUE, YOU MAY HAVE TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY TO MAKE THE BALLOON PAYMENT. IN THAT CASE, YOU MAY AGAIN HAVE TO PAY COMMISSIONS, FEES, AND EXPENSES FOR THE ARRANGING OF THE NEW LOAN. IN ADDITION, IF YOU ARE UNABLE TO MAKE THE MONTHLY PAYMENTS OR THE BALLOON PAYMENT, YOU MAY LOSE THE PROPERTY AND ALL OF YOUR EQUITY THROUGH FORECLOSURE. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THIS LOAN."

(i) A statement containing the name of the real estate broker negotiating the loan, his or her license number, and the address of his or her licensed place of business.

(j) If the broker anticipates that the loan to the borrower may be made wholly or in part from broker-controlled funds, a statement to that effect.

For purposes of this section, "broker-controlled funds" means funds owned by the broker, by a spouse, child, parent, grandparent, brother, sister, father-in-law, mother-in-law, brother-in-

law, or sister-in-law of the broker, or by any entity in which the broker alone or together with any of the above relatives of the broker has an ownership interest of 10 percent or more.

(k) The terms of prepayment privileges and penalties, if any.

(l) A statement that the purchase of credit or credit disability insurance is not required as a condition for the making of the loan.

(m) If the loan is one that is within the limits specified in Section 10245, a certification by the real estate licensee negotiating the loan that the loan is being made in compliance with the provisions of this article.

Insurance Limitations

10241.1. (a) The purchase of credit life insurance on the life of the borrower or credit disability insurance to provide indemnity for payments becoming due on the indebtedness shall not be required as a condition of making a loan under this article.

(b) The licensee may provide through duly licensed agents, and collect from the borrower the costs of purchasing, credit life insurance on the life of a borrower and credit disability insurance to provide indemnity for payments becoming due on the indebtedness, with the borrower's consent. The form and rate of the insurance shall be approved by the Insurance Commissioner, as provided in Section 779.9 of the Insurance Code. The insurance shall be in an amount not in excess of that reasonably necessary to discharge the obligation of the borrower, and for a term not exceeding the term of the loan. Only one premium for credit disability insurance may be collected by the licensee in connection with any loan contract irrespective of the number of borrowers, and only one borrower may be insured, except that where more than one borrower is a party to a loan contract and each borrower is a wage earner whose earnings are reasonably relied upon by the lender for the repayment of the loan, each borrower may be insured.

(c) The licensee may collect from the borrower the costs of purchasing fire and hazard insurance on the property offered as security for a loan in order to reasonably insure against loss for a reasonable term considering the circumstances of the loan, (1) if the policy or policies of insurance are made payable to the borrower or any member of his or her family, regardless of whether a customary mortgagee clause is attached, and (2) if the insurance is sold at standard rates through duly licensed agents.

(d) If premiums for any insurance provided under this section are to be paid from the proceeds of the loan, any amount so paid and any commission under subdivision (b) of Section 10242 attributable to borrowing that amount, shall not be considered in determining whether the loan is exempt from this article under Section 10245.

Broker – Controlled Loan Funds – Notice to Borrower

10241.2. If the broker elects to make a loan subject to Section 10240 which consists wholly or in part of broker-controlled funds as defined in subdivision (j) of Section 10241, the broker shall advise the borrower of that fact not later than the next business day after making the election, but in any event before the close of escrow of the loan transaction.

Appraisal Report to Be Given to Borrower and Lender

10241.3. In any loan transaction in which a fee is charged to a borrower for an appraisal of the real property that will serve as security for the loan, a copy of the appraisal report shall be given by or on behalf of the broker to both the borrower and the lender at or before the closing of the loan transaction.

Notice re: Balloon Payment – Extension of Loan

10241.4. (a) Prior to a borrower becoming obligated on any loan secured by a dwelling that provides for a balloon payment and is otherwise subject to Section 10240, if any agreement includes a promise, representation, or similar undertaking to extend or seek the extension of the term of the loan or refinancing of the loan, and the undertaking is not set forth in the promissory note evidencing the loan or in a rider to that note, the undertaking shall be in writing

and the notice required by this section shall be provided to the borrower.

(b) The notice required by subdivision (a), shall state in at least 10-point boldface capitalized type:

"AS THIS LOAN PROVIDES FOR A BALLOON PAYMENT, SEE THE MORTGAGE LOAN DISCLOSURE STATEMENT/GOOD FAITH ESTIMATE FOR IMPORTANT INFORMATION ON BALLOON PAYMENTS. ALSO, REFER TO THE LOAN DOCUMENTS AND THIS EXTENSION AGREEMENT FOR YOUR SPECIFIC RIGHTS AND OBLIGATIONS."

(c) The notice shall also contain, in at least 10-point boldface capitalized type, either of the following statements depending upon which statement best describes the nature of the undertaking:

(1) THE LENDER OR NOTEHOLDER HAS AGREED TO AN EXTENSION, REFINANCING, OR RENEGOTIATION OF THE TERMS OF THIS LOAN, AND THE LENDER'S OR NOTEHOLDER'S SIGNED AGREEMENT IS ATTACHED (OR THE NOTICE MAY DESCRIBE THE METHOD USED TO FURNISH THAT SIGNED DOCUMENT). TRANSMISSION BY A BROKER OF A LENDER'S OR NOTEHOLDER'S UNDERTAKING OR THE BROKER'S REPRESENTATION OF THAT UNDERTAKING, PURSUANT TO THIS SECTION, DOES NOT OF ITSELF, CREATE OR ALTER ANY AGENCY OR SIMILAR RELATIONSHIP BETWEEN THE LENDER OR NOTEHOLDER AND THE BORROWER, OR THE LENDER OR NOTEHOLDER AND THE BROKER.

(2) THE BROKER, _____ (INSERT NAME OF BROKER MAKING OR ARRANGING THE LOAN), HAS AGREED TO USE HIS OR HER BEST EFFORTS TO OBTAIN A FUTURE EXTENSION, REFINANCING, OR RENEGOTIATION OF THE LOAN BY THE LENDER OR NOTE OWNER. THERE CAN BE NO ASSURANCE OR GUARANTEE THAT THE LENDER OR NOTE OWNER WILL AGREE.

Maximum Expenses, Charges and Interest

10242. The maximum amount of expenses, charges and interest to be paid by a borrower with respect to any loan subject to this article shall be as follows:

(a) The maximum amount of all costs and expenses referred to in subdivision (a) of Section 10241, exclusive of actual title charges and recording fees, shall not exceed 5 percent of the principal amount of the loan or three hundred ninety dollars ($390), whichever is greater but in no event to exceed seven hundred dollars ($700), provided that in no event shall said maximum amount exceed actual costs and expenses paid, incurred or reasonably earned.

(b) The maximum amount of the charges referred to in subdivision (b) of Section 10241 shall not exceed the following amounts:

(1) In the case of a loan secured directly or collaterally, in whole or in part by a first trust deed, 5 percent of the principal amount of the loan where the term of the loan is a period of less than three years and 10 percent where the term is a period of three years or more.

(2) In the case of a loan secured directly or collaterally by a trust deed other than a first trust deed, 5 percent of the principal amount of the loan where the term of the loan is a period of less than two years, 10 percent where the term is a period of two years but less than three years, and 15 percent where the term is a period of three years or more.

(3) With respect to a further advance on a note, the charges shall not exceed the charges for an original loan in the same amount as the further advance and made for a term equal to the remaining term of the note on which the further advance is being made, including any extension thereof.

(c) No interest may be charged with respect to any period prior to the date that the proceeds of the loan are made available to the borrower or are deposited in escrow.

Late Charges

10242.5. (a) A charge imposed for late payment of an installment due on a loan secured by a mortgage or deed of trust on real property shall not exceed an amount equal to 10 percent of the installment due, except that a minimum charge of five dollars ($5) may be imposed when the late charge permitted by this section would otherwise be less than that minimum charge.

The charge permitted by this section may be assessed only as a percentage of the increment of any installment due that is attributable to principal and interest.

(b) No charge may be imposed more than once for the same late payment of an installment. No late charge may be imposed on any installment which is paid or tendered in full within 10 days after its scheduled due date, even though an earlier maturing installment or a late charge on an earlier installment may not have been paid in full. For purposes of this subdivision, a payment or tender of payment made within 10 days of a scheduled installment due date shall be deemed to have been made or tendered for payment of that installment.

(c) A late-payment charge may be imposed pursuant to this subdivision for the payment of any balloon payment more than 10 days after the date due. The charge shall not exceed an amount equal to the maximum late charge that could have been assessed with respect to the largest single monthly installment previously due, other than the balloon payment, multiplied by the sum of one plus the number of months occurring since the late-payment charge began to accrue. For purposes of this subdivision, "month" means the period between a particular day of a calendar month and the same day of the next calendar month.

Loan Prepayment

10242.6. (a) The principal and accrued interest on any loan secured by a mortgage or deed of trust on real property containing only a single-family, owner-occupied dwelling may be prepaid in whole or in part at any time but only a prepayment made within seven years of the date of execution of such mortgage or deed of trust may be subject to a prepayment charge and then solely as herein set forth. An amount not exceeding 20 percent of the unpaid balance may be prepaid in any 12-month period. A prepayment charge may be imposed on any amount prepaid in any 12-month period in excess of 20 percent of the unpaid balance which charge shall not exceed an amount equal to the payment of six months' advance interest on the amount prepaid in excess of 20 percent of the unpaid balance.

(b) Notwithstanding subdivision (a), there shall be no prepayment penalty charged to a borrower under a loan subject to this section if the dwelling securing the loan has been damaged to such an extent by a natural disaster for which a state of emergency is declared by the Governor, pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code, that the dwelling cannot be occupied and the prepayment is causally related thereto.

(c) As used in this section, "owner-occupied dwelling" means a dwelling which will be owned and occupied by a signatory to the mortgage or deed of trust secured by the dwelling within 90 days of the execution of the mortgage or deed of trust.

Borrower Liable

10243. If the loan is not consummated due to the failure of the borrower to disclose the outstanding liens of record or the correct current vested title which is material to the loan upon the real property as provided by subdivision (c) of Section 10241, the borrower shall be liable for the costs and expenses provided in subdivision (a) of Section 10241 which have been paid or incurred, and shall be liable for the payment of one-half of the charges provided in subdivision (b) of Section 10241. An exclusive agreement authorizing or employing a licensee to negotiate a loan secured directly or collaterally by a lien on real property shall be limited to a term of not more than 45 days.

Legal Action Required

If the loan is not consummated and the broker is entitled to any charges, costs or expenses authorized by this article, he or she may not record a lien or encumbrance against the

borrower's property except subsequent to the filing of a legal action pursuant to the Code of Civil Procedure to recover said charges, costs or expenses. However, nothing contained herein shall prohibit a broker from recording a lien pursuant to a voluntary lien agreement in conjunction with a stipulation to dismiss an actual or proposed complaint for damages entitling the broker to such charges, costs or expenses after written notice to the borrower that the broker proposes or has initiated a complaint for damages pursuant to the Code of Civil Procedure.

Substantially Equal Payments – Loans Under Three Years

10244. Any loan made by any person and secured directly by a lien on real property, other than a note given back to the seller by the purchaser on account of the purchase price, which provides for installment payments and the term of which is less than three years, shall require substantially equal installment payments over the period of the loan with the final payment not payable until the maturity date thereof. No installment including the final installment shall be greater than twice the amount of the smallest installment.

If any loan having an original maturity period of less than three (3) years is renewed or refinanced, the total amount of charges to be paid on both the original obligation and the balance of such obligation, as renewed or refinanced, shall not in the aggregate exceed the amount of charges as provided in Section 10242, and if such a loan is renewed or refinanced through the person who negotiated the original loan, the total amount of costs and expenses to be paid on both the original obligation and the renewed or refinanced obligation shall not exceed in the aggregate the amount of costs and expenses authorized in subdivision (a) of said section.

The provisions of this section do not apply to a bona fide loan, secured by a first trust deed on real property, made in connection with the financing of the usual costs of the development of 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 ten (10) percent of the loan funds after the expiration of the period for the filing of mechanics' and materialmen's liens.

Loans Under Six Years – Owner Occupied

10244.1. Notwithstanding the provisions of Section 10244, on a loan secured directly or collaterally by a lien on real property comprising an owner-occupied dwelling, for a term of six years or less, no installment, whether providing for payment of principal and interest or interest only, shall be greater than twice the amount of the smallest installment. This section does not apply to a note given back to the seller by the purchaser on account for the purchase price or any collateral loans secured solely by such a note. As used in this section, "owner-occupied dwelling" means a single dwelling unit in a condominium or cooperative or a residential building of less than three separate dwelling units, one of which will be owned and occupied by a signatory to the mortgage or deed of trust secured by such dwelling within 90 days of the execution of the mortgage or deed of trust.

Exceptions

10245. The provisions of this article, exclusive of the provisions of Sections 10240, 10240.3, 10242.5, and 10242.6, do not apply to any bona fide loan secured directly or collaterally by a first trust deed, the principal of which is thirty thousand dollars ($30,000) or more, or to any bona fide loan secured directly or collaterally by any lien junior thereto, the principal of which is twenty thousand dollars ($20,000) or more.

Right to Recover

10246. If any amount:

(a) In excess of the charges referred to in Section 10241 and limited by Section 10242,

(b) In excess of the charges permitted by Section 10242.5, or

(c) Prohibited by Section 10248.1, is received, the borrower may recover, from the person who

shall have taken or received the excess or prohibited amount, three times the amount of the excess or prohibited amount and the borrower shall be entitled to costs and a reasonable attorney's fee; provided that any action for recovery must be brought within two (2) years from the date such excess or prohibited charge was received. However, if the excess or prohibited amount is the result of a bona fide error the borrower may only recover such excess or prohibited amount.

Third Party Liability

10247. The provisions of this article pertaining to maximum costs and expenses, charges and interest, together with the penalties stated in this article, shall apply to any transaction involving a third party as a purported lender or any other transaction which is used as a subterfuge or means of avoiding or evading the provisions of this article.

Charges Limited by Section 10242

10248. Every person who, for compensation to be received directly or indirectly, sells, offers to sell, purchases for resale or offers to purchase for resale, or who negotiates or arranges for the purchase, sale or exchange of a promissory note secured directly or collaterally by a lien on real property, may receive only the maximum total charges provided for in Section 10242.

Laws Governing Charges/Fees

10248.1. No real estate licensee shall charge, receive, or negotiate for the payment by the borrower of any service charge or fee other than charges and fees specified in Sections 10241, 10241.1, 10242, and 10242.5, prepayment penalties as authorized by law, beneficiary-statement, payoff-demand, extinction, release, reconveyance or other removal of record fees, and trustee's costs and fees, and any other fees if in accordance with the Civil Code and the Code of Civil Procedure.

Borrower's Rights and Remedies – May Not Waive

10248.2. (a) A borrower may not waive any right or remedy under this article. This subdivision shall not be deemed to prohibit a bona fide settlement, release or compromise of any claim under this article.

(b) If a loan is negotiated in violation of any section of this article, the licensee, on demand, shall return to the borrower any bonus, brokerage or commission paid or payable under subdivision (b) of Section 10242 for negotiation of such loans. In the event such demand is not satisfied within 20 days from the date of written demand, the borrower may commence an action under this subdivision and may recover actual damages or twice any bonus, brokerage, or commission paid or payable under subdivision (b) of Section 10242 for the negotiation of said loan whichever is greater, plus costs and reasonable attorney's fees.

The "date of written demand" shall mean either the date upon which the written demand is personally delivered to the licensee or the date upon which the written demand is mailed to the licensee.

A licensee may not be held liable in any action brought under this section for a violation of this article if the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

If the borrower proceeds under this section he may not proceed under Section 10246 as to the same breach.

(c) If a real estate licensee subject to the provisions of this article violates any provision of Section 10241.1 he shall be liable for, and pay over to the borrower, any commission or experience rating dividend attributable to the insurance written on that loan received by the licensee as a result of the sale of such insurance to the borrower in violation of Section 10241.1 in addition to any premium loss due to short rate cancellation of any insurance subject to Section 10248.1 which was purchased by the borrower.

(d) No action for damages shall be maintained under this section unless brought within two years after the maturity of the loan.

(e) The provisions of this article are not exclusive. The remedies provided for herein shall be in addition to any other procedures or remedies provided under law.

Limits of Article
10248.3. The provisions of this article shall apply only to those loans otherwise subject to this article which are made or negotiated by real estate brokers acting within the meaning of subdivision (d) of Section 10131 or subdivision (b) of Section 10240.

Article 8. Out-of-State Land Promotions

Registration Required
10249. (a) A person acting as a principal or agent who intends, in this state, to sell or lease or offer for sale or lease lots, parcels, or interests in a subdivision, as defined in Section 10249.1, situated outside of this state but within the United States, shall, prior to a sale, lease, or offer, register the subdivision with the commissioner. An application for registration shall be made on a form acceptable to the commissioner and include, together with a fee, a description of the offering, certification by the applicant that the subdivision is in compliance with all applicable requirements of the state or states wherein the project is located, evidence of this compliance, if applicable, and a consent to service as described in Section 10249.92.

(b) The commissioner, within 10 days of receipt of an application of registration, shall provide the applicant with notice of the completion of the registration or a notice of deficiency. If the department does not provide a notice within 10 days, the registration shall be deemed complete.

Subdivision Defined
10249.1. "Subdivision," as used in Section 10249, includes all of the following:

(a) Improved or unimproved land or lands divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into five or more lots or parcels.

(b) Improved or unimproved land or lands in which, for the purpose of sale or lease, whether immediate or future, five or more undivided interests are created or proposed to be created.

(c) "Subdivision," as defined in Section 11004.5, excluding "subdivision" as defined in subdivision (e) of that section.

Application for Registration – Filing Fee
10249.3. (a) The commissioner may by regulation prescribe filing fees in connection with registrations with the bureau pursuant to the provisions of this article that are lower than the maximum fees specified in subdivision (b) if the commissioner determines that the lower fees are sufficient to offset the costs and expenses incurred in the administration of this article. The commissioner shall hold at least one hearing each calendar year to determine if lower fees than those specified in subdivision (b) should be prescribed.

(b) The filing fee for an application for a registration with the bureau pursuant to the provisions of this article shall not exceed the following for each subdivision or phase of the subdivision in which interests are to be offered for sale or lease:

(1) An application for an original registration: One hundred dollars ($100).

(2) An application for a renewal registration: One hundred dollars ($100).

(3) An application for an amended registration: One hundred dollars ($100).

(c) All fees collected by the Bureau of Real Estate under authority of this article shall be deposited into the Real Estate Fund under Chapter 6 (commencing with Section 10450) of Part 1. All fees received by the bureau pursuant to the provisions of this article shall be deemed earned upon receipt. No part of any fee is refundable unless the commissioner determines that it was paid as a result of mistake or inadvertence.

Disclaimers – Subdivisions Outside of California but Within the U.S.
10249.8. (a) Notwithstanding any provision to the contrary in Section 10249 or 11000, it is unlawful for a person, in this state, to sell or lease or offer for sale or lease lots, parcels, or interests in a subdivision, as defined in Section 10249.1, entirely located outside of this state but within the United States, unless any printed material, literature, advertising, or invitation in this state relating to that sale, lease, or offer

clearly and conspicuously contains the following disclaimer in at least 10-point type:

WARNING: THE CALIFORNIA BUREAU OF REAL ESTATE HAS NOT INSPECTED, EXAMINED, OR QUALIFIED THIS OFFERING.

(b) If an offer on property described in subdivision (a) is not initially made in writing, the disclaimer set forth in subdivision (c) shall be received by the offeree in writing prior to a visit to a location, sales presentation, or contact with a person representing the offeror, when the visit or contact was scheduled or arranged by the offeror or its representative. The deposit of the disclaimer in the United States mail, addressed to the offeree and with first-class postage prepaid, at least five days prior to the scheduled or arranged visit or contact, shall be deemed to constitute delivery for purposes of this section.

(c) If a California resident is presented with an agreement or contract to lease or purchase any property described in subdivision (a), where an offer to lease or purchase that property was made to that resident in California, a copy of the disclaimer set forth in this subdivision shall be inserted in at least 10-point type at the top of the first page of that agreement or contract and shall be initialed by that California resident.

WARNING: THE CALIFORNIA BUREAU OF REAL ESTATE HAS NOT QUALIFIED, INSPECTED, OR EXAMINED THIS OFFERING, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF TITLE, THE STATUS OF BLANKET LIENS ON THE PROJECT (IF ANY), ARRANGEMENTS TO ASSURE PROJECT COMPLETION, ESCROW PRACTICES, CONTROL OVER PROJECT MANAGEMENT, RACIALLY DISCRIMINATORY PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS (IF ANY), OR THE AVAILABILITY OF WATER, SERVICES, UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE FOR YOU TO CONSULT AN ATTORNEY OR OTHER KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR WITH REAL ESTATE AND DEVELOPMENT LAW IN THE STATE WHERE THIS SUBDIVISION IS SITUATED.

Disclaimer – Subdivisions Located Outside the U.S.

10249.9. (a) Notwithstanding any provision to the contrary in Section 10249 or 11000, it is unlawful for a person, in this state, to sell or lease or offer for sale or lease a lot, parcel, or interest in a subdivision, located outside the United States, unless the printed material, literature, advertising, or invitation in this state relating to that sale, lease, or offer clearly and conspicuously contains the following disclaimer in at least 10-point capital type:

WARNING: THE CALIFORNIA BUREAU OF REAL ESTATE HAS NOT EXAMINED THIS OFFERING, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF TITLE, THE STATUS OF BLANKET LIENS ON THE PROJECT (IF ANY), ARRANGEMENTS TO ASSURE PROJECT COMPLETION, ESCROW PRACTICES, CONTROL OVER PROJECT MANAGEMENT, RACIALLY DISCRIMINATORY PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS (IF ANY), OR THE AVAILABILITY OF WATER, SERVICES, UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE FOR YOU TO CONSULT AN ATTORNEY OR OTHER KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR WITH REAL ESTATE AND DEVELOPMENT LAW IN THE COUNTRY WHERE THIS SUBDIVISION IS SITUATED.

(b) If an offer on property described in subdivision (a) is not initially made in writing, the foregoing disclaimer shall be received by the offeree in writing prior to a visit to a location, sales presentation, or contact with a person representing the offeror, when the visit or contact was scheduled or arranged by the offeror or its representative. The deposit of the disclaimer in the United States mail, addressed to the offeree and with first-class postage prepaid, at least five days prior to the scheduled or arranged visit or contact, shall be deemed to constitute delivery for purposes of this section.

(c) If any California resident is presented with an agreement or contract to lease or purchase a property described in subdivision (a), where an offer to lease or purchase that property was made to that resident in California, a copy of the disclaimer set forth in subdivision (a) shall be inserted in at least 10-point type at the top of the first page of that agreement or contract and shall be initialed by that California resident.

Term of Registration
10249.91. The term of a registration issued pursuant to this article shall be one year, unless the commissioner by regulation prescribes a longer term.

Consent to Service
10249.92. A registration application pursuant to the provisions of this article shall be accompanied by an irrevocable consent stating that if in any action commenced against the applicant in this state personal service of process upon the applicant cannot be made after the exercise of due diligence, a valid service may thereupon be made upon the applicant by delivering the process to the Secretary of State.

Insofar as possible, the provisions of Section 1018 of the Code of Civil Procedure relating to service of process on the Secretary of State are applicable to this section.

Violation – Order to Cease and Desist
10249.93. (a) If the commissioner finds, based on available evidence, that a person is violating any provision of this article or a regulation of the commissioner adopted to implement a provision of this article, the commissioner may order the person to cease and desist from committing the violation or to cease and desist from the further sale or lease of an interest in the subdivision until the violation is corrected.

(b) A person to whom an order is directed shall, upon receipt of the order, immediately cease the activity described in the order.

(c) The person to whom the order is directed may request a hearing in accordance with subdivision (c) of Section 11019.

CHAPTER 6. REVENUE

Article 1. Real Estate Fund

Real Estate Fund
10450. All fees charged and collected under this part and under Chapter 1 of Part 2, except as provided in this chapter, shall be paid by the commissioner at least once a month, accompanied by a detailed statement thereof, into the Treasury of the State to the credit of the Real Estate Fund, which fund is continued in existence.

Separate Accounts for Education and Research, and for Recovery
10450.6. There shall be separate accounts in the Real Estate Fund for purposes of real estate education and research and for purposes of recovery which shall be known respectively as the Education and Research Account and the Consumer Recovery Account. The commissioner may, by regulation, require that up to 8 percent, or any lesser amount that he or she deems appropriate, of the amount of any license fee collected under this part be credited to the Education and Research Account. Twelve percent of the amount of any license fee collected shall be credited to the Consumer Recovery Account, provided, however, that if as of June 30 of any fiscal year the balance of funds in the Consumer Recovery Account is at least three million five hundred thousand dollars ($3,500,000), all funds in excess of this amount which have been credited to the Consumer Recovery Account shall instead be credited to the Real Estate Fund. As long as the balance of funds in the Consumer Recovery Account exceeds three million five hundred thousand dollars ($3,500,000), all license fees collected, except for the percentage of license fees credited to the Education and Research Account, shall be credited to the Real Estate Fund. Funds in the Education and Research Account shall be used by the commissioner in accordance with Section 10451.5. The Consumer Recovery Account is continuously appropriated for carrying out Chapter 6.5 (commencing with Section 10470). As used in this part or any other provision of law, "Recovery Account" shall be deemed to refer to the Consumer Recovery Account.

Fund Appropriation
10451. All money paid into the State Treasury and credited to the Real Estate Fund is hereby appropriated to be used by the commissioner in carrying out the provisions of this part and Chapter 1 of Part 2, including the payment of the salaries of the commissioner and his deputies, clerks and assistants. The money credited to the fund shall remain therein.

Education and Research
10451.5. (a) All money paid into the State Treasury and credited to the Education and Research Account in the Real Estate Fund pursuant to Section 10450.6 is available for appropriation by the Legislature to be used by the commissioner in carrying out the provisions of this part and Chapter 1 (commencing with Section 11000) of Part 2, in the advancement of education and research in real estate at the University of California, state colleges and community colleges, or in contracting for a particular research project in the field of real estate for the state with any university in the State of California accredited by the Western Association of Schools and Colleges, or with any corporation or association qualified to perform such research.

(b) If the balance in the Education and Research Account is more than four hundred thousand dollars ($400,000), the Real Estate Commissioner may authorize the transfer of all or part of such surplus amount to the Real Estate Fund and may authorize the return to the Education and Research Account of all or part of any amount previously transferred to the Real Estate Fund.

(c) Notwithstanding the provisions of subdivision (b), if at any time the amount of funds credited to the Real Estate Fund, including any amounts credited to the separate accounts for Education and Research and Recovery, is less than 25 percent of the department's authorized expenditures for the following fiscal year, the commissioner may transfer any or all of the funds credited to the Education and Research Account to the Real Estate Fund. The commissioner may authorize the return to the Education and Research Account of all or part of any amount previously transferred to the Real Estate Fund.

Controller's Warrants
10452. The Controller shall draw his warrant on the respective funds from time to time in favor of the commissioner for the amounts expended under his direction, and the Treasurer shall pay the same.

Expenditures
10453. All of the expenditures of the commissioner, including his salary, shall be paid only from the Real Estate Fund except as otherwise provided in this chapter.

Revolving Fund
10454. The commissioner may, with the consent of the Department of Finance, withdraw from the Real Estate Fund moneys to be used as a revolving fund where cash advances are necessary. The commissioner shall account for the sum withdrawn from the revolving fund at any time upon demand of the Department of Finance.

Article 2. Exemption from Fees

Military Service Defined
10460. As used in this article:

(a) "Military licensee" refers to a person who, while holding a license or license endorsement under the Real Estate Law, or any of the statutes codified therein, entered the military service of the United States and notifies the commissioner of that fact within six months of such entry.

(b) "Persons in the military service of the United States" includes the following persons and no others: all members of the United States Army, the United States Navy, the United States Air Force, the Marine Corps, the Merchant Marine in time of war, the Coast Guard, the National Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy.

(c) "Military service" signifies federal service after October 1, 1940, on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms

"active service" or "active duty" include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

Renewal of License
10461. A military licensee shall not be required to renew his or her license or license endorsement under this part, or his or her license under Chapter 19 of Division 3, until the beginning of the license or license endorsement period which first commences (a) after his or her again engaging in business, or (b) after one year following termination of military service, whichever is the earlier.

Limitation of Military License Privilege
10462. A military licensee shall not be entitled to the privileges of this article if he receives a dishonorable discharge from the military service of the United States or if he voluntarily remains in the military service for more than seven years from the date of notification to the commissioner as provided by subdivision (a) of Section 10460.

Military License Reinstatement
10463. A person who would qualify as a military licensee except for the failure to notify the commissioner of his or her entry into the military service of the United States may apply to the commissioner for reinstatement of his or her license or license endorsement upon resuming business or within one year following termination of military service, whichever is earlier. The commissioner shall reinstate the applicant if he or she finds that the applicant would be entitled to the privileges of this article except for his or her failure to give the commissioner notice of his or her entry into the military service of the United States and that the applicant has complied with Article 2.5 (commencing with Section 10170). In the event the applicant failed to notify the commissioner of his or her entry into the military service as provided, he or she shall be required to submit proof of his or her previous licensure or license endorsement within seven years of the date of entry into the military service to permit reinstatement of his or her license or license endorsement.

Section 114 Not Applicable
10464. Section 114 of this code does not apply to this part.

CHAPTER 6.5. REAL ESTATE RECOVERY PROGRAM

Provision for Augmentation
10470. If, on June 30 of any year, the balance remaining in the Consumer Recovery Account in the Real Estate Fund is less than two hundred thousand dollars ($200,000), every licensed broker, when obtaining or renewing any broker license within four years thereafter, shall pay, in addition to the license fee, a fee of seven dollars ($7); every licensed salesperson, when obtaining or renewing such license within four years thereafter, shall pay, in addition to the license fee, a fee of four dollars ($4); and every person holding a prepaid rental listing service license, when obtaining or renewing that license within two years thereafter, shall pay, in addition to the application fee, a fee of one dollar ($1). The fees from the broker, salesperson, and prepaid rental listing service licensees shall be paid into the State Treasury and credited to the Consumer Recovery Account.

Transfer of Funds
10470.1. (a) In addition to the amount paid into the Consumer Recovery Account as set forth in Section 10450.6, the Real Estate Commissioner may authorize the transfer from the Real Estate Fund to the Consumer Recovery Account of any amounts as are deemed necessary.

(b) If the balance remaining in the Consumer Recovery Account contains more than four hundred thousand dollars ($400,000), the commissioner may authorize the transfer of all or part of the surplus amount into the Real Estate Fund.

(c) The commissioner may authorize the return to the Consumer Recovery Account of all or any amount previously transferred to the Real Estate Fund under this section.

Application for Payment from Recovery Account
10471. (a) When an aggrieved person obtains (1) a final judgment in a court of competent jurisdiction, including, but not limited to, a

criminal restitution order issued pursuant to subdivision (f) of Section 1202.4 of the Penal Code or Section 3663 of Title 18 of the United States Code, or (2) an arbitration award that includes findings of fact and conclusions of law rendered in accordance with the rules established by the American Arbitration Association or another recognized arbitration body, and in accordance with Sections 1281 to 1294.2, inclusive, of the Code of Civil Procedure where applicable, and where the arbitration award has been confirmed and reduced to judgment pursuant to Section 1287.4 of the Code of Civil Procedure, against a defendant based upon the defendant's fraud, misrepresentation, or deceit, made with intent to defraud, or conversion of trust funds, arising directly out of any transaction in which the defendant, while licensed under this part, performed acts for which a real estate license or a prepaid rental listing service license was required, the aggrieved person may, upon the judgment becoming final, file an application with the Bureau of Real Estate for payment from the Consumer Recovery Account, within the limitations specified in Section 10474, of the amount unpaid on the judgment that represents an actual and direct loss to the claimant in the transaction. As used in this chapter, "court of competent jurisdiction" includes the federal courts, but does not include the courts of another state.

(b) The application shall be delivered in person or by certified mail to an office of the bureau not later than one year after the judgment has become final.

(c) The application shall be made on a form prescribed by the bureau, verified by the claimant, and shall include the following:

(1) The name and address of the claimant.

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

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

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

(5) (A) Except as provided in subparagraph (B), a statement by the claimant, signed under penalty of perjury, that the complaint upon which the underlying judgment is based was prosecuted conscientiously and in good faith. As used in this section, "conscientiously and in good faith" means that no party potentially liable to the claimant in the underlying transaction was intentionally and without good cause omitted from the complaint, that no party named in the complaint who otherwise reasonably appeared capable of responding in damages was dismissed from the complaint intentionally and without good cause, and that the claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Consumer Recovery Account.

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

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

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

(iii) The claimant employed no other procedural means contrary to the diligent prosecution of the complaint in order to seek to qualify for the Consumer Recovery Account.

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

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

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

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

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

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

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

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

(G) That the application was mailed or delivered to the bureau no later than one year after the underlying judgment became final.

(d) If the claimant is basing his or her application upon a judgment against a salesperson, and the claimant has not obtained a judgment against that salesperson's employing broker, if any, or has not diligently pursued the assets of that broker, the application shall be denied for failure to diligently pursue the assets of all other persons liable to the claimant in the transaction unless the claimant can demonstrate, by clear and convincing evidence, either that the salesperson was not employed by a broker at the time of the transaction, or that the salesperson's employing broker would not have been liable to the claimant because the salesperson was acting outside the scope of his or her employment by the broker in the transaction.

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

(f) An application for payment from the Consumer Recovery Account that is based on a criminal restitution order shall comply with all of the requirements of this chapter. For the purpose of an application based on a criminal restitution order, the following terms have the following meanings:

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

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

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

Notice to Be Served on Judgment Debtor

10471.1. (a) The claimant shall serve a copy of the notice prescribed in subdivision (e) together with a copy of the application upon the judgment debtor by personal service, by certified

mail, or by publication, as set forth in subdivision (b).

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

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

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

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

"NOTICE: Based upon a judgment entered against you in favor of _____,
(name of claimant)
application for payment from the Consumer Recovery Account of the Real Estate Fund is being made to the Bureau of Real Estate.

"If payment is made from the Consumer Recovery Account, all licenses and license rights that you have under the Real Estate Law will be automatically suspended on the date of payment and cannot be reinstated until the Consumer Recovery Account has been reimbursed for the amount paid plus interest at the prevailing rate.

"If you wish to contest payment by the Real Estate Commissioner, you must file a written response to the application addressed to the Bureau of Real Estate at _____ within 30 days after mailing, delivery, or publication of this notice and mail or deliver a copy of that response to the claimant. If you fail to do so, you will have waived your right to present your objections to payment."

(f) If a judgment debtor fails to mail or deliver a written response to the application with the bureau within 30 days after personal service, mailing, or final publication of the notice, the judgment debtor shall not thereafter be entitled to notice of any action taken or proposed to be taken by the commissioner with respect to the application.

Deficient or Substantially Complete Application

10471.2. (a) If the commissioner determines that the application as submitted by the claimant fails to comply substantially with the requirements of Section 10471 or with the requirements of a regulation adopted by the commissioner under authority of Section 10080, the commissioner shall, within 15 days after receipt of the application, mail an itemized list of deficiencies to the claimant.

(b) The time within which the commissioner is required to act under Section 10471.3 shall be measured from the date of receipt by the department of an application that is substantially complete. In the event of an irreconcilable dispute between the claimant and the commissioner on the question of whether the application is substantially complete, the claimant may immediately file the claim with the court pursuant to Section 10472.

Final Decision – Settlement
10471.3. (a) The commissioner shall render a final written decision on the application within 90 days after a completed application has been received unless the claimant agrees in writing to extend the time within which the commissioner may render a decision.

(b) The commissioner may deny or grant the application or may enter into a compromise with the claimant to pay less in settlement than the full amount of the claim. If the claimant refuses to accept a settlement of the claim offered by the commissioner, the written decision of the commissioner shall be to deny the claim or it shall be deemed denied if a written decision is not rendered within the time specified in subdivision (a). Evidence of settlement offers and discussions between the commissioner and the claimant shall not be competent evidence in judicial proceedings undertaken by the claimant pursuant to Section 10472.

Consideration of an Application
10471.4. In its consideration and investigation of an application, the department shall have recourse to all appropriate means of investigation and discovery available to it under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

Notice of Decision
10471.5. (a) The commissioner shall give notice of a decision rendered with respect to the application to the claimant and to a judgment debtor who has filed a timely response to the application in accordance with Section 10471.1.

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

"Claimant's application has been denied. If the claimant wishes to pursue the application in court, the claimant must file the application as follows in a superior court of this state not later than six months after receipt of this notice, pursuant to Section 10472 of the Business and Professions Code. If the underlying judgment is a California state court judgment, the application shall be filed in the court in which the underlying judgment was entered. If the underlying judgment is a federal court judgment, the application shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento."

(c) If the decision of the commissioner is to make a payment to the claimant out of the Consumer Recovery Account, the following notice shall be given to the judgment debtor along with a copy of the decision of the commissioner:

"The decision of the Real Estate Commissioner on the application of ____ is to pay $____ from the Consumer Recovery Account. A copy of that decision is enclosed.

"Pursuant to Section 10475 of the Business and Professions Code, all of your licenses and license rights under the Real Estate Law will be suspended effective on the date of the payment, and you will not be eligible for reinstatement of any license issued under authority of the Real Estate Law until you have reimbursed the Consumer Recovery Account for this payment plus interest at the prevailing legal rate."

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

Aggregate Claims – Proration
10471.6. If, at any time prior to the rendering of a decision on an application, the commissioner makes a preliminary determination that the aggregate valid applications of all aggrieved

persons against that licensee are likely to exceed the limits of liability in Section 10474, the commissioner shall, in lieu of further administrative proceedings, initiate a proration proceeding pursuant to Section 10474.5 in a superior court of any county in this state that would be a proper court for the filing of a denied application or writ of mandamus pursuant to Section 10471.5.

Notice of Denial – Court Order Directing Payment from Fund

10472. (a) A claimant against whom the commissioner has rendered a decision denying an application pursuant to Section 10471 may, within six months after the mailing of the notice of the denial, file a verified application in superior court for an Order Directing Payment Out of the Consumer Recovery Account based upon the grounds set forth in the application to the commissioner. If the underlying judgment is a California state court judgment, the application shall be filed in the court in which the underlying judgment was entered. If the underlying judgment is a federal court judgment, the application shall be filed in the superior court of any county within California that would have been a proper venue if the underlying lawsuit had been filed in a California state court, or in the Superior Court of the County of Sacramento.

(b) A copy of the verified application shall be served upon the commissioner and upon the judgment debtor. A certificate or affidavit of service shall be filed by the claimant with the court. Service on the commissioner may be made by certified mail addressed to the headquarters office of the bureau. Service upon a judgment debtor may be made in accordance with Section 10471.1. The notice served upon the judgment debtor shall read as follows:

"NOTICE: An application has been filed with the court for a payment from the Consumer Recovery Account that was previously denied by the Real Estate Commissioner.

"If the Bureau of Real Estate makes a payment from the Consumer Recovery Account pursuant to court order, all of your licenses and license rights under the Real Estate Law will be automatically suspended until the Consumer Recovery Account has been reimbursed for the amount paid plus interest at the prevailing rate.

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

Thirty Days to File Written Response

10472.1. (a) The commissioner and the judgment debtor shall each have 30 days after being served with the application in which to file a written response. The court shall thereafter set the matter for hearing upon the petition of the claimant. The court shall grant a request of the commissioner for a continuance of as much as 30 days and may, upon a showing of good cause by any party, continue the hearing as the court deems appropriate.

(b) The claimant shall have the burden of proving compliance with the requirements of Section 10471 by competent evidence at an evidentiary hearing. The claimant shall be entitled to a de novo review of the merits of the application as contained in the administrative record.

(c) If the judgment debtor fails to file a written response to the application, the application may be compromised or settled by the commissioner at any time during the court proceedings and the court shall, upon joint petition of the claimant and the commissioner, issue an order directing payment out of the Consumer Recovery Account.

Commissioner's Right to Defend and Review

10473. Whenever the court proceeds upon an application under Section 10472, it shall order payment out of the Consumer Recovery Account only upon a determination that the aggrieved party has a valid cause of action within the purview of Section 10471, and has complied with Section 10472.

The commissioner may defend any such action on behalf of the Consumer Recovery Account and shall have recourse to all appropriate means of defense and review, including examination of

witnesses and the right to relitigate any issues material and relevant in the proceeding against the Consumer Recovery Account which were determined in the underlying action on which the judgment in favor of the applicant was based. If the judgment in favor of the applicant was by default, stipulation, consent, or pursuant to Section 594 of the Code of Civil Procedure, or whenever the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving that the cause of action against the licensee was for fraud, misrepresentation, deceit, or conversion of trust funds. Otherwise, the judgment shall create a rebuttable presumption of the fraud, misrepresentation, deceit, or conversion of trust funds by the licensee, which presumption shall affect the burden of producing evidence.

The commissioner may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of Section 10471; provided, however, the commissioner shall give written notice at least 10 days before the motion.

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

Judgment Debtor's Right to Defend – Conclusive Adjudication

10473.1. The judgment debtor may defend an action against the Consumer Recovery Account on his or her own behalf and shall have recourse to all appropriate means of defense and review, including examination of witnesses. All matters, including, but not limited to, the issues of fraud, misrepresentation, deceit, or conversion of trust funds, finally adjudicated in the underlying action are conclusive as to the judgment debtor and the applicant in the proceeding against the Consumer Recovery Account.

Court Order to Pay – Limitations – Multiple Licensed Personnel

10474. Notwithstanding any other provision of this chapter and regardless of the number of persons aggrieved or parcels of real estate involved in a transaction or the number of judgments against a licensee, the liability of the Consumer Recovery Account shall not exceed the following amounts:

(a) Except as provided in subdivision (b), causes of action which occurred on or after January 1, 1980, twenty thousand dollars ($20,000) for any one transaction and one hundred thousand dollars ($100,000) for any one licensee.

(b) For applications for payment from the Consumer Recovery Account filed on or after January 1, 2009, fifty thousand dollars ($50,000) for any one transaction and two hundred fifty thousand dollars ($250,000) for any one licensee.

(c) When multiple licensed real estate personnel are involved in a transaction and the individual conduct of two or more of the licensees results in a judgment meeting the requirements of subdivision (a) of Section 10471, the claimant may seek recovery from the Consumer Recovery Account based on the judgment against any of the licensed real estate personnel, subject to the limitations of this section and subparagraph (E) of paragraph (7) of subdivision (c) of Section 10471.

Claims Equitably Distributed

10474.5. If the amount of liability of the Consumer Recovery Account as provided for in Section 10474 is insufficient to pay in full the valid claims of all aggrieved persons by whom claims have been filed against any one licensee, the amount shall be distributed among them in the ratio that their respective claims bear to the aggregate of the valid claims, or in any other manner as the court deems equitable. Distribution of any moneys shall be among the persons entitled to share therein, without regard to the order of priority in which their respective judgments may have been obtained or their

claims have been filed. Upon petition of the commissioner, the court may require all claimants and prospective claimants against one licensee to be joined in one action, to the end that the respective rights of all claimants to the Consumer Recovery Account may be equitably adjudicated and settled.

License Suspension
10475. Should the commissioner pay from the Consumer Recovery Account any amount in settlement of a claim or toward satisfaction of a judgment against a licensed broker or salesperson or a person holding a prepaid rental listing service license, the license of the broker or salesperson or prepaid rental listing service licensee shall be automatically suspended upon the date of payment from the Consumer Recovery Account. No broker or salesperson or prepaid rental listing service licensee shall be granted reinstatement until he or she has repaid in full, plus interest at the prevailing legal rate applicable to a judgment rendered in any court of this state, the amount paid from the Consumer Recovery Account on his or her account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this chapter.

Insufficient Funds – Priority of Payment When Money Deposited
10476. If, at any time, the money deposited in the Consumer Recovery Account is insufficient to satisfy any duly authorized claim or portion thereof, the commissioner shall, when sufficient money has been deposited in the Consumer Recovery Account, satisfy the unpaid claims or portions thereof, in the order that the claims or portions thereof were originally filed, plus accumulated interest at the rate of 4 percent a year.

Deposit of Money – Allocation
10477. Any sums received by the commissioner pursuant to any provisions of this chapter shall be deposited in the State Treasury and credited to the Consumer Recovery Account.

Liability for False Documents
10478. It shall be unlawful for any person or the agent of any person to file with the commissioner any notice, statement, or other document required under the provisions of this chapter which is false or untrue or contains any willful, material misstatement of fact. Such conduct shall constitute a public offense punishable by imprisonment in the county jail for a period of not more than one year or a fine of not more than one thousand dollars ($1,000), or both.

Commissioner's Right to Subrogation
10479. When, the commissioner has paid from the Consumer Recovery Account any sum to the judgment creditor, the commissioner shall be subrogated to all of the rights of the judgment creditor and the judgment creditor shall assign all of his or her right, title, and interest in the judgment to the commissioner and any amount and interest so recovered by the commissioner on the judgment shall be deposited to the Consumer Recovery Account.

Waiver of Rights
10480. The failure of an aggrieved person to comply with all of the provisions of this chapter shall constitute a waiver of any rights hereunder.

Disciplinary Action Against Licensee
10481. Nothing in this chapter limits the authority of the commissioner to take disciplinary action against any licensee for a violation of the Real Estate Law, or of Chapter 1 (commencing with Section 11000) of Part 2, or of the rules and regulations of the commissioner; nor shall the repayment in full of all obligations to the Consumer Recovery Account by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the Real Estate Law.

CHAPTER 7. MINERAL, OIL AND GAS BROKERAGE

Article 1. Scope of Regulation

MOG Broker or Real Estate Broker License Required for Certain Acts
10500. Except as otherwise provided in Section 10131.4 and this chapter, it is unlawful for any person to engage in any of the following acts for another or others for compensation or in expectation of compensation, unless the person is licensed as a mineral, oil, and gas broker or a real estate broker:

(a) To sell or offer for sale, buy or offer to buy, solicit prospective sellers or purchasers, solicit or obtain listings, or negotiate the purchase, sale, or exchange of mineral, oil, or gas property.

(b) To solicit borrowers or lenders for or negotiate loans on mineral, oil, or gas property, or collect payments for lenders in connection with these loans.

(c) To lease or offer to lease or negotiate the sale, purchase, or exchange of leases on mineral, oil, or gas property.

(d) To rent or place for rent, mineral, oil, or gas property or to collect rent or royalties from mineral, oil, or gas property or improvements thereon.

(e) Other than as an officer or employee of the state or federal government, to assist or offer to assist another or others in filing an application for the purchase or lease of, or to locate or enter upon mineral, oil, or gas property owned by the state or federal government.

MOG or RE Broker License Required to Engage in Certain Businesses

10500.5. Except as otherwise provided in Section 10131.45 and in this chapter, it is unlawful for any person to engage in the following businesses as a principal unless the person is licensed as a mineral, oil, and gas broker or a real estate broker:

(a) Except as provided in subdivision (d) of Section 10502, buying or leasing, or taking an option on mineral, oil, or gas property for the purpose of sale, exchange, lease, sublease, or assignment of a lease of the property or any part of the property.

(b) Offering mining claims or any interest therein for sale or assignment.

Violation – Prosecution – Penalties

10501. (a) The Real Estate Commissioner may file a complaint for any violation of Section 10500 or 10500.5 before any court of competent jurisdiction, and the commissioner and the commissioner's counsel, deputies or assistants may assist in presenting the law or facts at the trial.

(b) It is the duty of the district attorney of the county in which a violation of Section 10500 or 10500.5 occurs to prosecute the violation.

(c) A natural person convicted of a violation of Section 10500 or 10500.5 shall be punished by a fine of not to exceed five hundred dollars ($500) or by imprisonment in the county jail for a term not to exceed six months, or by both such fine and imprisonment, in the discretion of the court. A corporation convicted of a violation of Section 10500 or 10500.5 shall be punished by a fine of not to exceed five thousand dollars ($5,000).

Activities Not Requiring an MOG License

10502. A mineral, oil and gas broker license shall not be required to engage in any of the following activities with respect to a mineral, oil or gas property:

(a) To act as a depository under an oil lease, gas lease or oil and gas lease other than for purpose of sale.

(b) To engage in any transaction subject to an order of a court of competent jurisdiction.

(c) To engage in the business of drilling for or producing oil or gas or mining for or producing minerals.

(d) To negotiate leases or agreements between an owner of mineral, oil or gas lands, leases or mineral rights on the one hand, and a person organized for or engaging in oil or gas or mineral or metal production on the other, or to enter into leases or agreements with an owner of mineral, oil, or gas lands, leases, or mineral rights on behalf of a disclosed or undisclosed person organized for or engaging in oil or gas or mineral or metal production.

(e) To deal with mineral rights or land, other than oil or gas rights or land, as the owner of the rights or land.

MOG Property Defined

10503. Mineral, oil or gas property refers to land used for, intended to be used for, or concerning which representations are made with respect to, the mining of minerals or the extraction of oil or gas therefrom.

Action for Compensation
10508. No person engaged in the business or acting in the capacity of a mineral, oil and gas broker within this state shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in this article without alleging and proving that he was a duly licensed mineral, oil and gas broker at the time the alleged cause of action arose.

Unlawful Payment of Compensation
10509. (a) It is unlawful for a mineral, oil, and gas broker or a real estate broker to employ or compensate, directly or indirectly, any person who is not a mineral, oil, and gas broker or a licensed real estate salesperson in the employ of the real estate broker for performing any acts for which a mineral, oil, and gas broker license is required.

(b) It is a misdemeanor, punishable by a fine of not exceeding one hundred dollars ($100) for each offense, for any person, whether obligor, escrow holder or otherwise, to pay or deliver compensation to a person for performing any acts for which a mineral, oil, and gas broker license is required unless that person is known by the payer to be or has presented evidence to the payer that he or she was a licensed mineral, oil, and gas broker at the time the compensation was earned.

False MOG Advertising
10512. Every officer, agent or employee of any company, and every other person who knowingly authorizes, directs or aids in the publication, advertisement, distribution or circularization of any false statement or representation concerning any mineral, oil or gas property, or, if the mineral, oil or gas property is owned by the state or federal government, which such person offers to assist another or others to file an application for the purchase or lease of, or to locate or enter upon, and every person who, with knowledge that any advertisement, pamphlet, prospectus or letter concerning any mineral, oil or gas property or any written statement that is false or fraudulent, issues, circulates, publishes or distributes the same, or causes the same to be issued, circulated, published or distributed, or who in any other respect willfully violates or fails, omits, or neglects to obey, observe or comply with any order, permit, decision, demand or requirement of the commissioner under the provisions of this part relating to mineral, oil and gas brokerage, is guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a term not to exceed six months, or by a fine of not to exceed one thousand dollars ($1,000), and, if a mineral, oil and gas licensee, he shall be held to trial by the commissioner for a suspension or revocation of his mineral, oil and gas license, as provided in the provisions of this part relating to hearings. It shall be the duty of the district attorney of each county in this state to prosecute all violations of the provisions of this section in respective counties in which the violations occur.

Application of Real Estate Broker Provisions
10513. In performing acts within the scope and under the authority of this chapter, mineral, oil and gas brokers are subject to the provisions applicable to real estate brokers contained in Sections 10131.5, 10140.5, 10142, 10143.5, 10144, 10145, and 10148.

Article 2. Licenses

MOG Broker Subject to Certain Real Estate Broker Provisions But Not Continuing Education Requirements
10515. (a) Mineral, oil, and gas brokers in performing acts within the scope and under the authority of this chapter are subject to the provisions applicable to real estate brokers contained in Sections 10153.6, 10156.2, 10157, 10159, 10159.2, 10159.5, 10161.5, 10161.75, 10162, 10163, and 10165.

(b) Mineral, oil, and gas brokers shall not be subject to any of the provisions of Article 2 (commencing with Section 10150) or Article 2.5 (commencing with Section 10170) of Chapter 3 which impose continuing education requirements as a prerequisite to the renewal of a license.

Restricted License
10519. (a) The commissioner may issue a restricted mineral, oil, and gas broker license to

a person whose mineral, oil, and gas broker license has been revoked as the result of disciplinary action taken by the commissioner.

(b) A restricted mineral, oil, and gas broker license issued by the commissioner may be restricted by term and by the conditions to be observed by the licensee in the performance of acts for which a mineral, oil, and gas broker license is required including the posting of a surety bond by the restricted licensee in such form and condition as the commissioner may require.

Restricted License – No Right to Renewal – Suspension

10519.1. There is no property right and no right to the renewal of a restricted license issued pursuant to Section 10519.

The commissioner may suspend a restricted license pending the holding of a hearing on charges alleging a basis for disciplinary action against the restricted licensee.

Article 4. Disciplinary Action

Suspension or Revocation of MOG License

10560. Upon grounds provided in this article and the other articles of this chapter, the license of any mineral, oil and gas licensee may be revoked or suspended in accordance with the provisions of this part relating to hearings.

Grounds for Suspension or Revocation of MOG License

10561. The commissioner may, upon his own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a mineral, oil and gas licensee, within this state, and he may temporarily suspend or permanently revoke a mineral, oil and gas license at any time if the licensee, while a mineral, oil and gas licensee, in performing or attempting to perform any of the acts within the scope of this chapter, has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false promises of a character likely to influence, persuade or induce.

(c) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.

(d) Commingling with his own money or property the money or property of others which is received and held by him.

(e) Claiming or demanding a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to sell, buy or exchange mineral, oil or gas property for compensation, or commission where such agreement does not contain a definite, specified date of final and complete termination.

(f) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of such licensee the full amount of such licensee's compensation, commission, or profit under any agreement authorizing or employing such licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of such agreement, whether evidenced by documents in an escrow or by any other or different procedure.

(g) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing such licensee to sell, buy or exchange mineral, oil or gas property for compensation or commission, except when such licensee prior to or coincident with election to exercise such option to purchase reveals in writing to the employer the full amount of licensee's profit and obtains the written consent of the employer approving the amount of such profit.

(h) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

Further Grounds for Discipline

10562. The commissioner may suspend or revoke the license of a mineral, oil, and gas licensee who has done any of the following:

(a) Entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, or a crime substantially related to the qualifications, functions, or duties of a mineral, oil, and gas licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of an order granting probation following that conviction, suspending the imposition of sentence, or of a subsequent order under the provision of Section 1203.4 of the Penal Code allowing the licensee to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation or information.

(b) Knowingly authorized, directed, connived at or aided in the publication, advertisement, distribution, or circulation of a material false statement or representation concerning his or her business or a mineral, oil, or gas property offered for sale.

(c) Willfully disregarded or violated any of the provisions of the Real Estate Law (commencing with Section 10000) or of Chapter 1 (commencing with Section 11000) of Part 2 or of the rules and regulations of the commissioner for the administration and enforcement of the Real Estate Law and Chapter 1 (commencing with Section 11000) of Part 2.

(d) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a mineral, oil, and gas license.

(e) Willfully used the term "realtor" or a trade name or insigne of membership in a real estate organization of which the licensee is not a member.

(f) Demonstrated negligence or incompetence in performing an act for which he or she is required to hold a license.

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

(h) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

Fraud in Civil Action Against MOG Licensee
10562.5. When a final judgment is obtained in a civil action against any mineral, oil and gas licensee, upon grounds of fraud, misrepresentation, or deceit with reference to any transaction for which a license is required under this division, the commissioner may, after hearing in accordance with the provisions of this part relating to hearings, suspend or revoke the license of such mineral, oil and gas licensee.

Action Against Officer or Agent of Corporation
10564. The commissioner may suspend or revoke the mineral, oil, and gas license of a corporation as to any officer or agent acting under its mineral, oil, and gas license, without revoking the mineral, oil, and gas license of the corporation.

Article 5. Fees

Applicability of Broker License Provisions
10580. Mineral, oil, and gas brokers are subject to the provisions applicable to real estate brokers contained in Sections 10200, 10207, 10209.5, 10210, 10211, and 10222.

PART 2. REGULATION OF TRANSACTIONS

CHAPTER 1. SUBDIVIDED LANDS

Article 1. General Provisions

"Subdivided Lands" and "Subdivision"
11000. (a) "Subdivided lands" and "subdivision" refer to improved or unimproved land or lands, wherever situated within California, divided or proposed to be divided for the purpose of sale or lease or financing, whether immediate or future, into five or more lots or parcels. However, land or lands sold by lots or parcels of not less than 160 acres which are designated by lot or parcel description by government surveys and appear as such on the current assessment roll of the county in which the land or lands are situated shall not be deemed to be "subdivided lands" or "a subdivision" within the meaning of this section, unless the land or lands are divided or proposed to be divided for the purpose of sale for oil and gas purposes, in which case the land

or lands shall be deemed to be "subdivided lands" or "a subdivision" within the meaning of this section. This chapter also does not apply to the leasing of apartments, offices, stores, or similar space within an apartment building, industrial building, commercial building, or mobilehome park, as defined under Section 18214 of the Health and Safety Code, except that the offering of leases for a term in excess of five years to tenants within a mobilehome park as a mandatory requirement and prerequisite to tenancy within the mobilehome park shall be subject to the provisions of this chapter. The leasing of apartments in a community apartment project, as defined in Section 11004 in an apartment or similar space within a commercial building or complex, shall be subject to the provisions of this chapter.

(b) Nothing in this section shall in any way modify or affect any of the provisions of Section 66424 of the Government Code.

(c) Subdivisions, as defined in Section 10249.1, which are located entirely outside California shall be exempt from the provisions of this part.

"Undivided Interests" – Definition and Exemption

11000.1. (a) "Subdivided lands" and "subdivision," as defined by Sections 11000 and 11004.5, also include improved or unimproved land or lands, a lot or lots, or a parcel or parcels, of any size, in which, for the purpose of sale or lease or financing, whether immediate or future, five or more undivided interests are created or are proposed to be created.

(b) This section does not apply to the creation or proposed creation of undivided interests in land if any one of the following conditions exists:

(1) The undivided interests are held or to be held by persons related one to the other by blood or marriage.

(2) The undivided interests are to be purchased and owned solely by persons who present evidence satisfactory to the Real Estate Commissioner that they are knowledgeable and experienced investors who comprehend the nature and extent of the risks involved in the ownership of these interests. The Real Estate Commissioner shall grant an exemption from this part if the undivided interests are to be purchased by no more than 10 persons, each of whom furnishes a signed statement to the commissioner that he or she (A) is fully informed concerning the real property to be acquired and his or her interest in that property including the risks involved in ownership of undivided interests, (B) is purchasing the interest or interests for his or her own account and with no present intention to resell or otherwise dispose of the interest for value, and (C) expressly waives protections afforded to a purchaser by this part.

(3) The undivided interests are created as the result of a foreclosure sale.

(4) The undivided interests are created by a valid order or decree of a court.

(5) The offering and sale of the undivided interests have been expressly qualified by the issuance of a permit from the Commissioner of Corporations pursuant to the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).

"Undivided Interests" – Right to Rescind Contract

11000.2. (a) A person who has made an offer to purchase an interest in an undivided-interest subdivision specified in subdivision (a) of, and not exempted by subdivision (b) of, Section 11000.1 shall have the right to rescind any contract resulting from the acceptance of that offer until midnight of the third calendar day following the day on which the prospective purchaser executed the offer to purchase.

(b) The owner of a subdivision subject to this section or his or her agent shall, in accordance with regulations adopted by the Real Estate Commissioner, clearly and conspicuously disclose to all prospective purchasers of undivided interests the right of rescission provided for in subdivision (a), and shall furnish to each offeror a form, as prescribed by

regulations of the commissioner, for the exercise of the right of rescission.

(c) Any certificate bearing the signature of the purchaser of an interest in an undivided-interest subdivision subject to this section which contains an adequate description of the interest or interests sold and a statement by the purchaser that he or she has not exercised the right of rescission within the time limit set forth in subdivision (a) shall constitute conclusive evidence that the right of rescission has not been exercised in any matter involving the rights of a third party who has acted in good faith in reliance upon representations in the certificate.

Rules and Regulations

11001. The Real Estate Commissioner (hereafter referred to in this chapter as the commissioner) may adopt, amend, or repeal such rules and regulations as are reasonably necessary for the enforcement of this chapter. He may issue any order, permit, decision, demand or requirement to effect this purpose. Such rules, regulations, and orders shall be adopted pursuant to the provisions of the Administrative Procedure Act.

Planned Development Defined

11003. "Planned development" has the same meaning as specified in Section 4175 or 6562 of the Civil Code.

Stock Cooperative Defined

11003.2. "Stock cooperative" has the same meaning as specified in Section 4190 or 6566 of the Civil Code, except that, as used in this chapter, a "stock cooperative" does not include a limited-equity housing cooperative.

"Limited-Equity Housing Cooperative" Defined – Exempt from Chapter upon Conditions

11003.4. (a) A "limited-equity housing cooperative" or a "workforce housing cooperative trust" is a corporation that meets the criteria of Section 11003.2 and that also meets the criteria of Sections 817 and 817.1 of the Civil Code, as applicable. Except as provided in subdivision (b), a limited-equity housing or workforce housing cooperative trust shall be subject to all the requirements of this chapter pertaining to stock cooperatives.

(b) A limited-equity housing cooperative or a workforce housing cooperative trust shall be exempt from the requirements of this chapter if the limited-equity housing cooperative or workforce housing cooperative trust complies with all the following conditions:

(1) The United States Department of Housing and Urban Development, the United States Department of Agriculture, the National Consumers Cooperative Bank, the California Housing Finance Agency, the Public Employees' Retirement System (PERS), the State Teachers' Retirement System (STRS), the Department of Housing and Community Development, or the Federal Home Loan Bank System or any of its member institutions, alone or in any combination with each other, or with the city, county, school district, or redevelopment agency in which the cooperative is located, directly finances or subsidizes at least 50 percent of the total construction or development cost or one hundred thousand dollars ($100,000), whichever is less; or the real property to be occupied by the cooperative was sold or leased by the Department of Transportation, other state agency, a city, a county, or a school district for the development of the cooperative and has a regulatory agreement approved by the Department of Housing and Community Development for the term of the permanent financing, notwithstanding the source of the permanent subsidy or financing.

(2) No more than 20 percent of the total development cost of a limited-equity mobilehome park, and no more than 10 percent of the total development cost of other limited-equity housing cooperatives, is provided by purchasers of membership shares.

(3) A regulatory agreement that covers the cooperative for a term of at least as long as the duration of the permanent financing or subsidy, notwithstanding the source of the permanent subsidy or financing has been duly executed between the recipient of the

financing and either (A) one of the federal or state agencies specified in paragraph (1) or (B) a local public agency that is providing financing for the project under a regulatory agreement meeting standards of the Department of Housing and Community Development. The regulatory agreement shall make provision for at least all of the following:

(A) Assurances for completion of the common areas and facilities to be owned or leased by the limited-equity housing cooperative, unless a construction agreement between the same parties contains written assurances for completion.

(B) Governing instruments for the organization and operation of the housing cooperative by the members.

(C) The ongoing fiscal management of the project by the cooperative, including an adequate budget, reserves, and provisions for maintenance and management.

(D) Distribution of a membership information report to any prospective purchaser of a membership share, prior to purchase of that share. The membership information report shall contain full disclosure of the financial obligations and responsibilities of cooperative membership, the resale of shares, the financing of the cooperative including any arrangements made with any partners, membership share accounts, occupancy restrictions, management arrangements, and any other information pertinent to the benefits, risks, and obligations of cooperative ownership.

(4) The federal, state, or local public agency that executes the regulatory agreement shall satisfy itself that the bylaws, articles of incorporation, occupancy agreement, subscription agreement, any lease of the regulated premises, any arrangement with partners, and arrangement for membership share accounts provide adequate protection of the rights of cooperative members.

(5) The federal or state agency shall receive from the attorney for the recipient of the financing or subsidy a legal opinion that the cooperative meets the requirements of Section 817 of the Civil Code and the exemption provided by this section.

(c) Any limited-equity cooperative, or workforce housing cooperative trust that meets the requirements for exemption pursuant to subdivision (b) may elect to be subject to all provisions of this chapter.

(d) The developer of the cooperative shall notify the Bureau of Real Estate, on a form provided by the bureau, that an exemption is claimed under this section. The Bureau of Real Estate shall retain this form for at least four years for statistical purposes.

"Community Apartment Project" Defined

11004. "Community apartment project" has the same meaning as specified in Section 4105 of the Civil Code.

Subdivisions – Also Defined As

11004.5. In addition to the provisions of Section 11000, the reference in this code to "subdivided lands" and "subdivision" shall include all of the following:

(a) Any planned development, as defined in Section 11003, containing five or more lots.

(b) Any community apartment project, as defined by Section 11004, containing five or more apartments.

(c) Any condominium project containing five or more condominiums, as defined in Section 783 of the Civil Code.

(d) Any stock cooperative as defined in Section 11003.2, including any legal or beneficial interests therein, having or intended to have five or more shareholders.

(e) Any limited-equity housing cooperative, as defined in Section 11003.4.

(f) In addition, the following interests shall be subject to this chapter and the regulations of the commissioner adopted pursuant thereto:

(1) Any accompanying memberships or other rights or privileges created in, or in connection with, any of the forms of development referred to in subdivision (a), (b), (c), (d), or (e) by any deeds, conveyances, leases, subleases, assignments, declarations of restrictions, articles of incorporation, bylaws, or contracts applicable thereto.

(2) Any interests or memberships in any owners' association as defined in Section 4080 or 6528 of the Civil Code, created in connection with any of the forms of the development referred to in subdivision (a), (b), (c), (d), or (e).

(g) Notwithstanding this section, time-share plans, exchange programs, incidental benefits, and short-term product subject to Chapter 2 (commencing with Section 11210) are not "subdivisions" or "subdivided lands" subject to this chapter.

Nonresident Consent to Service
11007. Every nonresident subdivider shall file with the questionnaire an irrevocable consent that if, in any action commenced against him in this State, personal service of process upon him cannot be made in this State after the exercise of due diligence, a valid service may thereupon be made upon him by delivering the process to the Secretary of State.

Insofar as possible, the provisions of Section 1018 of the Code of Civil Procedure relating to the service of process on the Secretary of State are applicable to this section.

Criminal Provisions of the Law May Apply
11008. No provision of this part which makes a violation of this part a crime shall be construed to preclude application of any other criminal provision of the law of this state to an act or omission which constitutes a violation of this part.

Article 2. Investigation, Regulation and Report

Application for Public Report – Waiver
11010. (a) Except as otherwise provided pursuant to subdivision (c) or elsewhere in this chapter, any person who intends to offer subdivided lands within this state for sale or lease shall file with the Bureau of Real Estate an application for a public report consisting of a notice of intention and a completed questionnaire on a form prepared by the bureau.

(b) The notice of intention shall contain the following information about the subdivided lands and the proposed offering:

(1) The name and address of the owner.

(2) The name and address of the subdivider.

(3) The legal description and area of lands.

(4) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

(5) A true statement of the terms and conditions on which it is intended to dispose of the land, together with copies of any contracts intended to be used.

(6) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas, telephone, and sewerage facilities. For subdivided lands that were subject to the imposition of a condition pursuant to subdivision (b) of Section 66473.7 of the Government Code, the true statement of the provisions made for water shall be satisfied by submitting a copy of the written verification of the available water supply obtained pursuant to Section 66473.7 of the Government Code.

(7) A true statement of the use or uses for which the proposed subdivision will be offered.

(8) A true statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision.

(9) A true statement of the amount of indebtedness that is a lien upon the subdivision or any part thereof, and that was incurred to pay for the construction of any onsite or offsite improvement, or any community or recreational facility.

(10) A true statement or reasonable estimate, if applicable, of the amount of any indebtedness which has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area, assessment district, or community facilities district within the boundaries of which, the subdivision, or any part thereof, is located, and that is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to that subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision, or any part thereof.

(11) A notice pursuant to Section 1102.6c of the Civil Code.

(12) (A) As to each school district serving the subdivision, a statement from the appropriate district that indicates the location of each high school, junior high school, and elementary school serving the subdivision, or documentation that a statement to that effect has been requested from the appropriate school district.

(B) In the event that, as of the date the notice of intention and application for issuance of a public report are otherwise deemed to be qualitatively and substantially complete pursuant to Section 11010.2, the statement described in subparagraph (A) has not been provided by any school district serving the subdivision, the person who filed the notice of intention and application for issuance of a public report shall immediately provide the bureau with the name, address, and telephone number of that district.

(13) (A) The location of all existing airports, and of all proposed airports shown on the general plan of any city or county, located within two statute miles of the subdivision. If the property is located within an airport influence area, the following statement shall be included in the notice of intention:

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

(B) For purposes of this section, an "airport influence area," also known as an "airport referral area," is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission.

(14) A true statement, if applicable, referencing any soils or geologic report or soils and geologic reports that have been prepared specifically for the subdivision.

(15) A true statement of whether or not fill is used, or is proposed to be used, in the subdivision and a statement giving the name and the location of the public agency where information concerning soil conditions in the subdivision is available.

(16) On or after July 1, 2005, as to property located within the jurisdiction of the San Francisco Bay Conservation and Development Commission, a statement that the property is so located and the following notice:

NOTICE OF SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION JURISDICTION

This property is located within the jurisdiction of the San Francisco Bay Conservation and Development Commission. Use and development of property within the commission's jurisdiction may be subject to special regulations, restrictions, and permit requirements. You may wish to investigate and determine whether they are acceptable to you and your intended use of the property before you complete your transaction.

(17) If the property is presently located within one mile of a parcel of real property designated as "Prime Farmland," "Farmland of Statewide Importance," "Unique Farmland," "Farmland of Local Importance," or "Grazing Land" on the most current "Important Farmland Map" issued by the California Department of Conservation, Division of Land Resource Protection, utilizing solely the county-level GIS map data, if any, available on the Farmland Mapping and Monitoring Program Website. If the residential property is within one mile of a designated farmland area, the report shall contain the following notice:

NOTICE OF RIGHT TO FARM

This property is located within one mile of a farm or ranch land designated on the current county-level GIS "Important Farmland Map," issued by the California Department of Conservation, Division of Land Resource Protection. Accordingly, the property may be subject to inconveniences or discomforts resulting from agricultural operations that are a normal and necessary aspect of living in a community with a strong rural character and a healthy agricultural sector. Customary agricultural practices in farm operations may include, but are not limited to, noise, odors, dust, light, insects, the operation of pumps and machinery, the storage and disposal of manure, bee pollination, and the ground or aerial application of fertilizers, pesticides, and herbicides. These agricultural practices may occur at any time during the 24-hour day. Individual sensitivities to those practices can vary from person to person. You may wish to consider the impacts of such agricultural practices before you complete your purchase. Please be advised that you may be barred from obtaining legal remedies against agricultural practices conducted in a manner consistent with proper and accepted customs and standards pursuant to Section 3482.5 of the Civil Code or any pertinent local ordinance.

(18) Any other information that the owner, his or her agent, or the subdivider may desire to present.

(c) The commissioner may, by regulation, or on the basis of the particular circumstances of a proposed offering, waive the requirement of the submission of a completed questionnaire if the commissioner determines that prospective purchasers or lessees of the subdivision interests to be offered will be adequately protected through the issuance of a public report based solely upon information contained in the notice of intention.

Senior Citizen Housing Development

11010.05. A person who proposes to create a senior citizen housing development, as defined in Section 51.3 or 51.11 of the Civil Code, shall include in the application for a public report a complete statement of the restrictions on occupancy that are to be applicable in the development. Any public report issued for a senior housing development shall also include a complete statement of the restrictions on occupancy to be applicable in the development. This section shall become operative on July 1, 2001, and shall apply to all applications for a public report for a senior housing development submitted to the department on or after July 1, 2001.

Notice to Commissioner – Prior to Issuance of Promissory Notes

11010.1. Prior to the issuance of promissory notes secured by individual lots in an unrecorded subdivision, the owner, his agent or subdivider shall notify the commissioner in writing of his intention to issue such notes.

The notice of intention shall contain the following information:

(a) The name and address of the owner.

(b) The name and address of the subdivider.

(c) The legal description and area of lands.

(d) A true statement of the condition of the title to the land, particularly including all encumbrances thereon.

(e) A true statement of the terms and conditions on which it is intended to issue the promissory notes.

(f) A true statement of the provisions, if any, that have been made for public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.

(g) Such other information as the owner, his agent or subdivider, may desire to present.

Subdivision Public Reports – Applications for Issuance – Procedures

11010.2. (a) As used in this section:

(1) "Quantitative" means the number and type of documents required to make the filing substantially complete, as defined in the regulations of the commissioner, without regard to the content of those requirements.

(2) "Qualitatively complete" means that all deficiencies and substantive inadequacies contained in the documents that were required to make the filing substantially complete have been corrected.

(3) "Substantially complete" means that a notice and application contain all requirements as set forth in the regulations of the commissioner.

(b) Upon receipt of a notice of intention pursuant to Section 11010 and an application for issuance of a public report, the commissioner shall review the notice and application to determine if the notice and application are substantially complete, with respect to quantitative requirements. The commissioner shall notify the applicant in writing of that determination within 10 days of receipt of the notice and application.

(1) If the notice and application are not substantially complete with respect to the quantitative requirements pursuant to this subdivision, the notification shall specify the information needed to make the notice and application substantially complete. Upon receipt of any resubmittal of a notice and application, the commissioner shall notify the applicant in writing of that determination within 10 days of receipt of the notice and application.

(2) If the commissioner determines that the notice and application are substantially complete with respect to the quantitative requirements pursuant to this subdivision, the commissioner shall provide the applicant with a list of all deficiencies and substantive inadequacies necessary for the notice and application to be qualitatively complete, within 60 days of that determination, in the case of subdivisions specified in Section 11000.1 or 11004.5, and within 20 days of that determination, in the case of other subdivisions.

(c) Upon receipt of all documents, materials, writings, and other information submitted in response to the list in paragraph (2) of subdivision (b), the commissioner shall notify the applicant whether the notice and application are qualitatively complete within 30 days, in the case of subdivisions specified in Section 11000.1 or 11004.5, and within 20 days of receipt, in the case of other subdivisions. If the application and notice are not qualitatively complete, the notification shall include a list of any remaining deficiencies and substantive inadequacies. Upon receipt of any resubmittal of documents, materials, writings, and other information in response to a list of any remaining deficiencies and substantive inadequacies, the commissioner shall provide notification within the time limits specified in this subdivision.

(d) The commissioner shall issue a public report within 15 days, in the case of a subdivision specified in Section 11000.1 or 11004.5, or 10 days, in the case of other subdivisions, after the notice and application are determined to be

qualitatively and substantially complete, and submittal of recorded or filed instruments and evidence of financial arrangements required by the commissioner.

(e) Upon receipt of an application for approval of a declaration as provided in Section 11010.10, the commissioner shall notify the applicant of any deficiency or inadequacy in the declaration within 60 days of its receipt. The commissioner shall notify the applicant of any deficiency or inadequacy in a declaration that has been revised following the first notice of deficiency or inadequacy within 30 days of its receipt.

(f) The commissioner shall adopt regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, that define "substantially complete" and that list all the requirements necessary for a notice of intention and application to be considered "substantially complete."

(g) The commissioner may adopt emergency regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to increase, as set forth below, those time periods specified in subdivisions (b), (c), and (d), upon a showing that the number of notices of intention and applications for a subdivision public report filed with the department for any immediately preceding six-month period has increased by more than 15 percent over the monthly average number of notices and applications filed for the base period commencing July 1, 1983, and ending June 30, 1986:

(1) The time for issuing the notice provided in subdivision (b) shall increase to 15 days.

(2) The time for providing the listing required by paragraph (2) of subdivision (b) shall increase to 90 days, in the case of subdivisions specified in Sections 11000.1 and 11004.5, and to 30 days, in the case of other subdivisions.

(3) The time period provided in subdivision (c) for responding to receipt of documents intended to correct deficiencies shall be 30 days without regard to the type of subdivision being processed.

(4) The time periods provided in subdivision (d) within which the commissioner is required to issue a public report in the case of subdivisions specified in Sections 11000.1 and 11004.5, shall increase to 30 days and in the case of other subdivisions shall increase to 15 days.

This section does not apply to filings made exclusively under Section 11010.1. Nothing in this section requires the commissioner to issue a public report where grounds for denial exist, provided that issuance of a public report shall not be denied for inadequate information if the cause thereof is the commissioner's failure to comply with this section.

Notwithstanding other provisions of this section, the commissioner shall not be required to issue a public report if grounds for denial exist under Section 11018 or 11018.5. However, the commissioner may not base the denial of a public report on the lack of adequate information if the commissioner has not acted within the time periods prescribed in this section.

Exemption – Industrial and Commercial Subdivisions

11010.3. (a) This chapter shall not apply to the proposed sale or lease of lots or other interests in a subdivision that is limited to industrial or commercial uses by law or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of the county or counties in which the subdivision is located.

(b) For the purposes of this section, "commercial use" includes, but is not limited to, the operation of a business that provides facilities for the overnight stay of its customers, employees, or agents.

Other Notice of Intention Exemption

11010.4. The notice of intention specified in Section 11010 is not required for a proposed offering of subdivided land that satisfies all of the following criteria:

(a) The owner, subdivider, or agent has complied with Sections 11013.1, 11013.2, and 11013.4, if applicable.

(b) The subdivided land is not a subdivision as defined in Section 11000.1or 11004.5.

(c) Each lot, parcel or unit of the subdivision is located entirely within the boundaries of a city.

(d) Each lot, parcel, or unit of the subdivision will be sold or offered for sale improved with a completed residential structure and with all other improvements completed that are necessary to occupancy or with financial arrangements determined to be adequate by the city to ensure completion of the improvements. A lot, parcel, or unit shall satisfy the requirement that it be improved with a completed residential structure if it is improved with a completed residential structure at the time it is conveyed by the subdivider.

Exceptions to Filing Second Notice of Intention

11010.5. The filing of a second notice of intention to sell and a second report of the commissioner under this article shall not be required when all the following conditions have been met:

(a) where there has been a previous subdivision report and the lots are subsequently acquired through any foreclosure action, or by a deed in lieu of foreclosure, by a bank, life insurance company, industrial loan company, credit union, or savings and loan association licensed or operating under the provisions of a state or federal law if the acquired lots, either improved or unimproved, will be sold in conformance with the previously issued subdivision public report;

(b) the original public report is given to the first purchasers of the lots in the foreclosed subdivision; and

(c) the commissioner is notified of the change of ownership within 30 days of the acquisition of the title to such property.

Notice of Intention Exemption – Public Agencies

11010.6. The provisions of this chapter shall not be applicable to subdivided land which is offered or proposed to be offered for sale, lease, or financing by a state agency, including the University of California, a local agency, or other public agency.

Exception – Nonbinding Expression of Intent to Purchase

11010.7. The notice of intention specified in Section 11010 shall not apply to nonbinding expressions of intent to purchase or lease which an owner, agent, or subdivider is required to obtain from the tenants of units which are proposed to be converted to a condominium, community apartment project, or stock cooperative project, by ordinance, or as a condition to the approval of a tentative or parcel map pursuant to Division 2 (commencing with Section 66410) of Title 7 of the Government Code.

Exception – Mobilehome Park Purchase by Nonprofit Corporation

11010.8. (a) The requirement that a notice of intention be filed pursuant to Section 11010 is not applicable to the purchase of a mobilehome park by a nonprofit corporation if all of the following occur:

(1) A majority of the shareholders or members of the nonprofit corporation constitute a majority of the homeowners of the mobilehome park, and a majority of the members of the board of directors of the nonprofit corporation are homeowners of the mobilehome park.

(2) All members of the corporation are residents of the mobilehome park. Members of the nonprofit corporation may enter into leases with the corporation that are greater than five years in length. “Homeowners” or “residents” of the mobilehome park shall include a bona fide secured party who has, pursuant to a security interest in a membership, taken title to the membership by means of foreclosure, repossession, or voluntary repossession, and who is actively attempting to resell the membership to a prospective resident or homeowner of the mobilehome park, in accordance with subdivision (f) of Section 7312 of the Corporations Code.

(3) A permit to issue securities under Section 25113 of the Corporations Code is obtained from the Department of Business Oversight, Division of Corporations. In the case of a nonissuer transaction (as defined by Section 25011 of the Corporations Code) involving the offer to resell or the resale of memberships by a bona fide secured party as described in paragraph (2) of this section, a permit is not required where the transaction is exempt from the qualification requirements of Section 25130 of the Corporations Code pursuant to subdivision (e) of Section 25104 of the Corporations Code. The exemption from qualification pursuant to subdivision (e) of Section 25104 of the Corporations Code available to a bona fide secured party does not eliminate the requirement of this section that the nonprofit corporation shall either file a notice of intention pursuant to Section 11010 or obtain a permit pursuant to Section 25113 of the Corporations Code.

(4) All funds of tenants for the purchase of the mobilehome park are deposited in escrow until the document transferring title of the mobilehome park to the nonprofit corporation is recorded. The escrow also shall include funds of homeowners that shall be available to the homeowners association nonprofit corporation for payment of any and all costs reasonably associated with the processing and conversion of the mobilehome park into condominium interests. Payment of these costs may be made from the funds deposited in escrow prior to the close of escrow upon the direction of the homeowners association nonprofit corporation.

(b) The funds described by paragraph (4) of subdivision (a), or any other funds subsequently received from tenants for purposes other than the purchase of a separate subdivided interest in any portion of the mobilehome park, are not subject to the requirements of Section 11013.1, 11013.2, or 11013.4.

Notice of Intention – Floating Home Marinas

11010.85. (a) The requirement that a notice of intention be filed pursuant to Section 11010 is not applicable to the purchase of a floating home marina by a nonprofit corporation if all of the following occur:

(1) A majority of the shareholders or members of the nonprofit corporation constitute a majority of the homeowners of the floating home marina, and a majority of the members of the board of directors of the nonprofit corporation are homeowners of the floating home marina.

(2) All members of the corporation are residents of the floating home marina. Members of the nonprofit corporation may enter into leases with the corporation that are greater than five years in length. “Homeowners” or “residents” of the floating home marina shall include a bona fide secured party who has, pursuant to a security interest in a membership, taken title to the membership by means of foreclosure, repossession, or voluntary repossession, and who is actively attempting to resell the membership to a prospective resident or homeowner of the floating home marina, in accordance with subdivision (f) of Section 7312 of the Corporations Code.

(3) A permit to issue securities under Section 25113 of the Corporations Code is obtained from the Department of Business Oversight, Division of Corporations. In the case of a nonissuer transaction (as defined by Section 25011 of the Corporations Code) involving the offer to resell or the resale of memberships by a bona fide secured party as described in paragraph (2) of this section, a permit is not required where the transaction is exempt from the qualification requirements of Section 25130 of the Corporations Code pursuant to subdivision (e) of Section 25104 of the Corporations Code. The exemption from qualification pursuant to subdivision (e) of Section 25104 of the Corporations Code available to a bona fide secured party does not eliminate the requirement of this section that the nonprofit

corporation shall either file a notice of intention pursuant to Section 11010 or obtain a permit pursuant to Section 25113 of the Corporations Code.

(4) All funds of tenants for the purchase of the floating home marina are deposited in escrow until the document transferring title of the floating home marina to the nonprofit corporation is recorded. The escrow also shall include funds of homeowners that shall be available to the homeowners association nonprofit corporation for payment of any and all costs reasonably associated with the processing and conversion of the floating home marina into condominium interests. Payment of these costs may be made from the funds deposited in escrow prior to the close of escrow upon the direction of the homeowners association nonprofit corporation.

(b) The funds described by paragraph (4) of subdivision (a), or any other funds subsequently received from tenants for purposes other than the purchase of a separate subdivided interest in any portion of the floating home marina, are not subject to the requirements of Section 11013.1, 11013.2, or 11013.4.

Mobilehome Park Conversion – Disclosures Regarding Prices

11010.9. (a) Notwithstanding any other provision of law, the subdivider of a mobilehome park or floating home marina that is proposed to be converted to resident ownership, prior to filing a notice of intention pursuant to Section 11010, shall disclose to homeowners and residents of the park or marina, by written notice, the tentative price of the subdivided interest proposed to be sold or leased.

(b) The disclosure notice required by subdivision (a) shall include a statement that the tentative price is not binding, could change between the time of disclosure and the time of governmental approval to commence the actual sale or lease of the subdivided interests in the park or marina, as the result of conditions imposed by the state or local government for approval of the park or marina conversion, increased financing costs, or other factors and, in the absence of bad faith, shall not give rise to a claim for liability against the provider of this information.

(c) The disclosure notice required by subdivision (a) shall not be construed to authorize the subdivider of a mobilehome park or floating home marina that is proposed to be converted to resident ownership to offer to sell or lease, sell or lease, or accept money for the sale or lease of, subdivided interests in the park or marina, or to engage in any other activities that are otherwise prohibited, with regard to subdividing the park or marina into ownership interests, prior to the issuance of a public report pursuant to this chapter.

Separate Review of Proposed Management Documents

11010.10. A person who plans to offer for sale or lease lots or other interests in a subdivision which sale or lease (a) is not subject to the provisions of this chapter, (b) does not require the submission of a notice of intention as provided in Section 11010, or (c) is subject to this chapter and for which the local jurisdiction requires review and approval of the declaration, as defined in Section 4135 of the Civil Code, prior to or concurrently with the recordation of the subdivision map and prior to the approval of the declaration pursuant to a notice of intention for a public report, may submit an application requesting review of the declaration, along with any required supporting documentation, to the commissioner, without the filing of a notice of intention for the subdivision for which the declaration is being prepared. Upon approval, the commissioner shall give notice to the applicant that the declaration shall be approved for a subsequent notice of intent filing for any public report for the subdivision identified in the application, provided that the subdivision setup is substantially the same as that originally described in the application for review of the declaration.

Disclosure – Right to Negotiate Property Inspections

11010.11. Notwithstanding any provision in the purchase contract to the contrary, if the subdivision is to be used for residential

purposes, the subdivision public report shall disclose that a prospective buyer has the right to negotiate with the seller to permit inspections of the property by the buyer, or the buyer's designee, under terms mutually agreeable to the prospective buyer and seller.

Exempt Transfers – Builder to Builder

11010.35. (a) The provisions of this chapter shall not apply to the proposed sale or lease of five or more lots, parcels, or other interests in a subdivision or the sale of one or more lots or parcels in a subdivision where the lot or lots or parcel or parcels are intended to be further subdivided into five or more lots, parcels, or other subdivision interests as defined in Sections 11000, 11000.1, and 11004.5, to any person who acquires the lots, parcels, or other subdivision interests for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings, or for the purpose of resale or lease of the lots, parcels, or other subdivision interests to persons engaged in this business, provided that the purchase or lease agreement or a separate disclosure document includes a statement or provision that the purchaser or lessee is required to comply with the applicable provisions of this chapter prior to offering for sale or lease any lot, parcel, or other subdivision interest acquired pursuant to the exemption granted by this subdivision.

(b) The exemption provided by subdivision (a) does not apply to a proposed sale or lease of lots, parcels, or other subdivision interests that is done for the purpose of evading any other provision of this chapter.

(c) The provisions of subdivision (a) are intended to clarify the application of this chapter to the commercial sale or lease of residential subdivision interests and should not be interpreted to impose requirements on transactions entered into prior to the date on which this section became operative.

Subdivision Filing Fees – Notice of Intention

11011. (a) The commissioner may by regulation prescribe filing fees in connection with applications to the Bureau of Real Estate pursuant to this chapter that are lower than the maximum fees specified in subdivision (b) if the commissioner determines that the lower fees are sufficient to offset the costs and expenses incurred in the administration of this chapter. The commissioner shall hold at least one hearing each calendar year to determine if lower fees than those specified in subdivision (b) should be prescribed.

(b) The filing fee for an application for a public report to be issued under authority of this chapter shall not exceed the following for each subdivision or phase of a subdivision in which interests are to be offered for sale or lease:

(1) A notice of intention without a completed questionnaire: One hundred fifty dollars ($150).

(2) An original public report for subdivision interests described in Section 11004.5: One thousand seven hundred dollars ($1,700) plus ten dollars ($10) for each subdivision interest to be offered.

(3) An original public report for subdivision interests other than those described in Section 11004.5: Six hundred dollars ($600) plus ten dollars ($10) for each subdivision interest to be offered.

(4) A conditional public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500).

(5) A conditional public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500).

(6) A preliminary public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500).

(7) A preliminary public report for subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500).

(8) A renewal public report for subdivision interests described in Section 11004.5: Six hundred dollars ($600).

(9) A renewal public report for subdivision interests other than those described in

Section 11004.5: Six hundred dollars ($600).

(10) An amended public report for subdivision interests described in Section 11004.5: Five hundred dollars ($500) plus ten dollars ($10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(11) An amended public report to offer subdivision interests other than those described in Section 11004.5: Five hundred dollars ($500) plus ten dollars ($10) for each subdivision interest to be offered under the amended public report for which a fee has not previously been paid.

(c) The filing fee to review a declaration as described in Section 11010.10 shall not exceed two hundred dollars ($200).

(d) The actual subdivision fees established by regulation under authority of this section and Section 10249.3 shall not exceed the amount reasonably required by the bureau to administer this part and Article 8 (commencing with Section 10249) of Chapter 3 of Part 1.

(e) All fees collected by the bureau under authority of this chapter shall be deposited into the Real Estate Fund under Chapter 6 (commencing with Section 10450) of Part 1. All fees received by the bureau pursuant to this chapter shall be deemed earned upon receipt. No part of any fee is refundable unless the commissioner determines that it was paid as the result of a mistake or inadvertence.

This section shall remain in effect unless it is superseded pursuant to Section 10226 or subdivision (a) of Section 10226.5, whichever is applicable.

Notice of Change in Setup of Offering

11012. It is unlawful for the owner, his or her agent, or subdivider, of the project, after it is submitted to the Bureau of Real Estate, to materially change the setup of such offering without first notifying the bureau in writing of such intended change. This section only applies to those changes of which the owner, his or her agent, or subdivider has knowledge or constructive knowledge.

Blanket Encumbrance

11013. For the purposes of this part, a blanket encumbrance shall be considered to mean a trust deed or mortgage or any other lien or encumbrance, mechanics' lien or otherwise, securing or evidencing the payment of money and affecting land to be subdivided or affecting more than one lot or parcel of subdivided land, or an agreement affecting more than one such lot or parcel by which the owner or subdivider holds said subdivision under an option, contract to sell, or trust agreement.

Release Clause

11013.1. It shall be unlawful, except as provided in Section 11013.2, for the owner, subdivider, or agent to sell or lease lots or parcels within a subdivision that is subject to a blanket encumbrance unless there exists in such blanket encumbrance or other supplementary agreement a provision, hereinafter referred to as a release clause, which by its terms shall unconditionally provide that the purchaser or lessee of a lot or parcel can obtain legal title or other interest contracted for, free and clear of such blanket encumbrance, upon compliance with the terms and conditions of the purchase or lease.

Subdivision Subject to Blanket Encumbrance

11013.2. Should there not exist in the blanket encumbrance or supplementary agreement a release clause as set forth in Section 11013.1, then it shall be unlawful for the owner, subdivider, or agent to sell or lease lots or parcels within such subdivision unless one of the following conditions is complied with:

Escrow

(a) The entire sum of money paid or advanced by the purchaser or lessee of any such lot or parcel, or such portion thereof as the commissioner shall determine is sufficient to protect the interest of the purchaser or lessee, shall be deposited into an escrow depository acceptable to the commissioner until either (1) a proper release is obtained from such blanket encumbrance; or (2) either the owner, subdivider, or agent or the purchaser or lessee may default under their contract of sale or lease

and there is a determination as to the disposition of such moneys; or (3) the owner, subdivider, or agent orders the return of such moneys to such purchaser or lessee.

Title Held in Trust
(b) The title to the subdivision is to be held in trust under an agreement of trust acceptable to the commissioner until a proper release from such blanket encumbrance is obtained.

Bond
(c) A bond to the State of California is furnished to the commissioner for the benefit and protection of purchasers or lessees of such lots or parcels, in such amount and subject to such terms as may be approved by the commissioner, which shall provide for the return of the moneys paid or advanced by any purchaser or lessee, for or on account of the purchase or lease of any such lot or parcel if a proper release from such blanket encumbrance is not obtained; provided, however, that if it should be determined that such purchaser or lessee, by reason of default or otherwise, is not entitled to the return of such moneys, or any portion thereof, then such bond shall be exonerated to the extent of the amount of such moneys to which such purchaser or lessee is not entitled.

Alternative Requirement
(d) There is conformance to such other alternative requirement or method which the commissioner may deem acceptable to carry into effect the intent and provisions of this part.

Taxes and Assessments
11013.3. Taxes and assessments levied by public authority shall not be considered a blanket encumbrance within the meaning of Section 11013.

Subdivision Not Subject to Blanket Encumbrance
11013.4. If a subdivision is not subject to a blanket encumbrance, as defined in Section 11013, it is unlawful for the owner, subdivider, or agent to sell or lease lots or parcels within a subdivision unless one of the following conditions is complied with:

Escrow
(a) The entire sum of money paid or advanced by the purchaser or lessee of any lot or parcel, or such portion thereof as the commissioner determines is sufficient to protect the interest of the purchaser or lessee, is deposited into an escrow depository acceptable to the commissioner or into a trust account acceptable to the commissioner to be held in the escrow depository or trust account until the legal title or other interest contracted for, whether title of record or other interest, is delivered to the purchaser or lessee or until (1) either the owner, subdivider, or agent or the purchaser or lessee defaults under the contract of sale or lease and a determination is made as to the disposition of the money; or (2) the owner, subdivider, or agent orders the return of the money to the purchaser or lessee.

Bond
(b) A bond to the State of California is furnished to the commissioner for the benefit and protection of purchasers or lessees of the lots or parcels, in such amount and subject to such terms as may be approved by the commissioner, which provides for the return of the money paid or advanced by any purchaser or lessee, for or on account of the purchase or lease of any lot or parcel in the event that the owner, subdivider, or agent does not, within the time specified in the contract to sell or lease, or any extension thereof, deliver the legal title or other interest contracted for, whether title of record or other interest, to the purchaser or lessee for any reason other than an uncured default of the purchaser or lessee.

Association Certificates – Bond Increasable
(c) An association, approved by the commissioner, files with the commissioner a certificate in which it certifies that the owner, subdivider, or agent is a member of the association and that there is on file with the commissioner a bond, of the kind specified in subdivision (b), which has been approved by the commissioner as to amount, terms and coverage, and which is for the benefit and protection of all purchasers and lessees of subdivided lots or parcels to be sold or leased by members of the association (all which the commissioner may, at

the commissioner's option, verify or require to be verified).

Proof of Security
(d) Proof, satisfactory to the commissioner, is furnished:

(1) that security provided or contemplated to be given pursuant to the provisions of Section 66493 and Chapter 5 (commencing with Section 66499) of Division 2 of Title 7 of the Government Code, has been given in an amount, the commissioner approves, or that the giving of such security is unnecessary; and

(2) that a lien and completion bond or bonds, approved by the commissioner as to amount, terms and coverage and including within its scope all onsite construction work to be undertaken on the lots or parcels, has been written and issued by an admitted surety insurer; provided, however, that this subdivision applies only to an owner, subdivider, or agent who proposes to sell or lease the lots or parcels with improvements thereon in the nature of residential structures.

Escrow – Limit of Applicability
(e) The entire sums of moneys paid or advanced by the purchasers or lessees of the lots or parcels, or such portion of the money as the commissioner determines is sufficient to protect the interest of the purchaser or lessee, is deposited into an escrow depository or other agency, acceptable to the commissioner, to be held, in whole or in part, by the escrow depository or other agency as provided by subdivision (a) or, at the election of the owner, subdivider, or agent, to be disbursed, in whole or in part, for the construction of residential or other structures to be built on the lots or parcels within the subdivision, or such unit or units thereof as the commissioner determines, in such manner and pursuant to such instructions as the commissioner approves; provided, however, that the provisions of this subdivision apply only to an owner, subdivider, or agent who proposes to sell or lease the lots or parcels with improvements thereon in the nature of residential structures.

Alternative Methods
(f) There is conformance to such other alternative requirement or method the commissioner deems acceptable to carry into effect the intent and provisions of this part.

Public Report
11013.5. The public report of the commissioner, when issued, shall indicate the method or procedure selected by the owner or subdivider to comply with the provisions of Sections 11013.1, 11013.2 or 11013.4.

Investigation of Subdivision Offering
11014. The commissioner may investigate any subdivision being offered for sale or lease in this State. For the purposes of such investigations the commissioner may use and rely upon any relevant information or data concerning a subdivision obtained by him from the Federal Housing Administration, the United States Veterans Administration or any other federal agency having comparable duties and functions in relation to subdivisions or property therein.

Issuance or Denial of Public Report
11018. The Real Estate Commissioner shall make an examination of any subdivision, and shall, unless there are grounds for denial, issue to the subdivider a public report authorizing the sale or lease in this state of the lots or parcels within the subdivision. The report shall contain the data obtained in accordance with Section 11010 and which the commissioner determines are necessary to implement the purposes of this article. The commissioner may publish the report.

The grounds for denial are:

(a) Failure to comply with any of the provisions in this chapter or the regulations of the commissioner pertaining thereto.

(b) The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

(c) Inability to deliver title or other interest contracted for.

(d) Inability to demonstrate that adequate financial arrangements have been made for all offsite improvements included in the offering.

(e) Inability to demonstrate that adequate financial arrangements have been made for any community, recreational or other facilities included in the offering.

(f) Failure to make a showing that the parcels can be used for the purpose for which they are offered; and in the case of a subdivision being offered for residential purposes failure to make a showing that vehicular access and a source of potable domestic water either is available or will be available.

(g) Failure to provide in the contract or other writing the use or uses for which the parcels are offered, together with any covenants or conditions relative thereto.

(h) Agreements or bylaws to provide for management or other services pertaining to common facilities in the offering, which fail to comply with the regulations of the commissioner.

(i) Failure to demonstrate that adequate financial arrangements have been made for any guaranty or warranty included in the offering.

Prospective Purchaser to Receive Public Report **11018.1**. (a) A copy of the public report of the commissioner, when issued, shall be given to the prospective purchaser by the owner, subdivider, or agent prior to the execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision. The requirement of this section extends to lots or parcels offered by the subdivider after repossession. A receipt shall be taken from the prospective purchaser in a form and manner as set forth in regulations of the Real Estate Commissioner.

(b) A copy of the public report shall be given by the owner, subdivider, or agent at any time, upon oral or written request, to any member of the public. A copy of the public report and a statement advising that a copy of the public report may be obtained from the owner, subdivider or agent at any time, upon oral or written request, shall be posted in a conspicuous place at any office where sales or leases or offers to sell or lease lots within the subdivision are regularly made.

(c) At the same time that a public report is required to be given by the owner, subdivider, or agent pursuant to subdivision (a) with respect to a common interest development, as defined, in Section 4100 of the Civil Code, the owner, subdivider, or agent shall give the prospective purchaser a copy of the following statement:

"COMMON INTEREST DEVELOPMENT
GENERAL INFORMATION

The project described in the attached Subdivision Public Report is known as a common-interest development. Read the public report carefully for more information about the type of development. The development includes common areas and facilities which will be owned or operated by an owners' association. Purchase of a lot or unit automatically entitles and obligates you as a member of the association and, in most cases, includes a beneficial interest in the areas and facilities. Since membership in the association is mandatory, you should be aware of the following information before you purchase:

Your ownership in this development and your rights and remedies as a member of its association will be controlled by governing instruments which generally include a Declaration of Restrictions (also known as CC&Rs), Articles of Incorporation (or association), and bylaws. The provisions of these documents are intended to be, and in most cases are, enforceable in a court of law. Study these documents carefully before entering into a contract to purchase a subdivision interest.

In order to provide funds for operation and maintenance of the common facilities, the association will levy assessments against your lot or unit. If you are delinquent in the payment of assessments, the association may enforce payment through court proceedings or your lot or unit may be liened and sold through the exercise of a power of sale. The anticipated income and expenses of the association, including the amount that you may expect to pay through assessments, are outlined in the proposed budget. Ask to see a copy of the budget if the subdivider has not already made it available for your examination.

A homeowner association provides a vehicle for the ownership and use of recreational and other common facilities which were designed to attract you to buy in this development. The association also provides a means to accomplish architectural control and to provide a base for homeowner interaction on a variety of issues. The purchaser of an interest in a common-interest development should contemplate active participation in the affairs of the association. He or she should be willing to serve on the board of directors or on committees created by the board. In short, "they" in a common interest development is "you." Unless you serve as a member of the governing board or on a committee appointed by the board, your control of the operation of the common areas and facilities is limited to your vote as a member of the association. There are actions that can be taken by the governing body without a vote of the members of the association which can have a significant impact upon the quality of life for association members.

Until there is a sufficient number of purchasers of lots or units in a common interest development to elect a majority of the governing body, it is likely that the subdivider will effectively control the affairs of the association. It is frequently necessary and equitable that the subdivider do so during the early stages of development. It is vitally important to the owners of individual subdivision interests that the transition from subdivider to resident-owner control be accomplished in an orderly manner and in a spirit of cooperation.

When contemplating the purchase of a dwelling in a common interest development, you should consider factors beyond the attractiveness of the dwelling units themselves. Study the governing instruments and give careful thought to whether you will be able to exist happily in an atmosphere of cooperative living where the interests of the group must be taken into account as well as the interests of the individual. Remember that managing a common interest development is very much like governing a small community ... the management can serve you well, but you will have to work for its success."

Failure to provide the statement in accordance with this subdivision shall not be deemed a violation subject to Section 10185.

Public Report Required Prior to Sale or Lease or Offer for Sale or Lease

11018.2. No person shall sell or lease, or offer for sale or lease in this state any lots or parcels in a subdivision without first obtaining a public report from the Real Estate Commissioner. This section shall not apply to subdivisions for which a notice of intention is not required under the provisions of this chapter.

Right to Hearing

11018.3. Any subdivider objecting to the denial of a public report may, within 30 days after receipt of the order of denial, file a written request for a hearing. The commissioner shall hold the hearing within 20 days thereafter unless the party requesting the hearing requests a postponement. If the hearing is not held within 20 days after request for a hearing is received plus the period of the postponement or if a proposed decision is not rendered within 45 days after submission and an order adopting or rejecting the proposed decision is not issued within 15 days thereafter, the order of denial shall be rescinded and a public report issued.

Issuance of Public Reports on Section 11004.5 Subdivisions

11018.5. With respect to the subdivisions and interests of the type described in Section 11004.5, and in addition to the other grounds for denial of a public report as set forth in this code, the commissioner shall issue a public report if the commissioner finds the following with respect to any such subdivision or interest:

(a) (1) Reasonable arrangements have been made to assure completion of the subdivision and all offsite improvements included in the offering.

(2) If the condominium or community apartment project, stock cooperative or planned development, or premises or facilities within the common area are not completed prior to the issuance of a final subdivision public report on the project, the subdivider shall specify a reasonable date

for completion and shall comply with one of the following conditions:

(A) Arranges for lien and completion bond or bonds in an amount and subject to such terms, conditions and coverage as the commissioner may approve to assure completion of the improvements lien free.

(B) All funds from the sale of lots or parcels or such portions thereof as the commissioner shall determine are sufficient to assure construction of the improvement or improvements, shall be impounded in a neutral escrow depository acceptable to the commissioner until the improvements have been completed and all applicable lien periods have expired; provided, however, the commissioner determines the time for the completion is reasonable.

(C) An amount sufficient to cover the costs of construction shall be deposited in a neutral escrow depository acceptable to the commissioner under a written agreement providing for disbursements from that escrow as work is completed.

(D) If the project is a condominium situated on a single parcel as shown on an approved final subdivision map, arrange for (i) lien and completion bond or bonds in an amount sufficient to assure lien-free completion of all common area improvements not located in a residential structure, and (ii) placement of all funds, or such portions thereof as the commissioner shall determine are sufficient, from the sales of condominium interests in a neutral escrow depository acceptable to the commissioner. The funds for purchase or lease of the condominium interest shall remain in the escrow account until the residential structure in which the purchaser's separate unit is located has been completed, and all lien periods applicable to the purchaser's separate and undivided interests in the entire project arising out of the work of improvement performed by either the subdivider or any successor in interest to the subdivider have expired or have been insured against in a manner satisfactory to the commissioner.

(E) Such other alternative plan as may be approved by the commissioner.

(b) The deeds, conveyances, leases, subleases, or instruments or assignment to be used are adequate to transfer to the purchasers the legal interests and uses which the owner or subdivider represents the purchasers will receive.

(c) After transfer of title to the first lot, apartment, or condominium in the subdivision to any purchaser, the provisions of the declaration of restrictions, articles of incorporation, bylaws, management contracts (and the provisions of any and all other documents establishing, in whole or in part, the plan for use, enjoyment, maintenance, and preservation of the subdivision) as last submitted to the commissioner prior to issuance of the final public report, shall be binding upon the purchaser and occupant of every other lot, apartment, or condominium in the subdivision, including, except with regard to a limited-equity housing cooperative, purchasers acquiring title by foreclosure, whether judicial or nonjudicial, or by deed in lieu thereof, under any mortgage or deed of trust, whether or not the mortgage or deed of trust was recorded prior to recordation of the covenants, conditions and restrictions applicable to the first lot, apartment, or condominium.

(d) Reasonable arrangements have been made for delivery of control over the subdivision and all offsite land and improvements included in the offering, to the purchasers of lots, apartments, or condominiums in the subdivision.

(e) Reasonable arrangements have been or will be made as to the interest of each of the purchasers of lots, apartments, or condominiums in the subdivision with respect to the management, maintenance, preservation, operation, use, right of resale, and control of

their lots, apartments, or condominiums, and such other areas or interests, whether or not within, or pertaining to, areas within the boundaries of the subdivision, as have been or will be made subject to the plan of control proposed by the owner and subdivider, and which are included in the offering. "Purchaser," as used in this section, shall include within its meaning a lessee of the legal interests described in Section 11003 of this code.

Governing Documents – Availability and Delivery to Prospective Purchaser

11018.6. Any person offering to sell or lease any interest subject to the requirements of subdivision (a) of Section 11018.1 in a subdivision described in Section 11004.5 shall make a copy of each of the following documents available for examination by a prospective purchaser or lessee before the execution of an offer to purchase or lease and shall give a copy thereof to each purchaser or lessee as soon as practicable before transfer of the interest being acquired by the purchaser or lessee:

(a) The declaration of covenants, conditions, and restrictions for the subdivision.

(b) Articles of incorporation or association for the subdivision owners association.

(c) Bylaws for the subdivision owners association.

(d) Any other instrument which establishes or defines the common, mutual, and reciprocal rights, and responsibilities of the owners or lessees of interests in the subdivision as shareholders or members of the subdivision owners association or otherwise.

(e) To the extent available, the current financial information and related statements as specified in Sections 5300 and 5565 of the Civil Code, for subdivisions subject to those provisions.

(f) A statement prepared by the governing body of the association setting forth the outstanding delinquent assessments and related charges levied by the association against the subdivision interests in question under authority of the governing instruments for the subdivision and association.

Governing Documents – Amendments

11018.7. (a) No amendment or modification of provisions in the declaration of restrictions, bylaws, articles of incorporation or other instruments controlling or otherwise affecting rights to ownership, possession, or use of interests in subdivisions as defined in Sections 11000.1 and 11004.5 which would materially change those rights of an owner, either directly or as a member of an association of owners, is valid without the prior written consent of the Real Estate Commissioner during the period of time when the subdivider or his or her successor in interest holds or directly controls as many as one-fourth of the votes that may be cast to effect that change.

(b) The commissioner shall not grant his or her consent to the submission of the proposed change to a vote of owners or members if he or she finds that the change if effected would create a new condition or circumstance that would form the basis for denial of a public report under Sections 11018 or 11018.5.

An application for consent may be filed by any interested person on a form prescribed by the commissioner. A filing fee to be fixed by regulation, but not to exceed twenty-five dollars ($25), shall accompany each application.

There shall be no official meeting of owners or members nor any written solicitation of them for the purpose of effectuating a change referred to herein except in accordance with a procedure approved by the commissioner after the application for consent has been filed with him or her; provided, however, that the governing body of the owners association may meet and vote on the question of submission of the proposed change to the commissioner.

Conditional Public Report

11018.12. (a) The commissioner may issue a conditional public report for a subdivision specified in Section 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made

under the authority of the conditional public report have been established, and all requirements for the issuance of a public report set forth in the regulations of the commissioner have been satisfied, except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A condominium plan pursuant to Section 4120 of the Civil Code has not been recorded.

(3) A declaration of covenants, conditions, and restrictions pursuant to Sections 4250 and 4255 of the Civil Code has not been recorded.

(4) A declaration of annexation has not been recorded.

(5) A recorded subordination of existing liens to the declaration of covenants, conditions, and restrictions or declaration of annexation, or escrow instructions to effect recordation prior to the first sale, are lacking.

(6) Filed articles of incorporation are lacking.

(7) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(8) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(b) The commissioner may issue a conditional public report for a subdivision not referred to or specified in Section 11000.1 or 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for issuance of a public report set forth in the regulations of the commissioner have been satisfied, except for one or more of the following requirements, as applicable:

(1) A final map has not been recorded.

(2) A declaration of covenants, conditions, and restrictions has not been recorded.

(3) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the declaration covering all subdivision interests to be included in the public report has not been provided.

(4) Other requirements the commissioner determines are likely to be timely satisfied by the applicant, notwithstanding the fact that the failure to meet these requirements makes the application qualitatively incomplete.

(c) A decision by the commissioner to not issue a conditional public report shall be noticed in writing to the applicant within five business days and that notice shall specifically state the reasons why the report is not being issued.

(d) Notwithstanding the provisions of Section 11018.2, a person may sell or lease, or offer for sale or lease, lots or parcels in a subdivision pursuant to a conditional public report if, as a condition of the sale or lease or offer for sale or lease, delivery of legal title or other interest contracted for will not take place until issuance of a public report and provided that the requirements of subdivision (e) are met.

(e) (1) Evidence shall be supplied that all purchase money will be deposited in compliance with subdivision (a) of Section 11013.2 or subdivision (a) of Section 11013.4, and in the case of a subdivision referred to in subdivision (a) of this section, evidence shall be given of compliance with paragraphs (1) and (2) of subdivision (a) of Section 11018.5.

(2) A description of the nature of the transaction shall be supplied.

(3) Provision shall be made for the return of the entire sum of money paid or advanced by the purchaser if a subdivision public report has not been issued during the term of the conditional public report, or as extended, or the purchaser is dissatisfied with the public report because of a change pursuant to Section 11012.

(f) A subdivider, principal, or his or her agent shall provide a prospective purchaser a copy of the conditional public report and a written statement including all of the following:

(1) Specification of the information required for issuance of a public report.

(2) Specification of the information required in the public report that is not available in the conditional public report, along with a statement of the reasons why that information is not available at the time of issuance of the conditional public report.

(3) A statement that no person acting as a principal or agent shall sell or lease, or offer for sale or lease, lots or parcels in a subdivision for which a conditional public report has been issued except as provided in this article.

(4) Specification of the requirements of subdivision (e).

(g) The prospective purchaser shall sign a receipt that he or she has received and has read the conditional public report and the written statement provided pursuant to subdivision (f).

(h) The term of a conditional public report shall not exceed six months, and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

(i) The term of a conditional public report for attached residential condominium units, as defined pursuant to Section 783 of the Civil Code, consisting of 25 units or more as specified on the approved tentative tract map, shall not exceed 30 months and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

Abandonment of Application for Public Report – Regulations

11018.13. (a) After written notice to the subdivider, or the subdivider's representative, the commissioner may abandon any application for a subdivision public report if the data required by Section 11010 has not been furnished within three years from the date a notice of intention is filed for a subdivision public report.

(b) The commissioner shall adopt regulations establishing time periods for notifying the subdivider, or the subdivider's representative, of the intention to abandon a file, and establishing hardship or justifiable extenuating circumstances the commissioner deems acceptable.

Environmental Quality Act – Commissioner Not Responsible Agency

11018.14. The commissioner shall not be a responsible agency for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000), Public Resources Code). Receipt by the commissioner of a copy of an environmental impact report or negative declaration prepared pursuant to the California Environmental Quality Act shall be conclusive evidence of compliance with that act for purposes of issuing a subdivision public report.

Desist and Refrain Order

11019. (a) Whenever the commissioner determines from available evidence that a person has done any of the following, the commissioner may order the person to desist and refrain from those acts and omissions or from the further sale or lease of interests in the subdivision until the condition has been corrected:

(1) Has violated or caused the violation of any provision of this part or the regulations pertaining thereto.

(2) Has violated or caused a violation of Section 17537, 17537.1, or 17539.1, in

advertising or promoting the sale of subdivision interests.

(3) Has failed to fulfill representations or assurances with respect to the subdivision or the subdivision offering upon which the department relied in issuing a subdivision public report.

(4) Has failed to inform the department of material changes that have occurred in the subdivision or subdivision offering which have caused the subdivision public report to be misleading or inaccurate or which would have caused the department to deny a public report if the conditions had existed at the time of issuance.

(b) Upon receipt of such an order, the person or persons to whom the order is directed shall immediately discontinue activities in accordance with the terms of the order.

(c) Any person to whom the order is directed may, within 30 days after service thereof upon him, file with the commissioner a written request for hearing to contest the order. The commissioner shall after receipt of a request for hearing assign the matter to the Office of Administrative Hearings to conduct a hearing for findings of fact and determinations of the issues set forth in the order. If the hearing is not commenced within 15 days after receipt of the request for hearing, or on the date to which continued with the agreement of the person requesting the hearing, or if the decision of the commissioner is not rendered within 30 days after completion of the hearing, the order shall be deemed to be vacated.

(d) Service and proof of service of an order issued by the commissioner pursuant to this section may be made in a manner and upon such persons as prescribed for the service of summons in Article 3 (commencing with Section 415.10), Article 4 (commencing with Section 416.10) and Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2, of the Code of Civil Procedure.

False Public Report – Public Offense – Penalty

11020. (a) It shall be unlawful for any person to make, issue, publish, deliver, or transfer as true and genuine any public report which is forged, altered, false, or counterfeit, knowing it to be forged, altered, false, or counterfeit or to cause to be made or participate in the making, issuance, delivery, transfer, or publication of a public report with knowledge that it is forged, altered, false, or counterfeit.

(b) Any person who violates subdivision (a) is guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by both that fine and imprisonment.

(c) The penalty provided by this section is not an exclusive penalty, and does not affect any other penalty, relief, or remedy provided by law.

Statute of Limitations

11021. For the purpose of calculating the period of any applicable statute of limitations in any action or proceeding, either civil or criminal involving any violation of this chapter, the cause of action shall be deemed to have accrued not earlier than the time of recording with the county recorder of the county in which the property is situated of any deed, lease or contract of sale conveying property sold or leased in violation of this chapter and which describes a lot or parcel so wrongfully sold or leased.

Nonrecording Does Not Prohibit Action

This section does not prohibit the maintenance of any such action at any time before the recording of such instruments.

False Subdivision Advertising

11022. (a) It is unlawful for an owner, subdivider, agent or employee of a subdivision or other person, with intent directly or indirectly to sell or lease subdivided lands or lots or parcels therein, to authorize, use, direct, or aid in the publication, distribution, or circularization of an advertisement, radio broadcast, or telecast concerning subdivided lands, that contains a statement, pictorial representation, or sketch that is false or misleading.

(b) An owner, subdivider, agent, or employee of an owner or subdivider may, prior to the use, publication, distribution, or circulation of any

advertisement concerning subdivided lands, submit the same to the department for approval. The submission shall be accompanied by a fee of not more than seventy-five dollars ($75). The commissioner shall prescribe by regulation the amount of the fee.

If disapproval of the proposed advertisement is not communicated by the department to the owner, subdivider, agent, or employee within 15 calendar days after receipt of the copy of the proposed advertisement, the advertisement shall be deemed approved, but the department shall not be stopped from disapproving a later distribution, circulation, or use of the same or similar advertising.

(c) Nothing in this section shall be construed to hold the publisher or employee of any newspaper, or any job printer, or any broadcaster, or telecaster, or any magazine publisher, or any of the employees thereof, liable for any publication herein referred to unless the publisher, employee, or printer has actual knowledge of the falsity thereof or has an interest either as an owner or agent in the subdivided lands so advertised.

Violation Constitutes Public Offense
11023. Any person who violates Section 11010, 11010.1, 11010.8, 11013.1, 11013.2, 11013.4, 11018.2, 11018.7, 11018.9, 11018.10, 11018.11, 11019, or 11022 is guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000) or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail not exceeding one year, or by both that fine and imprisonment.

Article 3. Contents of Sales Contracts

Sales Contracts – Contents
11200. Every sales contract relating to the purchase of real property in a subdivision as defined in this chapter shall clearly set forth the legal description of the property, of the encumbrances outstanding at the date of the sales contract, and the terms of the contract.

CHAPTER 2. THE VACATION OWNERSHIP AND TIME-SHARE ACT OF 2004

Article 1. General Provisions

"Vacation Ownership and Time-Share Act of 2004"
11210. This chapter may be cited as the Vacation Ownership and Time-share Act of 2004.

Purpose of the Act
11211. The purposes of this chapter are to do all of the following:

(a) Provide full and fair disclosure to the purchasers and prospective purchasers of time-share plans.

(b) Require certain time-share plans offered for sale or created and existing in this state to be subject to the provisions of this chapter.

(c) Recognize that the tourism industry in this state is a vital part of the state's economy; that the sale, promotion, and use of time-share plans is an emerging, distinct segment of the tourism industry; that this segment of the tourism industry continues to grow, both in volume of sales and in complexity and variety of product structures; and that a uniform and consistent method of regulation is necessary in order to safeguard California's tourism industry and the state's economic well-being.

(d) In order to protect the quality of California time-share plans and the consumers who purchase them, it is the intent of the Legislature that this chapter be interpreted broadly in order to encompass all forms of time-share plans with a duration of at least three years that are created with respect to accommodations that are located in the state or that are offered for sale in the state, including, but not limited to, condominiums, cooperatives, vacation clubs, and multisite vacation plans.

(e) It is the intent of the Legislature that this chapter not be interpreted to preempt the application of, the enforcement of, or alter the standards of, the general consumer protection laws of this state set forth in Sections 17200 to 17209, inclusive, and Sections 17500 to

17539.1, inclusive, of the Business and Professions Code.

Scope of the Act

11211.5. (a) This chapter applies to all of the following:

(1) Time-share plans with an accommodation or component site in this state.

(2) Time-share plans without an accommodation or component site in this state, if those time-share plans are sold or offered to be sold to any individual located within this state.

(3) Exchange programs as defined in this chapter.

(4) Short-term products as defined in this chapter.

(b) This chapter does not apply to any of the following:

(1) Time-share plans, whether or not an accommodation is located in this state, consisting of 10 or fewer time-share interests. Use of an exchange program by owners of time-share interests to secure access to other accommodations shall not affect this exemption.

(2) Time-share plans, whether or not an accommodation is located in this state, the use of which extends over any period of three years or less.

(3) Time-share plans, whether or not an accommodation is located in this state, under which the prospective purchaser's total financial obligation will be equal to or less than three thousand dollars ($3,000) during the entire term of the time-share plan.

(c) For purposes of determining the term of a time-share plan, the period of any renewal or renewal option shall be included.

(d) Single site time-share plans located outside the state and component sites of multisite time-share plans located outside the state, that are offered for sale or sold in this state are subject only to Sections 11210 to 11219, inclusive, Sections 11225 to 11246, inclusive, Sections 11250 to 11256, inclusive, paragraphs (1), (2), (3), and (4) of subdivision (a), and subdivisions (b) and (c), of Section 11265, subdivision (g) of Section 11266, subdivisions (a) and (c) of Section 11267, Sections 11272 and 11273, subdivisions (b), (c), and (d) of Section 11274, and Sections 11280 to 11287, inclusive.

Exemptions and Exceptions

11211.7. (a) Any time-share plan registered pursuant to this chapter to which the Davis-Stirling Common Interest Development Act (Part 5 (commencing with Section 4000) of Division 4 of the Civil Code) might otherwise apply is exempt from that act, except for Sections 4090, 4177, 4178, 4215, 4220, 4230, 4260 to 4275, inclusive, 4500 to 4510, inclusive, 4625 to 4650, inclusive, 4775 to 4790, inclusive, 4900 to 4950, inclusive, 5500 to 5560, inclusive, and 5975 of the Civil Code.

(b) (1) To the extent that a single site time-share plan or component site of a multisite time-share plan located in the state is structured as a condominium or other common interest development, and there is any inconsistency between the applicable provisions of this chapter and the Davis-Stirling Common Interest Development Act, the applicable provisions of this chapter shall control.

(2) To the extent that a time-share plan is part of a mixed use project where the time-share plan comprises a portion of a condominium or other common interest development, the applicable provisions of this chapter shall apply to that portion of the project uniquely comprising the time-share plan, and the Davis-Stirling Common Interest Development Act shall apply to the project as a whole.

(c) (1) The offering of any time-share plan, exchange program, incidental benefit, or short term product in this state that is subject to the provisions of this chapter shall be exempt from Sections 1689.5 to 1689.14, inclusive, of the Civil Code (Home Solicitation Sales), Sections 1689.20 to 1689.24, inclusive, of the Civil Code (Seminar Sales), and Sections 1812.100 to

1812.129, inclusive, of the Civil Code (Contracts for Discount Buying Services).

(2) A developer or exchange company that, in connection with a time-share sales presentation or offer to arrange an exchange, offers a purchaser the opportunity to utilize the services of an affiliate, subsidiary, or third-party entity in connection with wholesale or retail air or sea transportation, shall not, in and of itself, cause the developer or exchange company to be considered a seller of travel subject to Sections 17550 to 17550.34, inclusive, of the Business and Professions Code, so long as the entity that actually provides or arranges the air or sea transportation is registered as a seller of travel with the California Attorney General's office or is otherwise exempt under those sections.

(d) To the extent certain sections in this chapter require information and disclosure that by their terms only apply to real property time-share plans, those requirements shall not apply to personal property time-share plans.

Definitions

11212. As used in this chapter, the following definitions apply:

(a) "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, or other private or commercial structure containing toilet facilities therein that is designed and available, pursuant to applicable law, for use and occupancy as a residence by one or more individuals, or any unit or berth on a commercial passenger ship, which is included in the offering of a time-share plan.

(b) "Advertisement" means any written, oral, or electronic communication that is directed to or targeted to persons within the state or such a communication made from this state or relating to a time-share plan located in this state and contains a promotion, inducement, or offer to sell a time-share plan, including, but not limited to, brochures, pamphlets, radio and television scripts, electronic media, telephone and direct mail solicitations, and other means of promotion.

(c) "Association" means the organized body consisting of the purchasers of time-share interests in a time-share plan.

(d) "Assessment" means the share of funds required for the payment of common expenses which is assessed from time to time against each purchaser by the managing entity.

(e) "Commissioner" means the Real Estate Commissioner.

(f) "Component site" means a specific geographic location where accommodations that are part of a multisite time-share plan are located. Separate phases of a time-share property in a specific geographic location and under common management shall not be deemed a component site.

(g) "Conspicuous type" means either of the following:

(1) Type in upper and lower case letters two point sizes larger than the nearest nonconspicuous type, exclusive of headings, on the page on which it appears but in at least 10-point type.

(2) Conspicuous type may be utilized in contracts for purchase or public permits only where required by law or as authorized by the commissioner.

(h) "Department" means the Department of Real Estate.

(i) "Developer" means and includes any person who creates a time-share plan or is in the business of selling time-share interests, other than those employees or agents of the developer who sell time-share interests on the developer's behalf, or employs agents to do the same, or any person who succeeds to the interest of a developer by sale, lease, assignment, mortgage, or other transfer, but the term includes only those persons who offer time-share interests for disposition in the ordinary course of business.

(j) "Dispose" or "disposition" means a voluntary transfer or assignment of any legal or equitable interest in a time-share plan, other than the transfer, assignment, or release of a security interest.

(k) "Exchange company" means any person owning or operating, or both owning and operating, an exchange program.

(l) "Exchange program" means any method, arrangement, or procedure for the voluntary exchange of time-share interests or other property interests. The term does not include the assignment of the right to use and occupy accommodations to owners of time-share interests within a single site time-share plan. Any method, arrangement, or procedure that otherwise meets this definition in which the purchaser's total contractual financial obligation exceeds three thousand dollars ($3,000) per any individual, recurring time-share period, shall be regulated as a time-share plan in accordance with this chapter. For purposes of determining the purchaser's total contractual financial obligation, amounts to be paid as a result of renewals and options to renew shall be included in the term except for the following: (1) amounts to be paid as a result of any optional renewal that a purchaser, in his or her sole discretion may elect to exercise, (2) amounts to be paid as a result of any automatic renewal in which the purchaser has a right to terminate during the renewal period at any time and receive a pro rata refund for the remaining unexpired renewal term, or (3) amounts to be paid as a result of an automatic renewal in which the purchaser receives a written notice no less than 30 nor more than 90 days prior to the date of renewal informing the purchaser of the right to terminate prior to the date of renewal. Notwithstanding these exceptions, if the contractual financial obligation exceeds three thousand dollars ($3,000) for any three-year period of any renewal term, amounts to be paid as a result of that renewal shall be included in determining the purchaser's total contractual financial obligation.

(m) "Incidental benefit" is an accommodation, product, service, discount, or other benefit, other than an exchange program, that is offered to a prospective purchaser of a time-share interest prior to the end of the rescission period set forth in Section 11238, the continuing availability of which for the use and enjoyment of owners of time-share interests in the time-share plan is limited to a term of not more than three years, subject to renewal or extension. The term shall not include an offer of the use of the accommodation, product, service, discount, or other benefit on a free or discounted one-time basis.

(n) "Managing entity" means the person who undertakes the duties, responsibilities, and obligations of the management of a time-share plan.

(o) "Offer" means any inducement, solicitation, or other attempt, whether by marketing, advertisement, oral or written presentation, or any other means, to encourage a person to acquire a time-share interest in a time-share plan, other than as security for an obligation.

(p) "Person" means a natural person, corporation, limited liability company, partnership, joint venture, association, estate, trust, government, governmental subdivision or agency, or other legal entity, or any combination thereof.

(q) "Promotion" means a plan or device, including one involving the possibility of a prospective purchaser receiving a vacation, discount vacation, gift, or prize, used by a developer, or an agent, independent contractor, or employee of any of the same on behalf of the developer, in connection with the offering and sale of time-share interests in a time-share plan.

(r) "Public report" means a preliminary public report, conditional public report, final public report, or other such disclosure document authorized for use in connection with the offering of time-share interests pursuant to this chapter.

(s) "Purchaser" means any person, other than a developer, who by means of a voluntary transfer for consideration acquires a legal or equitable interest in a time-share plan other than as security for an obligation.

(t) "Purchase contract" means a document pursuant to which a developer becomes legally obligated to sell, and a purchaser becomes legally obligated to buy, a time-share interest.

(u) "Reservation system" means the method, arrangement, or procedure by which a purchaser,

in order to reserve the use or occupancy of any accommodation of a multisite time-share plan for one or more time-share periods, is required to compete with other purchasers in the same multisite time-share plan, regardless of whether the reservation system is operated and maintained by the multisite time-share plan managing entity, an exchange company, or any other person. If a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy accommodations in a multisite time-share plan, that arrangement shall be deemed a reservation system. When an exchange company utilizes a mechanism for the exchange of use of time-share periods among members of an exchange program, that utilization is not a reservation system of a multisite time-share plan.

(v) "Short-term product" means the right to use accommodations on a one-time or recurring basis for a period or periods not to exceed 30 days per stay and for a term of three years or less, and that includes an agreement that all or a portion of the consideration paid by a person for the short-term product will be applied to or credited against the price of a future purchase of a time-share interest or that the cost of a future purchase of a time-share interest will be fixed or locked-in at a specified price.

(w) "Time-share instrument" means one or more documents, by whatever name denominated, creating or governing the operation of a time-share plan and includes the declaration dedicating accommodations to the time-share plan.

(x) "Time-share interest" means and includes either of the following:

(1) A "time-share estate," which is the right to occupy a time-share property, coupled with a freehold estate or an estate for years with a future interest in a time-share property or a specified portion thereof.

(2) A "time-share use," which is the right to occupy a time-share property, which right is neither coupled with a freehold interest, nor coupled with an estate for years with a future interest, in a time-share property.

(y) "Time-share period" means the period or periods of time when the purchaser of a time-share plan is afforded the opportunity to use the accommodations of a time-share plan.

(z) "Time-share plan" means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership agreement, sale, lease, deed, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years. A time-share plan may be either of the following:

(1) A "single site time-share plan," which is the right to use accommodations at a single time-share property.

(2) A "multisite time-share plan," which includes either of the following:

(A) A "specific time-share interest," which is the right to use accommodations at a specific time-share property, together with use rights in accommodations at one or more other component sites created by or acquired through the time-share plan's reservation system.

(B) A "nonspecific time-share interest," which is the right to use accommodations at more than one component site created by or acquired through the time-share plan's reservation system, but including no specific right to use any particular accommodations.

(aa) "Time-share property" means one or more accommodations subject to the same time-share instrument, together with any other property or rights to property appurtenant to those accommodations.

11213. Each time-share estate, as specified in paragraph (1) of subdivision (x) of Section 11212, constitutes, for purposes of title, a separate estate or interest in real property

including ownership in real property for tax purposes.

Developer Responsibility

11214. (a) The developer shall supervise, manage, and control all aspects of the offering of the time-share plan by or on behalf of the developer, including, but not limited to, promotion, advertising, contracting, and closing. The developer is responsible for each time-share plan registered with the commissioner and for the actions of any sales or marketing entity utilized by the developer in the offering or selling of any registered time-share plan.

(b) Any violation of this chapter that occurs during the offering activities shall be deemed to be a violation by the developer as well as by the person who actually committed the violation.

Time-Share Instrument

11215. (a) The time-share instrument shall prohibit a person from seeking or obtaining, through any legal procedures, judicial partition of the time-share interest or sale of the time-share interest, in lieu of partition and shall subordinate all rights that a time-share interest owner might otherwise have as a tenant-in-common in real property to the terms of the time-share instrument.

(b) Subdivision (a) shall not be deemed to prohibit a sale of an accommodation upon termination of the time-share plan or the removal of an accommodation from the time-share plan in accordance with applicable provisions of the time-share instrument.

Exchange Program

11216. (a) An exchange program is not a part of a time-share plan offering and, except as provided in this section and Section 11238, shall not be subject to either this chapter or the regulations of the commissioner adopted pursuant to this chapter.

(b) If a developer offers a purchaser the opportunity to subscribe to or to become a member of an exchange program, the developer shall provide to the purchaser in writing all of the information set forth in paragraphs (1) to (17), inclusive. If the exchange company is offering directly to the purchaser the opportunity to subscribe to or become a member of an exchange company, the exchange company shall provide to the purchaser in writing all of the information set forth in paragraphs (1) to (17), inclusive. In either case, the written information shall be provided prior to or concurrently with the execution of any contract or subscription for membership in the exchange program.

(1) The name and address of the exchange company.

(2) The names of all officers, directors, and shareholders of the exchange company.

(3) Whether the exchange company or any of its officers or directors have any legal or beneficial interest in any developer or managing entity for any time-share plan participating in the exchange program and, if so, the identity of the time-share plan and the nature of the interest.

(4) A copy of the form of the contract between the purchaser and the exchange company, along with a statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the seller of time-share interests.

(5) Whether the purchaser's participation in the exchange program is dependent upon the continued affiliation of the applicable time-share plan with the exchange program.

(6) Whether the purchaser's participation in the exchange program is voluntary.

(7) A fair and accurate description of the terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes thereto may be made.

(8) A fair and accurate description of the procedures necessary to qualify for and effectuate exchanges.

(9) A fair and accurate description of all limitations, restrictions, and priorities employed in the operation of the exchange program, including, but not limited to, limitations on exchanges based on

seasonality, accommodation size, or levels of occupancy, expressed in conspicuous type. If those limitations, restrictions, or priorities are not uniformly applied by the exchange company, the information shall include a clear description of the manner in which they are applied.

(10) Whether exchanges are arranged on a space available basis and whether any guarantees of fulfillment of specific requests for exchanges are made by the exchange company.

(11) Whether and under what circumstances an owner, in dealing with the exchange program, may lose the right to use and occupy an accommodation of the time-share plan during a reserved use period with respect to any properly applied for exchange without being provided with substitute accommodations by the exchange program.

(12) The fees or range of fees for participation by owners in the exchange program, a statement of whether any such fees may be altered by the exchange company and the circumstances under which alterations may be made.

(13) The name and address of the site of each accommodation included within a time-share plan participating in the exchange program.

(14) The number of accommodations in each time-share plan that are available for occupancy and that qualify for participation in the exchange program, expressed within the following numerical groups: 1-5; 6-10; 11-20; 21-50; and 51 and over.

(15) The number of currently enrolled owners for each time-share plan participating in the exchange program, expressed within the following numerical groups: 1-100; 101-249; 250-499; 500-999; and 1,000 and over; and a statement of the criteria used to determine those owners who are currently enrolled with the exchange program.

(16) The disposition made by the exchange company of use periods deposited with the exchange program by owners enrolled in the exchange program and not used by the exchange company in effecting exchanges.

(17) The following information for the preceding calendar year, which shall be independently audited by a certified public accountant in accordance with the standards of the Accounting Standards Board of the American Institute of Certified Public Accountants and reported annually no later than August 1 of each year:

(A) The number of owners currently enrolled in the exchange program.

(B) The number of time-share plans that have current affiliation agreements with the exchange program.

(C) The percentage of confirmed exchanges, which is the number of exchanges confirmed by the exchange program divided by the number of exchanges properly applied for, together with a complete and accurate statement of the criteria used to determine whether an exchange request was properly applied for.

(D) The number of use periods for which the exchange program has an outstanding obligation to provide an exchange to an owner who relinquished a use period during a particular year in exchange for a use period in any future year.

(E) The number of exchanges confirmed by the exchange program during the year.

(F) A statement in conspicuous type to the effect that the percentage described in subparagraph (C) is a summary of the exchange requests entered with the exchange program in the period reported and that the percentage does not indicate the probabilities of an owner's being confirmed to any specific choice or range of choices.

(c) All written, visual, and electronic communications relating to an exchange company or an exchange program shall be filed with the commissioner upon its request.

(d) The failure of an exchange company to observe the requirements of this section, and the use of any unfair or deceptive act or practice in connection with the operation of an exchange program, is a violation of this chapter.

(e) An exchange company may elect to deny exchange privileges to any owner whose use of the accommodations of the owner's time-share plan is denied, and no exchange program or exchange company shall be liable to any of its members or any third parties on account of any such denial of exchange privileges.

Exempt Communications

11217. (a) The following communications shall not be deemed an advertisement or promotion and are exempt from this chapter so long as the communications are in compliance with Section 11245:

(1) Any stockholder communication, such as an annual report or interim financial report, proxy material, a registration statement, a securities prospectus, a registration, a property report, or other material required to be delivered to a prospective purchaser by an agency of any state or the federal government.

(2) Any oral or written statement disseminated by a developer to broadcast or print media, other than paid advertising or promotional material, regarding plans for the acquisition or development of time-share property. However, any rebroadcast or any other dissemination of the oral statements to a prospective purchaser by a developer or any person in any manner, or any distribution of copies of newspaper magazine articles or press releases, or any other dissemination of the written statements to a prospective purchaser by a developer or any person in any manner, shall constitute an advertisement.

(3) Any advertisement or promotion in any medium to the general public if the advertisement or promotion clearly states that it is not an offer in any jurisdiction in which any applicable registration requirements have not been fully satisfied.

(4) Any audio, written, or visual publication or material relating to the availability of any accommodations for transient rental, so long as a sales presentation is not a term or condition of the availability of the accommodations and so long as the failure of any transient renter to take a tour of a time-share property or attend a sales presentation does not result in any reduction in the level of services that would otherwise be available to the transient renter.

(b) Any communication regarding a time-share interest that is addressed to any person who has previously executed a contract for the sale or purchase of that time-share interest and that does not constitute a solicitation of a time-share interest, shall be exempt from this chapter.

Interest in Subdivided Lands

11218. A time-share interest in a time-share plan shall be deemed an interest in subdivided lands or a subdivision for purposes of subdivision (f) of Section 25100 of the Corporations Code.

Qualified Resort Vacation Club Projects, Time-Shares and Injunctions

11219. (a) Time-share plans registered as Qualified Resort Vacation Club Projects under prior law shall continue to operate under that prior law notwithstanding anything in this chapter to the contrary.

(b) (1) All registrations of time-share plans in effect on the effective date of this chapter shall remain in full force and effect and shall be considered registered pursuant to this chapter.

(2) All time-share plans included in this subdivision are subject to Sections 11217, 11219, 11238, 11239, 11245, 11250, and 11280 to 11286, inclusive, and shall be required to comply with the other provisions of this chapter at the time they seek amendment or renewal of their existing registrations. When an amendment or renewal of a time-share plan is filed with the

commissioner, the existing registration continues in full force and effect while the amendment or renewal is pending before the commissioner.

(c) Any existing injunction or temporary restraining order validly obtained that prohibits unregistered practice of time-share developers, time-share plans, or their agents shall not be invalidated by the enactment of this chapter and shall continue to have full force and effect on and after the effective date of this chapter.

Article 2. Registration, Sale Requirements, and Fees

Registration, Sale Requirements

11225. A person shall not be required to register a time-share plan with the commissioner pursuant to this chapter if any of the following applies:

(a) The person is an owner of a time-share interest who has acquired the time-share interest for the person's own use and occupancy and who later offers it for resale.

(b) The person is a managing entity or an association that is not otherwise a developer of a time-share plan in its own right, solely while acting as an association or under a contract with an association to offer or sell a time-share interest transferred to the association through foreclosure, deed in lieu of foreclosure, or gratuitous transfer, if these acts are performed in the regular course of, or as an incident to, the management of the association for its own account in the time-share plan. Notwithstanding the exemption from registration, the association or managing entity shall provide each purchaser of a time-share interest covered by this subdivision a copy of the time-share instruments, a copy of the then-current budget, a written statement of the then-current assessment amounts, and shall provide the purchaser the opportunity to rescind the purchase within seven days after receipt of these documents. Immediately prior to the space reserved in the contract for the signature of the purchaser, the association or managing entity shall disclose, in conspicuous type, substantially the following notice of cancellation:

YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN SEVEN CALENDAR DAYS OF RECEIPT OF THE PUBLIC REPORT OR AFTER THE DATE YOU SIGN THIS CONTRACT, WHICHEVER DATE IS LATER. IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MUST NOTIFY THE ASSOCIATION (OR MANAGING ENTITY) IN WRITING OF YOUR INTENT TO CANCEL. YOUR NOTICE OF CANCELLATION SHALL BE EFFECTIVE UPON THE DATE SENT AND SHALL BE SENT TO (NAME OF ASSOCIATION OR MANAGING ENTITY) AT (ADDRESS OF ASSOCIATION OR MANAGING ENTITY). YOUR NOTICE OF CANCELLATION MAY ALSO BE SENT BY FACSIMILE TO (FACSIMILE NUMBER OF THE ASSOCIATION OR MANAGING ENTITY) OR BY HAND-DELIVERY. ANY ATTEMPT TO OBTAIN A WAIVER OF YOUR CANCELLATION RIGHT IS VOID AND OF NO EFFECT.

(c) The person is conveyed, assigned, or transferred more than seven time-share interests from a developer in a single voluntary or involuntary transaction and subsequently conveys, assigns, or transfers all of the time-share interests received from the developer to a single purchaser in a single transaction.

(d) (1) The developer is offering or disposing of a time-share interest to a purchaser who has previously acquired a time-share interest from the same developer if the developer has a time-share plan registered under this chapter, which was originally approved by the commissioner within the preceding seven years, and the developer complies in all respects with the provisions of Section 11245, and, further, provides the purchaser with (A) a cancellation period of at least seven days, (B) all the time-share disclosure documents that are required to be provided to purchasers as if the sale occurred in the state or jurisdiction where the time-share property is located, and (C) the following disclaimer in conspicuous type:

WARNING: THE CALIFORNIA BUREAU OF REAL ESTATE HAS NOT EXAMINED THIS OFFERING, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF TITLE, THE STATUS OF BLANKET LIENS ON THE PROJECT (IF ANY), ARRANGEMENTS TO ASSURE PROJECT COMPLETION, ESCROW PRACTICES, CONTROL OVER PROJECT MANAGEMENT, RACIALLY DISCRIMINATORY PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS (IF ANY), OR THE AVAILABILITY OF WATER, SERVICES, UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE FOR YOU TO CONSULT AN ATTORNEY OR OTHER KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR WITH REAL ESTATE AND DEVELOPMENT LAW IN THE STATE WHERE THIS TIME-SHARE PROPERTY IS SITUATED.

(2) By making such an offering or disposition, the person is deemed to consent to the jurisdiction of the commissioner in the event of a dispute with the purchaser in connection with the offering or disposition.

(e) It is a single site time-share plan located outside of the boundaries of the United States or component site of a specific time-share interest multisite time-share plan located wholly outside of the boundaries of the United States, or a nonspecific time-share interest multisite time-share plan in which all component sites are located wholly outside of the boundaries of the United States. However, it is unlawful and a violation of this chapter for a person, in this state, to sell or lease or offer for sale or lease a time-share interest in such a time-share plan, located outside the United States, unless the printed material, literature, advertising, or invitation in this state relating to that sale, lease, or offer clearly and conspicuously contains the following disclaimer in capital letters of at least 10-point type:

WARNING: THE CALIFORNIA BUREAU OF REAL ESTATE HAS NOT EXAMINED THIS OFFERING, INCLUDING, BUT NOT LIMITED TO, THE CONDITION OF TITLE, THE STATUS OF BLANKET LIENS ON THE PROJECT (IF ANY), ARRANGEMENTS TO ASSURE PROJECT COMPLETION, ESCROW PRACTICES, CONTROL OVER PROJECT MANAGEMENT, RACIALLY DISCRIMINATORY PRACTICES (IF ANY), TERMS, CONDITIONS, AND PRICE OF THE OFFER, CONTROL OVER ANNUAL ASSESSMENTS (IF ANY), OR THE AVAILABILITY OF WATER, SERVICES, UTILITIES, OR IMPROVEMENTS. IT MAY BE ADVISABLE FOR YOU TO CONSULT AN ATTORNEY OR OTHER KNOWLEDGEABLE PROFESSIONAL WHO IS FAMILIAR WITH REAL ESTATE AND DEVELOPMENT LAW IN THE COUNTRY WHERE THIS TIME-SHARE PROPERTY IS SITUATED.

(1) If an offer of time-share interest in a time-share plan described in subdivision (e) is not initially made in writing, the foregoing disclaimer shall be received by the offeree in writing prior to a visit to a location, sales presentation, or contact with a person representing the offeror, when the visit or contact was scheduled or arranged by the offeror or its representative.

The deposit of the disclaimer in the United States mail, addressed to the offeree and with first-class postage prepaid, at least five days prior to the scheduled or arranged visit or contact, shall be deemed to constitute delivery for purposes of this section.

(2) If any California resident is presented with an agreement or purchase contract to lease or purchase a time-share interest as described in subdivision (e), where an offer to lease or purchase that time-share interest was made to that resident in California, a copy of the disclaimer set forth in subdivision (e) shall be inserted in at least 10-point type at the top of the first page of that agreement or purchase contract and shall be initialed by that California resident.

(3) This subdivision shall not be deemed to exempt from registration in this state a nonspecific time-share interest multisite time-share plan in which any component site in the time-share plan is located in the United States.

Registration Requirements

11226. (a) Any person who, to any individual located in the state, sells, offers to sell, or attempts to solicit prospective purchasers to purchase a time-share interest, or any person who creates a time-share plan with an accommodation in the state, shall register the time-share plan with the commissioner, unless the time-share plan is otherwise exempt under this chapter.

(b) A developer, or any of its agents, shall not sell, offer, or dispose of a time-share interest in the state unless all necessary registration requirements are provided and approved by the commissioner, or the sale, offer, or disposition is otherwise permitted by this chapter, or while an order revoking or suspending a registration is in effect.

(c) In registering a time-share plan, the developer shall provide the commissioner all of the following information:

(1) The developer's legal name, any assumed names used by the developer, principal office street address, mailing address, primary contact person, and telephone number.

(2) The name of the developer's authorized or registered agent in the state upon whom claims can be served or service of process be had, the agent's street address in California, and telephone number.

(3) The name, street address, mailing address, primary contact person, and telephone number of the time-share plan being registered.

(4) The name, street address, mailing address, and telephone number of any managing entity of the time-share plan.

(5) A public report that complies with the requirements of Section 11234, or for a time-share plan located outside of the state, a public report that has been authorized for use by the situs state regulatory agency and that contains disclosures as determined by the commissioner upon review to be substantially equivalent to or greater than the information required to be disclosed pursuant to Section 11234.

(6) A description of the inventory control system that will ensure compliance with Section 11250.

(7) Any other information regarding the developer, time-share plan, or managing entities as established by regulation.

(d) An applicant for a public report for a time-share plan shall present evidence of the following for each accommodation in each time-share property that is, or will be, offered for sale in this state pursuant to the registration:

(1) That the accommodation is presently suitable for human occupancy or that financial arrangements have been made to complete construction or renovation of the accommodation to make it suitable for human occupancy on or before the first date for occupancy by a time-share interest owner.

(2) That the accommodation is owned or leased by the developer of the time-share plan or is the subject of an enforceable option or contract under which the developer will build, purchase, or lease the accommodation. Notwithstanding this subdivision, the developer shall present evidence prior to the receipt of a final public report that the accommodation to be sold is owned or leased by the developer and that the accommodation is free and clear of encumbrances in accordance with Sections 11244 and 11255.

(e) If an accommodation in a time-share plan is located within a local governmental jurisdiction or subdivision of real property in which the dedication of accommodations to time-sharing is expressly prohibited by ordinance or recorded restriction, either absolutely or without a permit or other entitlement from the governing body,

the applicant for a public report shall present evidence of a permit or other entitlement by the appropriate authority for the local government or the subdivision.

(f) (1) The developer shall amend or supplement its disclosure documents and registration information, to reflect any material change in any information required by this chapter or the regulations implementing this chapter. The developer shall notify the commissioner of the material change prior to implementation of the change, unless the change is beyond the control of the developer; in which event, the developer shall provide written notice to the commissioner as soon as reasonably practicable after the occurrence of the event necessitating the change. All amendments, supplements, and facts relevant to the material change shall be filed with the commissioner within 20 calendar days of the material change.

(2) The developer may continue to sell time-share interests in the time-share plan so long as, prior to closing, the developer provides a notice to each purchaser that describes the material change and provides to each purchaser the previously approved public report.

(A) If the change is material and adverse to the purchaser, all purchaser funds shall be held in escrow, or pursuant to alternative assurances permitted by subdivision (c) of Section 11243, and no closing shall occur until the amendment relating to the material and adverse change has been approved by the commissioner. After the amendment relating to the material and adverse change has been approved and the amended public report has been issued, the amended public report shall be sent to the purchaser, and an additional seven-day rescission period shall commence. The developer shall be required to maintain evidence of the receipt by each purchaser of the amended public report.

(B) If the commissioner refuses to approve the amendment relating to the material and adverse change, all sales made using the notice shall be subject to rescission and all funds returned.

(3) The developer shall update the public report to reflect any changes to the time-share plan that are not material and adverse, including the addition of any component sites, within a reasonable time, and may continue to sell and close time-share interests prior to the date that the amended public report is approved.

(g) An applicant for a public report for a multisite, time-share plan consisting of specific time-share interests, as defined in subparagraph (A) of paragraph (2) of subdivision (z) of Section 11212, affiliated with sites operated through the time-share plan's reservation system, shall certify both of the following:

(1) That a purchaser has, or will have, contractual or membership rights to use accommodations at each affiliated site and that, if an accommodation or promised improvement is, or may become, subject to a blanket encumbrance, that the blanket encumbrance is, or will be, subordinate to these rights.

(2) That a certificate of occupancy has been issued with respect to the accommodations at each affiliated site or that adequate provisions exist or will exist for the completion of all such accommodations. For any affiliated site accommodations that are not complete, the public report shall clearly identify in conspicuous type that those accommodations are not completed. For any accommodations that are not complete and for which adequate provisions for completion do not exist at the time the public report is issued, the public report shall also provide in conspicuous type that those accommodations might not be built, provided, however, that a developer's failure to build the accommodations shall not relieve the developer of any obligations created by the certification made pursuant to this subdivision.

(h) For purposes of subdivision (d) of this section, the "time-share property being offered for sale in this state" shall mean the following:

(1) With respect to a single site time-share plan, the time-share property being registered pursuant to this chapter.

(2) With respect to a specific time-share interest multisite time-share plan, the specific time-share property being registered pursuant to this chapter.

(3) With respect to a nonspecific time-share interest multisite time-share plan, all time-share properties in the time-share plan.

Governing Documents – Availability and Delivery to Prospective Purchaser

11226.1. Any person offering to sell or lease any interest subject to the requirements of Section 11226 shall make a copy of each of the following documents available for examination by a prospective purchaser or lessee before the execution of an offer to purchase or lease and shall give a copy of those documents to each purchaser or lessee as soon as practicable before transfer of the interest being acquired by the purchaser or lessee:

(a) The declaration of covenants, conditions, and restrictions for the time-share plan.

(b) Articles of incorporation or association for the time-share owners' association.

(c) Bylaws of the owners' association.

(d) Any other instrument that establishes or defines the common, mutual, and reciprocal rights and responsibilities of the owners or lessees of interest in the time-share plan as members of the owners' association or otherwise.

(e) The current budget and financial statements for the time-share plan.

Public Report – Final, Conditional and/or Preliminary

11227. (a) Subject to subdivision (h), the commissioner shall issue a final public report if all registration requirements have been met as set forth in this chapter and if all deficiencies and substantive inadequacies in the substantially complete application for a final public report for the time-share plan have been corrected.

(b) The commissioner may issue a conditional public report prior to issuing a final public report for a time-share plan if the requirements of subdivision (c) are met, all deficiencies and substantive inadequacies in the substantially complete application for a final public report for the time-share plan have been corrected, the material elements of the offering to be made under the authority of the conditional public report have been established, and all requirements for the issuance of the conditional public report have been met, except for one or more of the following requirements, as may be applicable:

(1) A final map has not been recorded.

(2) A condominium plan has not been recorded.

(3) A declaration of covenants, conditions, and restrictions has not been recorded.

(4) A declaration of annexation has not been recorded.

(5) A recorded subordination of existing liens to the time-share instruments or declaration of annexation or escrow instructions to effect recordation prior to the first sale, are lacking.

(6) Filed articles of incorporation are lacking.

(7) A current preliminary report of a licensed title insurance company issued after filing of the final map and recording of the time-share instrument covering all time-share interests to be included in the public report has not been provided.

(8) Other requirements the commissioner determines are likely to be timely satisfied by the applicant.

(c) An applicant for a conditional public report shall submit the following information and documents with the applicable filing fee:

(1) A copy of the statement set forth in subdivision (e).

(2) A sales agreement or lease to be used in any transaction conducted under authority of the conditional public report. The sales agreement or lease shall include all of the following provisions:

(A) No escrow will close, funds will not be released from escrow, and the interest contracted for will not be conveyed until a current final public report for the time-share plan is furnished to the purchaser.

(B) The contract may be rescinded, in which event the entire sum of money paid or advanced by the purchaser shall be returned if (i) a final public report has not been issued within six months after the date of issuance of the conditional public report if the conditional public report is not renewed, (ii) the final public report is not issued within 12 months after the initial conditional public report is received if the conditional public report has been renewed for an additional six-month period, or (iii) the purchaser or lessee is dissatisfied with the final public report because of a material and adverse change.

(3) Escrow instructions to be used in any transaction conducted under authority of the conditional public report that includes at least the following information:

(A) The name and address of the escrow depository.

(B) A description of the nature of the transaction.

(C) Provisions ensuring compliance with Section 11243.

(D) Provisions ensuring that no escrow will close, funds will not be released from escrow, and the interest contracted for will not be conveyed until a current final public report for the time-share plan is furnished to the purchaser or lessee.

(E) Provisions for the return of money as prescribed in subparagraph (B) of paragraph (2).

(d) A decision by the commissioner to not issue a conditional public report shall be noticed in writing to the applicant within five business days after his or her decision and that notice shall specifically state the reasons why the report is not being issued.

(e) A person may sell or lease, or offer for sale or lease, time-share interests in a time-share plan pursuant to a conditional public report if, as a condition of the sale or lease or offer for sale or lease, delivery of legal title or other interest contracted for will not take place until issuance of a final public report and provided that the requirements of subdivision (c) are met.

(f) A developer, principal, or his or her agent shall provide a prospective purchaser a copy of the conditional public report and a written statement including all of the following information:

(1) Specification of the information required for issuance of a final public report.

(2) Specification of the information required in the final public report that is not available in the conditional public report, along with a statement of the reasons why that information is not available at the time of issuance of the conditional public report.

(3) A statement that no person acting as a principal or agent shall sell or lease, or offer for sale or lease, time-share interests in a time-share plan for which a conditional public report has been issued except as provided in this chapter.

(4) Specification of the requirements of subdivision (e).

(g) The prospective purchaser shall sign a receipt that he or she has received and has read the conditional public report and the written statement provided pursuant to subdivision (f).

(h) The term of a conditional public report may not exceed six months unless renewed pursuant to this subdivision. The conditional public report

may be renewed for one additional six-month period if the commissioner determines that the requirements for issuance of a final public report are likely to be satisfied during the renewal term. The renewal of a conditional public report shall not act to afford a purchaser who received the initial conditional public report any additional rescission rights other than those provided to a purchaser when a final public report is issued and a material and adverse change has been made.

(i) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, a disclosure document that has been authorized for use by the state regulatory agency in the state in which the time-share plan or component site is located that contains the disclosures as determined by the commissioner upon review to be substantially equivalent to or greater than the information required to be disclosed pursuant to Section 11234, shall be accepted in lieu of a public report required pursuant to this section. The disclosure document shall contain a cover page issued by the commissioner certifying the approval of its use in lieu of the public report required herein.

(j) Notwithstanding anything in this section to the contrary, the commissioner may grant a 12-month preliminary public report allowing the developer to begin offering and selling time-share interests, in a time-share plan regardless of whether the accommodations of the time-share plan are located within or outside of the state, while the registration is pending with the commissioner. The commissioner may grant one additional 12-month period if the developer is actively and diligently pursuing registration under this chapter. The preliminary public report shall automatically terminate with respect to those time-share interests covered by a final public report that is issued before the scheduled termination date of the preliminary report. To obtain a preliminary public report, the developer shall provide all of the following:

(1) Submit the reservation instrument to be used in a form previously approved by the department with at least the following provisions:

(A) The right of both the developer and the potential purchaser to unilaterally cancel the reservation at any time.

(B) The payment to the potential purchaser of his or her total deposit following cancellation of the reservation by either party.

(C) The placing of the deposit into an interest bearing escrow account.

(2) Agree to provide each potential purchaser with a copy of the preliminary public report and an executed receipt for a copy before any money or other thing of value has been accepted by or on behalf of the developer in connection with the reservation.

(3) Agree to provide a copy of the reservation instrument signed by the potential purchaser and by or on behalf of the developer to the potential purchaser, and place any deposit taken from the potential purchaser into a neutral escrow depository acceptable to the commissioner.

Public Report – Term and Renewal

11228. The term of a final public report shall be limited to five years. A renewal shall be issued if the developer, owner, or agent makes application for renewal of any report and has submitted the additional information that the commissioner may require.

Public Report – Review and Grounds for Denial

11229. (a) In connection with its review of the registration application of a time-share plan, the commissioner may make an examination of any time-share property submitted for registration pursuant to this chapter, and shall, unless there are grounds for denial, issue to the developer a public report authorizing the sale or lease in this state of the time-share interests within the time-share plan submitted pursuant to this chapter. The report shall contain the data obtained in accordance with Section 11234.

(b) The commissioner may deny the issuance of the public report based on the applicant's failure to comply with any of the provisions of this chapter or the regulations of the commissioner pertaining thereto, including, but not limited to, all of the following:

(1) The sale or lease would constitute misrepresentation to, or deceit or fraud of, the purchasers or lessees.

(2) Inability to deliver title or other interest contracted for.

(3) Inability to demonstrate, in accordance with this chapter, that adequate financial arrangements have been made for all offsite improvements included in the offering.

(4) Inability to demonstrate, in accordance with this chapter, that adequate financial arrangements have been made for any community, recreational, or other facilities included in the offering.

(5) Failure to make a showing that the parcels can be used for the purpose for which they are offered.

(6) Failure to provide in the contract or other writing the use or uses for which the parcels are offered, together with any covenants or conditions relative thereto.

(c) Any developer objecting to the denial of a public report may, within 30 days after receipt of the order of denial, file a written request for a hearing. The commissioner shall hold the hearing within 20 days thereafter unless the party requesting the hearing requests a postponement. If the hearing is not held within 20 days after request for a hearing is received plus the period of the postponement or if a proposed decision is not rendered within 45 days after submission and an order adopting or rejecting the proposed decision is not issued within 15 days thereafter, the order of denial shall be rescinded and a public report issued.

Time-Share Plan – Completion of Construction

11230. If the time-share plan, including any accommodations, or amenities within the common area are not completed prior to the issuance of a final public report for the time-share plan, the developer shall specify a reasonable date for completion and shall comply with any one of the following conditions:

(a) Arranges for lien and completion bond or bonds, enforceable by the association, in an amount and subject to the terms, conditions, and coverage necessary to assure completion of the improvements lien-free. The bond shall not exceed 120 percent of the cost for completion, and the bond shall provide for the reduction of the bond amount as work is completed.

(b) All funds from the sale of time-share interests as the commissioner shall determine are sufficient to assure construction of the improvement or improvements shall be bonded or impounded in a neutral escrow depository acceptable to the commissioner until the improvements have been completed and all applicable lien periods have expired.

(c) An amount sufficient to cover the costs of construction shall be deposited in a neutral escrow depository acceptable to the commissioner under a written escrow agreement providing for disbursements from the escrow as work is completed.

(d) An alternative plan that may be approved by the commissioner.

Registration Review Timeframes

11231. Every registration required to be filed with the commissioner under this chapter shall be reviewed and issued the specified public report in accordance with the following schedule:

(a) Time-share registration. Registration shall be effective only upon the issuance of a public report by the commissioner that shall occur no later than 60 calendar days after the actual receipt by the commissioner of the properly completed application. The commissioner shall provide a list of deficiencies in the application, if any, within 60 calendar days of receipt. This same time period applies when amending a public report to add additional phases or component sites of the time-share plan.

(b) Preliminary public report registration. A preliminary public report shall be issued within

15 calendar days of receipt, unless the commissioner provides to the applicant a written list of deficiencies in the application, if any, within 15 calendar days of receipt of an application.

(c) Amended public report where no additional phases or component sites are added. An effective date for an amendment to a public report should occur no more than 45 calendar days after actual receipt by the commissioner of the amendment. The commissioner shall provide a list of deficiencies regarding the amendments, if any, within 45 calendar days of receipt.

Fees

11232. (a) The commissioner may by regulation prescribe filing fees in connection with applications to the Bureau of Real Estate for a public report pursuant to the provisions of this chapter that are lower than the maximum fees specified in subdivision (b) if the commissioner determines that the lower fees are sufficient to offset the costs and expenses incurred in the administration of this chapter. The commissioner shall hold at least one hearing each calendar year to determine if lower fees than those specified in subdivision (b) should be prescribed.

(b) The filing fees for an application for a public report to be issued under authority of this chapter shall not exceed the following for each time-share plan, location, or phase of the time-share plan in which interests are to be offered for sale or lease:

(1) One thousand seven hundred dollars ($1,700) plus ten dollars ($10) for each time-share interest to be offered for an original public report application.

(2) Six hundred dollars ($600) plus ten dollars ($10) for each time-share plan interest to be offered that was not permitted to be offered under the public report to be renewed for a renewal public report or permit application.

(3) Five hundred dollars ($500) plus ten dollars ($10) for each time-share interest to be offered under the amended public report for which a fee has not previously been paid for an amended public report application.

(4) Five hundred dollars ($500) for a conditional public report application.

(c) Fees collected by the commissioner under authority of this chapter shall be deposited into the Real Estate Fund pursuant to Chapter 6 (commencing with Section 10450) of Part 1. Fees received by the commissioner pursuant to this article shall be deemed earned upon receipt. A fee is not refundable unless the commissioner determines that it was paid as a result of mistake or inadvertency. This section shall remain in effect unless it is superseded pursuant to Section 10266 or subdivision (a) of Section 10266.5, whichever is applicable.

Point System

11233. An applicant for a public report for a time-share plan in which the use and occupancy of the time-share interest purchased in the time-share plan is determined according to a point system shall include in the application the following information:

(a) Whether additional points may be acquired by purchase or otherwise, in the future and the manner in which future purchases of points may be made.

(b) The transferability of points to other persons, other years or other time-share plans.

(c) A copy of the then-current point value use directory, along with rules and procedures for changes by the developer or the association in the manner in which point values may be used.

(1) No change exceeding 10 percent per annum in the manner in which point values may be used may be made without the assent of at least 25 percent of the voting power of the association other than the developer.

(2) No time-share interest owner shall be prevented from using a time-share plan as a result of changes in the manner in which point values may be used.

(3) In the event point values are changed or adjusted, no time-share owner shall be

prevented from using his or her home resort in the same manner as was provided for under the original purchase contract.

(d) Any limitations or restrictions upon the use of point values.

(e) A description of an inventory control system that will ensure compliance with Section 11250.

Public Report – Preparation and Content

11234. A developer shall prepare, for issuance by the commissioner, a public report that shall fully and accurately disclose those facts concerning the time-share developer and time-share plan that are required by this chapter or by regulation. The developer shall provide the public report to each purchaser of a time-share interest in a time-share plan at the time of purchase. The public report shall be in writing and dated and shall require the purchaser to certify in writing the receipt thereof. The public report for a single site time-share plan is subject to the requirements of subdivision (a). The public report for a specific time-share interest multisite time-share plan is subject to the requirements of both subdivisions (a) and (b). The public report for a nonspecific time-share interest multisite time-share plan is subject to the requirements of subdivision (c). For time-share plans located outside of the state, a public report that has been authorized for use by the situs state regulatory agency and that contains disclosures as determined by the commissioner upon review to be substantially equivalent to or greater than the information required to be disclosed pursuant to this section may be used by the developer to meet the requirements of this section. A developer may, upon approval by the commissioner, submit a public report that combines, in a manner prescribed by the commissioner, the information required to be disclosed by the applicable subdivisions of this section and the information required to be disclosed in a public report issued by a regulatory agency in one or more other states.

(a) Public reports for a single site and those component sites of a specific time-share interest multisite time-share plan that are offered in this state shall include the following:

(1) The name and address of the developer and the type of time-share plan being offered and the name and address of the time-share project.

(2) A description of the existing or proposed accommodations, including the type and number of time-share interests in the accommodations, and if the accommodations are proposed or not yet complete or fully functional, an estimated date of completion.

(3) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to the time-share plan, committed to the multisite time-share plan, and available for use by purchasers and a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(4) A description of any existing or proposed amenities of the time-share plan and, if the amenities are proposed or not yet complete or fully functional, the estimated date of completion.

(5) The extent to which financial arrangements have been made for the completion of any incomplete, promised improvements.

(6) A description of the duration, phases, and operation of the time-share plan.

(7) The name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it.

(8) The current annual budget as required by Section 11240, along with the projected assessments and a description of the method for calculating and apportioning the assessments among purchasers, all of which shall be attached as an exhibit to the public report.

(9) Any initial or special fee due from the purchaser at closing together with a description of the purpose and the method of calculating the fee.

(10) A description of any financing offered by or available through the developer.

(11) A description of any liens, defects, or encumbrances on or affecting the title to the time-share interests.

(12) A description of any bankruptcies, pending civil or criminal suits, adjudications, or disciplinary actions of which the developer has knowledge, that would have a material effect on the developer's ability to perform its obligations.

(13) Any current or expected fees or charges to be paid by time-share purchasers for the use of any amenities related to the time-share plan.

(14) A description and amount of insurance coverage provided for the protection of the purchaser.

(15) The extent to which a time-share interest may become subject to a tax lien or other lien arising out of claims against purchasers of different time-share interests.

(16) A statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a time-share interest.

(17) A statement disclosing that a deposit made in connection with the purchase of a time-share interest shall be held by an escrow agent until expiration of any right to cancel the contract and that a deposit shall be returned to the purchaser if he or she elects to exercise his or her right of cancellation. Alternatively, if the commissioner has accepted from the developer a surety bond, irrevocable letter of credit, or other financial assurance, each of which shall be enforceable by the association, in lieu of placing deposits in an escrow account: (A) a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other financial assurance in an amount equal to or in excess of the funds that would otherwise be placed in an escrow account, (B) a description of the type of financial assurance that has been obtained, (C) a statement that if the purchaser elects to exercise his or her right of cancellation as provided in the contract, the developer shall return the deposit, and (D) a description of the person or entity to whom the purchaser should apply for payment.

(18) A statement that the assessments collected from the purchasers will be kept in a segregated account separate from the assessments collected from the purchasers of other time-share plans managed by the same managing entity, along with a statement identifying the location of the account and a disclosure of the rights of owners to inspect the records pertaining to their accounts.

(19) If the time-share plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program.

(20) Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

(21) Any other information reasonably requested by the commissioner.

(b) Public reports for specific time-share interest multisite time-share plans shall include the following additional disclosures:

(1) A description of each component site, including the name and address of each component site.

(2) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to each component site of the time-share plan, committed to the multisite time-share plan and available for use by purchasers and a representation about the percentage of useable time authorized

for sale, and if that percentage is 100 percent, then a statement describing how adequate periods of time for maintenance and repair will be provided.

(3) Each type of accommodation in terms of the number of bedrooms, bathrooms, and sleeping capacity, and a statement of whether or not the accommodation contains a full kitchen. For purposes of this description, a "full kitchen" means a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.

(4) A description of amenities available for use by the purchaser at each component site.

(5) A description of the reservation system, which shall include the following:

(A) The entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system.

(B) A summary of the rules and regulations governing access to and use of the reservation system.

(C) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come-first-served basis.

(6) The name and principal address of the managing entity for the multisite time-share plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it.

(7) A description of any right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite time-share plan.

(8) A description of the purchaser's liability for any fees associated with the multisite time-share plan.

(9) The location of each component site of the multisite time-share plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite time-share plan during the 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at that time within the multisite time-share plan.

(10) Any other information that the developer, with the approval of the commissioner, desires to include in the time-share disclosure statement.

(c) Public reports for nonspecific time-share interest multisite time-share plans shall include the following:

(1) The name and address of the developer.

(2) A description of the type of interest and usage rights the purchaser will receive.

(3) A description of the duration and operation of the time-share plan.

(4) A description of the type of insurance coverage provided for each component site.

(5) An explanation of who holds title to the accommodations of each component site.

(6) A description of each component site, including the name and address of each component site.

(7) The number of accommodations and time-share interests, expressed in periods of seven-day use availability or other time increments applicable to the multisite time-share plan for each component site committed to the multisite time-share plan and available for use by purchasers and a representation about the percentage of useable time authorized for sale, and if that percentage is 100 percent, then a statement

describing how adequate periods of time for maintenance and repair will be provided.

(8) Each type of accommodation in terms of the number of bedrooms, bathrooms, and sleeping capacity, and a statement of whether or not the accommodation contains a full kitchen. For purposes of this description, a "full kitchen" means a kitchen having a minimum of a dishwasher, range, sink, oven, and refrigerator.

(9) A description of amenities available for use by the purchaser at each component site.

(10) A description of any incomplete amenities at any of the component sites along with a statement as to any assurance for completion and the estimated date the amenities will be available.

(11) The location of each component site of the multisite time-share plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite time-share plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at that time within the multisite time-share plan.

(12) A description of any right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite time-share plan.

(13) A description of the reservation system that shall include all of the following:

(A) The entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system.

(B) A summary of the rules and regulations governing access to and use of the reservation system.

(C) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come-first-served basis.

(14) A description of any liens, defects, or encumbrances that materially affect the purchaser's use rights.

(15) The name and principal address of the managing entity for the multisite time-share plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it, and a description of the relationship between a multisite time-share plan managing entity and the managing entity of the component sites of a multisite time-share plan, if different from the multisite time-share plan managing entity.

(16) The current annual budget as provided in Section 11240, along with the projected assessments and a description of the method for calculating and apportioning the assessments among purchasers, all of which shall be attached as an exhibit to the public report.

(17) Any current fees or charges to be paid by time-share purchasers for the use of any amenities related to the time-share plan and a statement that the fees or charges are subject to change.

(18) Any initial or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee.

(19) A description of any financing offered by or available through the developer.

(20) A description of any bankruptcies, pending civil or criminal suits, adjudications, or disciplinary actions of which the developer has knowledge, which

would have a material effect on the developer's ability to perform its obligations.

(21) A statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a time-share interest.

(22) A statement disclosing that a deposit made in connection with the purchase of a time-share interest shall be held by an escrow agent until expiration of any right to cancel the contract and that a deposit shall be returned to the purchaser if he or she elects to exercise his or her right of cancellation. Alternatively, if the commissioner has accepted from the developer a surety bond, irrevocable letter of credit, or other financial assurance in lieu of placing deposits in an escrow account: (A) a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other financial assurance in an amount equal to or in excess of the funds that would otherwise be placed in an escrow account, (B) a description of the type of financial assurance that has been arranged, (C) a statement that if the purchaser elects to exercise his or her right of cancellation as provided in the contract, the developer shall return the deposit, and (D) a description of the person or entity to whom the purchaser should apply for payment.

(23) If the time-share plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program.

(24) Any other information that the developer, with the approval of the commissioner, desires to include in the time-share disclosure statement.

(d) The commissioner may establish by regulation provisions regarding the delivery of the public report and other required information through alternative media forms.

(e) The commissioner may, upon finding that the subject matter is otherwise adequately covered or the information is unnecessary or inapplicable, waive any requirement set forth in this section.

Right to Rescind

11235. (a) A person who has entered into a contract to purchase a short-term product shall have the right to rescind the contract until midnight of the seventh calendar day, or a later time as provided in the contract, following the day on which the contract is first made, in which event the purchaser shall be entitled to a refund of 100 percent of the consideration paid under the contract, without deduction.

(b) The developer or other person who offers a short-term product shall clearly and conspicuously disclose, in writing, to all purchasers of a short-term product, all of the following:

(1) The right of rescission provided for in subdivision (a).

(2) That reservations for accommodations under the contract are subject to availability and that there is no guarantee that a purchaser will be able to obtain specific accommodations during a specific time period, if applicable.

(3) Specific blackout dates, if applicable.

(4) That the earlier the purchaser requests a reservation, the greater the opportunity to received a confirmed reservation.

(5) That, if the purchaser later purchases a time-share interest, the developer shall provide the purchaser with the then-current public report for the time-share plan being purchased and that the purchaser shall have until midnight of the seventh calendar day following receipt of the public report to cancel the purchase of the time-share interest.

(c) If a purchaser is unable to obtain a confirmed reservation for a specific accommodation and time period requested, the developer or other person who offers the short-term product shall attempt to provide the purchaser with a substantially similar alternative to the reservation requested. If the developer or other

person who offers the short-term product is unable to provide the reservation requested or an acceptable alternative during the initial term of the contract, the purchaser may request and be granted an extension of the contract for a period of 12 months.

(d) The contract for the purchase of a short-term product shall include the date of the contract and shall contain, in immediate proximity to the space reserved for the signature of the purchaser, a conspicuous statement as follows:

"YOU HAVE THE RIGHT TO CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE SEVENTH (7TH) (or later) CALENDAR DAY AFTER THE DATE OF THIS CONTRACT AND RECEIVE A FULL REFUND. YOU MAY EXERCISE YOUR RIGHT TO CANCEL BY SENDING A FACSIMILE, OR BY DEPOSIT, FIRST-CLASS POSTAGE PREPAID, INTO THE UNITED STATES MAIL TO THE FOLLOWING ADDRESS: (SPECIFIC CONTACT INFORMATION)"

(e) A purchaser of a short-term product may exercise the right of rescission by giving written notice to the owner of the short-term product as specified in subdivision (b), using a preprinted form provided by the developer. The developer or other person who offers the short-term product shall cause any deposit given by a purchaser who has exercised the right to rescind described in subdivision (a) to be returned to the purchaser not later than the last to occur of 10 business days following receipt of the purchaser's written notice of rescission, or 10 business days following the date upon which any deposit becomes good and immediately available funds.

(f) A developer or other person who offers a short-term product shall do one of the following:

(1) Place any purchase money funds received from the purchaser of a short-term product into an independent escrow depository until the seven-day period for rescission described in subdivision (a) has expired.

(2) Post a bond to secure the return of a purchaser's purchase money funds in a form and in an amount prescribed by the commissioner.

(3) Make alternative arrangements satisfactory to the commissioner to secure the owner's obligation to return the purchase money funds.

(g) If applicable, the developer shall disclose to the purchaser the type of alternative arrangement to be used and, in the event of a claim, to whom the purchaser should apply for payment under the alternative arrangement.

(h) The developer shall compensate the association for any services acquired from the association or for any of the association's property used when fulfilling a short-term product in excess of services or use of property provided to other owners.

(i) If the contract for a short-term product is negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, the developer shall provide to the prospective purchaser prior to the commencement of the rescission period an unexecuted translation of the contract in the language in which the contract was negotiated. The terms of the short-term contract that is executed in the English language shall determine the rights and obligations of the parties.

Receipt for Public Report

11236. (a) A receipt on the form specified herein shall be taken by or on behalf of the developer from each person executing a reservation agreement under authority of a preliminary public report and each person who has made a written offer to purchase or lease a time-share interest under authority of a preliminary, conditional, or final public report.

(b) The developer or his or her agent shall retain each receipt for a final public report for a period of three years from the date of the receipt and shall make the receipts available for inspection by the commissioner or his or her designated representative during regular business hours.

(c) The form approved by the commissioner for the acknowledgment of receipt of a preliminary, conditional, or final public report shall be as follows:

"RECEIPT FOR PUBLIC REPORT

The Law and Regulations of the commissioner require that you as a prospective purchaser or lessee be afforded an opportunity to read the public report for this time-share before you execute a contract to purchase or lease a time-share interest or before any money or other consideration toward purchase or lease of a time-share interest is accepted from you.

You must be afforded an opportunity to read the report before a written reservation or any deposit in connection therewith is accepted from you.

DO NOT SIGN THIS RECEIPT UNTIL YOU HAVE RECEIVED A COPY OF THE REPORT AND HAVE READ IT.

I have read the commissioner's public report on ____ (File No., Tract No., or Name). I understand the report is not a recommendation or endorsement of the time-share, but is for information only. The date of the public report which I received and read is ____. Developer Is Required to Retain This Receipt for Three Years.

Incidental Benefit Disclosure

11237. (a) If a purchaser of a time-share interest in a time-share plan is offered the opportunity to acquire an incidental benefit in connection with the sale of a time-share interest, the developer shall provide the purchaser with a disclosure statement containing all of the following information:

(1) A general description of the incidental benefit, including the terms and conditions governing the use of the incidental benefit.

(2) A statement that the continued availability of the incidental benefit is not necessary for the use and enjoyment of the purchaser's use of any accommodation of the time-share plan.

(3) A statement that the purchaser's use of or participation in the incidental benefit is completely voluntary, and payment of any fee or other cost associated with the incidental benefit is required only upon that use or participation.

(4) A listing of the fees, if any, that the purchaser will be required to pay to use the incidental benefit.

(5) A statement that no costs of acquisition, operation, maintenance, or repair of the incidental benefit shall be passed on to purchasers of time-share interests in the time-share plan as a common expense of the time-share plan.

(b) A developer shall include in its initial application for registration, a description of any incidental benefits which may be used by the developer. The developer may, but shall not be required to describe the incidental benefits in the public report for the time-share plan.

(c) The incidental benefit disclosure is not required to be filed with the commissioner prior to the use of the disclosure. However, the commissioner may request and review the records of the developer to ensure that the incidental benefit disclosure required by this section has been given to purchasers and to ensure that the statements required to be made in the disclosure are accurate as to the operation of each incidental benefit offered by the developer. The developer shall deliver the records to the commissioner within 10 business days of the commissioner's request.

Purchase Contract Voidable

11238. (a) The purchase contract entered into by any person who has made an offer to purchase a time-share interest or interests, any incidental benefit, made on the same day or within seven calendar days after the person attended a sales presentation for a time-share interest, or any right under an exchange program, made on the same day or within seven calendar days after the person attended a sales presentation for a time-share interest, shall be voidable by the purchaser, without penalty, within seven calendar days, or a longer period as provided in the contract, after the receipt of the public report

or the execution of the purchase contract, whichever is later.

(1) The purchase contract shall provide notice of the seven-day cancellation period, together with the name and mailing address to which any notice of cancellation shall be delivered.

(2) Notice of cancellation shall be deemed timely if given not later than midnight of the seventh calendar day.

(b) A person who has made an offer to purchase a time-share interest, incidental benefit, or rights under an exchange program as described above may exercise the right of cancellation granted by this section by giving written notification of the notice to cancel to the developer at the place of business designated by the developer in the purchase contract.

(c) If the notice of cancellation is by United States mail, a rebuttable presumption shall exist that notice was given on the date that it is postmarked. If the notice is sent by facsimile, it shall be considered given on the date of a confirmed transmission. If the notice is by means of a writing sent other than by United States mail or telegraph, it shall be considered as given at the time of delivery at the place of business designated by the developer. Exercising the rescission rights of the time-share interest shall also automatically rescind any agreement for the purchase of an incidental benefit or an enrollment into an exchange program where the agreements were entered into in conjunction with the purchase of the time-share interest.

(d) Each developer shall utilize and furnish each purchaser with a fully completed and executed copy of a contract pertaining to the sale of a time-share interest, which contract shall include the following information:

(1) The actual date the contract is executed by each party.

(2) The names and addresses of the developer and time-share plan.

(3) The initial purchase price and any additional charges to which the purchaser may be subject to in connection with the purchase of the time-share interest, including, but not limited to, financing, or other amounts that will be collected from the purchaser on or before closing, such as the current year's annual assessment for common expenses.

(4) The estimated date of completion of construction of each accommodation promised to be completed which is not completed at the time the contract is executed.

(5) A brief description of the nature and duration of the time-share interest being sold, including whether any interest in real property is being conveyed.

(6) The specific number of years of the term of the time-share plan.

(7) Immediately prior to the space reserved in the contract for the signature of the purchaser, the developer shall disclose, in conspicuous type, substantially the following notice of cancellation:

You may cancel this contract without any penalty or obligation within seven calendar days of receipt of the public report or after the date you sign this contract, whichever date is later. If you decide to cancel this contract, you must notify the developer in writing of your intent to cancel. Your notice of cancellation shall be effective upon the date sent and shall be sent to (name of developer) at (address of developer). Your notice of cancellation may also be sent by facsimile to (facsimile number of the developer) or by hand-delivery. Any attempt to obtain a waiver of your cancellation right is void and of no effect.

(8) The purchase contract for an interest in a single site or specific time-share interest multisite time-share plan without an accommodation in this state shall include the following additional disclosure in conspicuous type:

The accommodations of this time-share plan are located outside of California. As such, the management (including all matters

relating to the association, the association budget, and any management contract) of this time-share plan is not governed by California law, but by the applicable law, if any, of the jurisdiction in which the accommodations are located as stated in the public report. You should review the governing documents related to the association, the association's budget, and the management of the time-share plan.

(e) If rescission is sought and granted for a violation of this section, the court may also award reasonable attorneys' fees and costs to the prevailing purchaser.

Notice of Cancellation Rights

11239. (a) To inform a purchaser of his or her right of cancellation under Section 11238, the developer shall attach to the face page of every copy of a public report given to a prospective purchaser, the cancellation notice set forth in subdivision (b) thereof printed in conspicuous type.

(b) The form and content of the notice shall be as follows:

NOTICE OF CANCELLATION RIGHTS

You may cancel the purchase of the time-share interest(s) in the time-share plan identified below without any penalty or obligation and are legally entitled to the return of all money and other considerations that you have given toward the purchase. If you decide to cancel your purchase, you must notify the developer in writing of your intent to cancel within seven calendar days of receipt of the public report or the date you sign the purchase contract, whichever date is later. Your notice of cancellation shall be effective upon the date sent and shall be sent to the developer at the address or facsimile number provided in your purchase contract. Any attempt to obtain a waiver of your cancellation right is void and of no effect.

(c) Each notice shall also contain the following form. The form shall have all developer-related information completed by the developer and may be used by a purchaser to cancel the sale of the time- share interest:

(Name of Developer) (Address of Developer)

(Facsimile Number of Developer)

(Name of Time-share Plan)

(DRE Registration File Number)

RE: ELECTION TO CANCEL THE SALE OF A TIME-SHARE INTEREST(S)

I hereby elect to cancel my purchase of the time-share interest(s) in the above-name time-share plan. _____

(Date)

_____

(Signature)

_____

(Print Name)

_____

(Signature)

_____

(Print Name)

Estimated Operating Budget

11240. An estimated operating budget for the time-share plan shall be filed with the commissioner along with the other information required to be registered pursuant to this chapter, and shall contain the following information:

(a) The estimated annual expenses of the time-share plan along with the estimated revenue of the association from all sources, including the amounts collectible from purchasers as assessments. The estimated payments by the purchaser for assessments shall also be stated in the estimated amounts for the times when they will be due. Expenses shall be shown in a manner that enables the purchaser to calculate the annual expenses associated with the time-share interest being purchased. Expenses that are personal to purchasers that are not uniformly incurred by all purchasers or that are not provided for or contemplated by the time-share plan documents may be excluded from this estimate.

(b) (1) The estimated items of expenses of the time-share plan and the association, except as excluded under subdivision (a), including, but not limited to, if applicable, the

following items, that shall be stated either as association expenses collectible by assessments or as expenses of the purchaser payable to persons other than the association:

(2) Expenses for the association:

(A) Administration of the association.

(B) Management fees.

(C) Maintenance.

(D) Rent for accommodations.

(E) Taxes upon time-share property.

(F) Taxes upon leased areas.

(G) Insurance.

(H) Security provisions.

(I) Other expenses.

(J) Operating capital.

(K) Equitable apportionment of expenses between time-share and non-time-share uses of the common area, if applicable.

(L) Reserves for deferred maintenance and reserves for capital expenditures. All reserves for any accommodations and common areas of a time-share plan located in this state shall be based upon the estimated life and replacement cost of accommodations and common elements of the time-share plan. For any accommodations and common elements of a time-share plan located outside of this state, the developer shall disclose the amount of reserves for deferred maintenance and capital expenditures required by the law of the situs state, if applicable, and maintained for those accommodations and common elements, which amount of reserves shall be based on the estimated life and replacement cost of each reserve item. The developer or the association shall include in the budget a reasonable reserve accumulation plan. A plan that (i) provides for reserves to be funded within five years at a level of 50 percent of the amount specified in the reserve study as fully funded, and (ii) requires those reserves collected in any given year to equal or exceed the amount of reserve expenditures estimated for that year shall be deemed to be a reasonable reserve accumulation plan. The funding of reserves may be based on collection of reserve amounts in conjunction with annual assessments, or on some alternative mechanism, including, but not limited to, a bond, letter of credit, or similar mechanism. Collection of required reserve amounts solely by one or more special assessments is not reasonable. If control of the association is in owners other than the developer, and such owners vote not to maintain reserves or to maintain reserves at less than 50 percent, the failure to maintain the required level of reserves shall not be cause for denying the developer a public report.

(c) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time that purchasers elect a majority of the board of administration and the period after that date.

(d) The budget of a phase time-share plan shall contain a note identifying the number of time-share interests covered by the budget, indicating the number of time-share interests, if any, estimated to be declared as part of the time-share plan during that calendar year, and projecting the common expenses for the time-share plan based upon the number of time-share interests estimated to be declared as part of the time-share plan during that calendar year.

(e) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the budget shall include the subject matter set forth in subdivisions (a) to (d), inclusive. The budget shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if there is a conflict between the affirmative

standards set forth in the laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the budget provides for the matters contained in subdivisions (a) to (d), inclusive, the budget shall be deemed to be in compliance with the requirements of this section, and the developer shall not be required to make revisions in order to comply with this section.

(f) The budget shall include a certification subscribed and sworn by an expert in the preparation of time-share plan budgets, who may be (1) an independent public accountant, (2) a certified public accountant, who is an employee of the developer, or (3) at the discretion of the commissioner, an individual or entity acceptable to the commissioner to conduct the review. Acceptance of the individual or entity shall not be considered an endorsement by the commissioner of a proposed budget. The budget certification shall also be signed by the developer or on behalf of the developer by an appropriate officer, if the developer is a corporation, or the managing member, if the developer is a limited liability company. The certification concerning the adequacy of the budget shall be in the following form: On behalf of the developer of the captioned time-share plan, I/my firm has reviewed or prepared the budget containing projections of income and expenses for time-share operation. My/our experience in this field includes: (List experience.) I/we have reviewed the budget and investigated the facts set forth in the budget and the facts underlying it with due diligence in order to form a basis for this certification. I/we certify that the projections in the budget appear reasonable and adequate based on present prices (adjusted to reflect continued inflation and present levels of consumption for comparable units similarly situated) or, for an existing project, based on historical data for the project. I/we certify that the budget: (1) Sets forth in detail the terms of the transaction as it relates to the budget and is complete, current, and accurate. (2) Affords potential purchasers an adequate basis upon which to found their judgment. (3) Does not omit any material fact. (4) Does not contain any untrue statement of a material fact. (5) Does not contain any fraud, deception, concealment, or suppression. (6) Does not contain any promise or representation as to the future which is beyond reasonable expectation or unwarranted by existing circumstances. (7) Does not contain any representation or statement which is false, where I/we: (A) Knew the truth. (B) With reasonable effort could have known the truth and made no reasonable effort to ascertain the truth. (C) Did not have knowledge concerning the representation or statement made. I/we understand that a copy of this certification is intended to be incorporated into the public report so that prospective purchasers may rely on it. This certification is made under the penalty of perjury for the benefit of all persons to whom this offer is made. We understand that violations are subject to the civil and criminal penalties of the laws of California. The certification shall be dated within 90 days prior to the date of the submission of the budget to the commissioner. The expert's certification shall be based on experience in the management of hotel, resort, or time-share properties and disclose the approximate number of properties managed and length of time managed, together with other relevant real estate experience, qualifications, and licenses.

(g) Any budget that is not certified by an independent certified public accountant or an employee of the developer who is licensed as a certified public accountant may be reviewed by the commissioner to confirm the accuracy of the certification.

(h) The certified budget for the time-share plan shall be prepared and submitted by the developer to the commissioner annually for as long as the registration is in effect. If the budget is increased more than 20 percent in any year, the developer shall submit to the commissioner, along with the increased budget, evidence that the requirements of paragraph (5) of subdivision (a) of Section 11265 have been met. The budget shall be submitted at least 15 days prior to the first day of the period that it covers. Upon the submission of each annual budget, the exhibit to the public report specified in paragraph (8) of subdivision (a) of, and paragraph (16) of subdivision (c) of,

Section 11234 shall be updated. The updating of the exhibit shall not be considered to constitute an amendment of the public report.

(i) The audited financial statements of the association prepared pursuant to paragraph (2) of subdivision (b) of Section 11272 shall be delivered to the commissioner upon request.

(j) At the time an application is submitted for renewal of the public report or any amendment of the public report that affects the budget for the time-share plan, the developer shall submit with the application a copy of the most recent audited financial statement for the time-share plan, along with a certified copy of the budget reflecting the amendment or renewal. If the commissioner, upon reasonable comparison of the budget and the prior year's audited financial statements, determines that the budget is deficient, the commissioner may subject the budget to a substantive review.

Developer Obligated for Expenses Associated with Unsold Inventory

11241. (a) The developer is obligated for the expenses associated with unsold inventory held by the developer. The obligation can be fulfilled in either of the following ways:

(1) The developer shall pay the full maintenance fee for each of the interests owned by the developer.

(2) The developer shall enter into a subsidy agreement with the association to cover any shortfall between expenses incurred and assessments collected from other owners ("deficit subsidy"), and shall furnish the association with an executed copy of the agreement within 10 days after closing of escrow of the first sale or lease of a time-share interest. The department will not approve a deficit subsidy program unless provisions are made for the accumulation of reserves for replacement and major maintenance of the time-share property in accordance with accepted property management practices and the transfer of the reserve fund to the association on termination of the program.

(b) To assure the fulfillment of the obligations of the developer of a time-share plan to either pay assessments as an owner of time-share interests in the time-share plan or to pay a deficit subsidy, the commissioner shall require that the developer furnish a surety bond, cash deposit, letter of credit, or other alternate assurance enforceable by the association and acceptable to the commissioner, and that assurance shall be in compliance with either paragraph (1) or (2) of subdivision (c).

(c) The amount of the assurance shall be in such an amount as may be approved by the commissioner, but shall not exceed the lesser of 50 percent of the anticipated cost of operation and maintenance of the time-share plan, including the establishment of reserves for replacement and major repair, for an operational period of one year or 100 percent of the assessments attributed to the total amount of the total unsold time-share interests owned by the developer and registered pursuant to this chapter. The security shall be delivered to a neutral escrow depository, or to the trustee if title to the time-share property has been delivered to the trustee, along with instructions signed by the developer for the benefit of the association which shall provide as follows:

(1) Where the developer pays full maintenance fees on unsold inventory the security shall remain available to pay any assessments for which the developer is liable and delinquent until the depository or trustee has received both of the following:

(A) Written notice, from the developer that sales of 80 percent of the time-share interest in the time-share plan have been closed.

(B) Written notice from the association that the developer is not delinquent in the payment of assessments for which it is obligated.

(2) The amount of the assurance required by this section may be adjusted annually to an amount approved by the commissioner, but shall be not more than the smaller of 50 percent of the anticipated cost of operation

and maintenance of the time-share plan, including the establishment of reserves for replacement and major repair, for an operational period of one year or 100 percent of the assessments attributed to the total amount of the total unsold time-share interests owned by the developer and registered pursuant to this chapter.

(d) A deficit subsidy agreement entered into after July 1, 2005, shall provide that if there is a dispute between the developer and the association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The fee payable to the American Arbitration Association to initiate the arbitration shall be remitted by the developer. The cost of arbitration shall ultimately be borne as determined by the arbitrator under these rules.

Developer Subsidization of Operating and Maintenance Costs

11242. (a) In any time-share plan , the developer may undertake to pay a portion of the assessments otherwise payable by each purchaser ("buy down subsidy"). Any developer undertaking to pay a buy down subsidy shall do both of the following:

(1) Enter into a contract with the association that specifies in detail the obligations of the developer and the methods to be used in valuing the goods and services furnished under the time-share plan.

(2) Furnish the association with an executed copy of the subsidization contract within 10 days after closing of escrow of the first sale or lease of a time-share interest.

(b) If the developer is paying a buy down subsidy, the developer shall provide an assurance for its buy down subsidy obligation in an amount acceptable to the commissioner, but not more than the aggregate amount by which annual assessments are to be reduced, for example, the number of interests to be sold in each unit type multiplied by the amount by which the annual assessment for such unit type is to be reduced, multiplied by the number of years in the term of the buy down subsidy.

(c) For any buy down subsidy agreements entered into after July 1, 2005, the subsidy agreements shall provide that if there is a dispute between the developer and the association with respect to the question of satisfaction of the conditions for exoneration or release of the security, the issue shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The fee payable to the American Arbitration Association to initiate the arbitration shall be remitted by the developer. The cost of arbitration shall ultimately be borne as determined by the arbitrator under those rules.

Assurance Handling Procedures

11242.1. (a) The assurance specified in Section 11241 and, if applicable, the assurance specified in Section 11242, shall be delivered to the trustee or an escrow depository acceptable to the department along with an executed copy of the subsidization contract and instructions to the escrow depository signed by the developer and on behalf of the association. The instructions shall provide for both of the following:

(1) The escrow agent shall not release or exonerate the security device until it has received written notice from the association that the developer has faithfully performed all of his or her obligations under the subsidization contract, if applicable, and the escrow agent has received the written notices specified in paragraph (1) of subdivision (c) of Section 11241.

(2) If there is a dispute between the developer and the association with respect to the questions of satisfaction of the conditions for exoneration or release of the security, the issue or issues shall, at the request of either party, be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

(b) The fee payable to the American Arbitration Association to initiate arbitration shall be submitted by the developer. The costs of arbitration shall be borne by the party as determined by the arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

(c) The agreement for the deficit subsidy, described in subdivision (a) of Section 11241, and the agreement for the buy down subsidy, described in subdivision (a) of Section 11242 may, at the option of the developer, be contained in one instrument.

Escrow Requirements

11243. The developer shall comply with the following escrow requirements:

(a) A developer of a time-share plan shall deposit into an escrow account in an acceptable escrow depository 100 percent of all funds that are received during the purchaser's rescission period. An acceptable escrow depository includes, when qualified to do business in this state, escrow agents licensed by the Commissioner of Corporations, banks, trust companies, savings and loan associations, title insurers, and underwritten title companies. The deposit of these funds shall be evidenced by an executed escrow agreement between the escrow agent and the developer, that shall include provisions that state the following:

(1) Funds may be disbursed to the developer by the escrow agent from the escrow account only after expiration of the purchaser's rescission period and in accordance with the purchase contract, subject to subdivision (b).

(2) If a prospective purchaser properly cancels the purchase contract pursuant to its terms, the funds shall be paid to the prospective purchaser or paid to the developer if the prospective purchaser's funds have been previously refunded by the developer.

(b) If a developer contracts to sell a time-share interest and the construction of any property in which the time-share interest is located has not been completed, the developer, upon expiration of the rescission period, shall continue to maintain in an escrow account all funds received by or on behalf of the developer from the prospective purchaser under his or her purchase contract. The commissioner shall establish, by regulation, the types of documentation which shall be required for evidence of completion, including, but not limited to, a certificate of occupancy, a certificate of substantial completion, or an inspection by the State Fire Marshal designee or an equivalent public safety inspection agency in the applicable jurisdiction. Unless the developer submits financial assurances, in accordance with subdivision (c), funds shall not be released from escrow until a certificate of occupancy, or its equivalent, has been obtained and the rescission period has passed, and the time-share interest can be transferred free and clear of blanket encumbrances, including mechanics' liens. Funds to be released from escrow shall be released as follows:

(1) If a prospective purchaser properly cancels the purchase contract pursuant to its terms, the funds shall be paid to the prospective purchaser or paid to the developer if the prospective purchaser's funds have been previously refunded by the developer.

(2) If a prospective purchaser defaults in the performance of the prospective purchaser's obligations under the purchase contract, the funds shall be paid to the developer.

(3) If the funds of a prospective purchaser have not been previously disbursed in accordance with the provisions of this subdivision, they may be disbursed to the developer by the escrow agent upon the issuance of acceptable evidence of completion of construction.

(c) In lieu of the provisions in subdivisions (a) and (b), the commissioner may accept from the developer a surety bond, escrow bond, irrevocable letter of credit, or other financial assurance or arrangement acceptable to the commissioner. Any acceptable financial assurance shall be in an amount equal to or in excess of the lesser of (1) the funds that would

otherwise be placed in escrow, or (2) in an amount equal to the cost to complete the incomplete property in which the time-share interest is located. However, in no event shall the amount be less than the amount of funds that would otherwise be placed in escrow pursuant to paragraph (1) of subdivision (a).

(d) The developer shall provide escrow account information to the commissioner and shall execute in writing an authorization consenting to an audit or examination of the account by the commissioner on forms provided by the commissioner. The developer shall comply with the reconciliation and records requirements established by regulation by the commissioner. The developer shall make documents related to the escrow account or escrow obligation available to the commissioner upon the department's request. The escrow agent shall maintain any disputed funds in the escrow account until either of the following occurs:

(1) Receipt of written direction agreed to by signature of all parties.

(2) Deposit of the funds with a court of competent jurisdiction in which a civil action regarding the funds has been filed.

Release of Funds Escrowed

11244. (a) Excluding any encumbrance placed against the purchaser's time-share interest securing the purchaser's payment of purchase money financing for the purchase, the developer shall not be entitled to the release of any funds escrowed under Section 11243 with respect to each time-share interest and any other property or rights to property appurtenant to the time-share interest, including any amenities represented to the purchaser as being part of the time-share plan, until the developer has provided satisfactory evidence to the commissioner of one of the following:

(1) The time-share interest, including, but not limited to, a time-share interest in any component sites of a nonspecific time-share interest multisite time-share plan, together with any other property or rights to property appurtenant to the time-share interest, including any amenities represented to the purchaser as being part of the time-share plan, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights.

(2) The developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the time-share plan, has recorded a subordination and notice to creditors document in the appropriate public records of the jurisdiction in which the time-share interest is located. The subordination document shall expressly and effectively provide that the interest holder's right, lien, or encumbrance shall not adversely affect, and shall be subordinate to, the rights of the owners of the time-share interests in the time-share plan regardless of the date of purchase, from and after the effective date of the subordination document.

(3) The developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the time-share interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the time-share plan, has transferred the subject accommodations, amenities, or all use rights in the amenities to a nonprofit organization or owners' association to be held for the use and benefit of the owners of the time-share plan, which shall act as a fiduciary to the purchasers, the developer has transferred control of the entity to the owners or does not exercise its voting rights in the entity with respect to the subject accommodations or amenities. Prior to the transfer, any lien or other encumbrance against the

accommodation or facility shall be made subject to a subordination and notice to creditors' instrument pursuant to paragraph (2).

(4) Alternative arrangements have been made which are adequate to protect the rights of the purchasers of the time-share interests and approved by the commissioner.

(b) Nothing in this section shall prevent a developer from accessing any escrow funds if the developer has complied with subdivision (c) of Section 11243.

(c) The developer shall notify the commissioner of the extent to which an accommodation may become subject to a tax or other lien arising out of claims against other purchasers in the same time-share plan. The commissioner may require the developer to notify a prospective purchaser of any such potential tax or lien that would materially and adversely affect the prospective purchaser.

Prohibited Acts

11245. (a) No person subject to this chapter shall do any of the following:

(1) Make any material misrepresentation that is false or misleading in connection with any advertisement or promotion of a time-share plan.

(2) Make a prediction of any increases in the resale price or resale value of the time-share interest.

(3) Materially misrepresent the size, nature, extent, qualities, or characteristics of the offered time-share plan.

(4) Materially misrepresent the conditions under which a purchaser may exchange the right to use accommodations in one location for the right to use accommodations in another location.

(5) Materially misrepresent the current or future availability of a resale or rental program offered by or on behalf of the developer.

(6) Materially misrepresent the nature or extent of any incidental benefit.

(7) Fail to deliver any item offered in connection with a promotion to a prospective purchaser upon the conclusion of the sales presentation, or fail to deliver any item offered in connection with a promotion to a prospective purchaser, upon request, reasonably approximate to the conclusion of the length of time for the sales presentation that was previously represented to the prospective purchaser.

(8) Fail to disclose, in a manner that meets the requirements of Section 17537.1 or 17537.2 of the Business and Professions Code, that a certificate, coupon, or raincheck redeemable for fulfillment for goods or services will be provided in connection with a promotion for the purchase of a time-share interest, if that is the case.

(9) State that the purchase of a time-share interest constitutes a financial investment.

(10) Fail to clearly and conspicuously disclose, prior to the execution of any purchase contract, the annual maintenance and association dues or any separately billed taxes, when applicable.

(11) Fail to clearly disclose in writing any automatic charging or billing procedure, and fail thereafter to obtain the express written authorization from the prospective purchaser for any purchase, subscription, or enrollment that results in that automatic charging or billing of initial or periodic amounts to the prospective purchaser.

(12) If the contract for a time-share interest is negotiated primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, and the developer fails to provide to the prospective purchaser prior to the commencement of the rescission period an unexecuted translation of the contract in the language in which the contract was negotiated.

(13) Fail to inform, verbally or in writing, any prospective purchaser that he or she can take as much time as he or she requires in order to read the public report, and any and all other documents necessary to

consummate a sale before leaving the premises or signing a contract, and not allowing, upon request, the prospective purchaser the time and opportunity to do so. If the prospective purchaser requests that he or she be able to return the next calendar day to complete the review of the documents before signing, the developer shall accommodate such a request, and the return visit shall not disqualify the prospective purchaser from receiving any price reduction or other incentive for purchasing on the day of the scheduled sales presentation. Further, it shall not be fraudulent or misleading for a developer to honor the request even if presented as an incentive only available on the day of the offer.

(14) Inform prospective purchasers that they are finalists in winning an item offered in connection with a promotion or have already won a specific prize, unless it is true.

(15) Offer as a promotional incentive any travel certificate or coupon redeemable for transportation, accommodations, or other travel-related service that does not allow the recipient to activate or redeem the incentive without incurring any additional telephone expenses charged by or on behalf of the developer other than the usual toll costs imposed by the prospective purchaser's telephone service.

(16) Offer as a promotional incentive any travel certificate or coupon redeemable for fixed air transportation or hotel accommodations or other travel-related service that entitles the prospective purchaser to a trip of a specified duration unless the offeror states at the time of the offer that there are terms or conditions that must be followed in order to utilize the incentive and that the details of the terms will be sent to the consumer in writing in time to be received by the consumer prior to leaving his or her house to attend the scheduled sales presentation. The writing shall include the approximate times of the air or sea transportation's departure and return, if applicable, and all other material conditions, including any limitations as to the dates or times available for use of the incentive.

(17) Misrepresent or fail to disclose that a prospective purchaser is required to attend a sales presentation to obtain a prize or promotional item, if attendance is a requirement of the promotion.

(18) Fail to inform any prospective purchaser who contacts the developer with a request to cancel a purchase within the rescission period provided by this chapter all of the procedures necessary to effectively cancel the purchase.

(19) Fail to cancel a purchase upon the receipt of a valid timely written notice of rescission. No person may obtain from the person a waiver or cancellation of the rescission.

(20) Fail to provide any refund of moneys, within the required timeframe, due to the prospective purchaser upon receipt of a valid timely written notice of rescission.

(21) Fail to provide a mechanism for an equitable apportionment of expenses between the time-share owner's association and any commercial operation on the property not operated by the time-share owner's association.

(b) For any time-share plan in which the managing entity is an affiliate of the developer, neither the developer nor the managing entity shall, during any applicable priority reservation period, hold out for rental to the public on a given day, developer owned or controlled time-share periods in a number greater than the total number of time-share periods owned or controlled by the developer in a particular season, multiplied by a fraction wherein the numerator is the number of time-share periods owned or controlled by the developer in that particular season, and the denominator is the total number or time-share periods in that particular season. For example, if the developer owns or controls 1,000 time-share periods in a particular season, out of a total of 4,000 time-

share periods available during that season, then the developer may not hold out for rental to the public during any applicable priority reservation period, more than 250 time-share periods on a given day during that season (1,000 X 1,000/4,000=250). The number of time-share interests permitted to be rented under this subdivision shall be in addition to any time-share interests that the developer may have the right to rent or use by virtue of having acquired those rights from another owner. The developer or managing entity may, at any time, rent any inventory transferred to the developer or managing entity by another owner in exchange for hotel accommodations, future use rights, or other considerations. For any use or rental by a developer of time-share interests owned or controlled by the developer, the developer shall reimburse the association for any increased expenses for housekeeping services that exceed the amount allocated in the assessment for maintenance for the use or rental.

Inventory Control Certification

11246. With each application for an amendment or renewal of a public report, and with the initial submittal of an application for a time-share plan in which sales have occurred prior to obtaining a California public report, the developer shall submit to the commissioner a certification by an independent third party acceptable to the commissioner and dated not more than three months prior to the submittal of the application, stating that the inventory control system, described in paragraph (6) of subdivision (c) of Section 11226 functions in accordance with the description set forth in that section. The certification shall be based on a random sampling of transactions performed within the six months preceding the date of the application. Inventory control systems that cover time-share estates for which the developer offers, and the title insurance company agrees to provide title insurance, shall not require certification. Independent title insurance companies licensed to do business as such in this state and independent certified public accountants shall be deemed acceptable third parties in accordance with this section.

Article 3. Time-Share Plan Requirements

Time-Share Plan Requirements

11250. A time-share plan may be created in any accommodation unless otherwise prohibited. All time-share plans shall maintain a one-to-one purchaser to accommodation ratio, which means the ratio of the number of purchasers eligible to use the accommodations of a time-share plan on a given night to the number of accommodations available for use within the plan on that night, such that the total number of purchasers eligible to use the accommodations of the time-share plan during a given calendar year never exceeds the total number of accommodations available for use in the time-share plan during that year. For purposes of the calculation under this section, each purchaser must be counted at least once, and no individual accommodation may be counted more than 365 times per calendar year or more than 366 times per leap year. A purchaser who is delinquent in the payment of time-share plan assessments shall continue to be considered eligible to use the accommodations of the time-share plan for purposes of calculating the one-to-one purchaser to accommodation ratio.

Time-Share Plan Declaration of Dedication

11251. (a) The developer of a single site time-share plan and for the component sites of a multisite time-share plan located in the state, shall cause to be recorded prior to the closing of the first sale of a time-share interest in each accommodation in the time-share plan, covenants dedicating the accommodations to the time-share plan and incorporating all covenants of the grantor or lessor of the time-share interests, and the following provisions:

(1) Organization of an association of time-share interest owners.

(2) A description of the real property for the common ownership or use of the time-share interest owners. Where the time-share plan is a personal property time-share plan, a description of the personal property for common use of the time-share interest owners.

(3) A description of the method for calculating and collecting regular and special assessments from time-share interest owners to defray expenses of the time-share property and for related purposes.

(4) A description of the method for terminating the membership and selling the interest of a time-share interest owner for failure to pay regular or special assessments.

(5) A description of the method for the disciplining of time-share interest owners for the late payment of assessments.

(6) Provisions requiring comprehensive general liability insurance and adequate property and casualty insurance covering the time-share property.

(7) Restrictions upon partition of an accommodation of the time-share plan.

(8) A description of the method for amending the covenants affecting the time-share plan.

(9) Where applicable, a description of the method relating to the annexation or de-annexation of additional accommodations, phases, or properties to the time-share plan.

(10) A description of the procedures in the event of condemnation, destruction, or extensive damage to an accommodation, including provisions for the disposition of insurance proceeds or damages payable on account of damage or condemnation.

(11) A method of the procedures on regular termination of the time-share plan.

(12) Where applicable, allocation of the cost of maintenance and operation between different elements or mixed uses within the portions of a project or relating to reciprocal rights and obligations between the time-share project and other property.

(13) A description of the method for entry into accommodations of the time-share plan under authority granted by the association for the purpose of cleaning, maid service, maintenance, and repair including emergency repairs and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity.

(14) Delineate all reserved rights of the developer.

(15) For projects located within the state, the covenants shall, insofar as reasonably possible, satisfy the requirements of Section 1468 or Sections 1469 and 1470 of the Civil Code for real property located in this state.

(b) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the developer shall cause to be recorded a declaration dedicating the accommodations to the time-share plan and incorporating all covenants of the grantor or lessor of the time-share interests. The declaration shall include the subject matter set forth in paragraphs (1) to (14), inclusive, of subdivision (a). If there is no provision for the recording of a declaration in the state or jurisdiction in which the time-share property or component site is located, alternatively, the developer shall establish that the declaration is otherwise enforceable in the state or jurisdiction in which the time-share property or component site is located. The declaration shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the declaration provides for the matters contained in paragraphs (1) to (14), inclusive, of subdivision (a), the declaration shall be deemed to be in compliance with the requirements of subdivision (a) and this subdivision and the developer shall not be required to make revisions in order to comply with subdivision (a) and this subdivision.

(c) The developer of a time-share plan located within the state shall make provisions in the time-share instruments for all of the following:

(1) A description of the services to be made available to time-share interest owners under the time-share plan.

(2) A description, to be contained in the declaration or the bylaws of the association,

of the procedures regarding transfer to the association of control over the time-share property and services comprising the time-share plan.

(3) A description of the method for preparation and availability to time-share interest owners of budgets, financial statements, and other information related to the time-share plan.

(4) A description of the methods for employing and for terminating the employment of a managing entity for the time-share plan.

(5) A description of the method for adoption of standards and rules of conduct for the use of accommodations by time-share interest owners.

(6) A description of the method for establishment of the rights of time-share interest owners to the use of an accommodation according to schedule or under a first-reserved, first-served priority system.

(7) A description of the method for compensating use periods or monetary compensation for an owner of a time-share estate if an accommodation cannot be made available for the period of use to which the owner is entitled by schedule or under a reservation system because of an error by the association or managing entity.

(8) A description of the method for the use of accommodations for transient accommodations or other income-producing purpose during periods of nonuse by time-share interest owners.

(9) A description of the method for the inspection of the books and records of the association by time-share interest owners.

(10) A description of the method for collective decisionmaking and the undertaking of action by or in the name of the association including, where applicable, representation of timeshare accommodations in an association for the time-share in which the accommodations are located.

(d) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the developer shall cause to be included in the time-share instrument the subject matter set forth in subdivision (c). The time-share instruments shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if there is a conflict between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the time-share instruments provide for the matters contained in subdivision (c), the time-share instruments shall be deemed to be in compliance with the requirements of subdivision (c) and this subdivision and the developer shall not be required to make revisions in order to comply with subdivision (c) and this subdivision.

Covenant Not to Encumber

11252. In a time-share plan offering time-share use interests, the developer shall not encumber the accommodations of the time-share plan in a manner that could materially and adversely affect the use rights of the purchasers of the accommodations without the written assent of not less than 51 percent of the time-share interest owners other than the developer. This section shall not prevent the developer from encumbering the purchaser's use rights so long as the developer has sufficient protection as permitted by Section 11244.

Insurance

11253. For single site time-share plans and component sites of multisite time-share plans located in this state, the time-share instrument shall require that the following insurance be at all times maintained in force to protect time-share interest owners in the time-share plan:

(a) Insurance against property damage as a result of fire and other hazards commonly insured against, covering all real and personal property comprising the time-share plan in an amount not less than 80 percent of the full replacement value of the time-share property.

(1) In a time-share use offering, the trustee shall be a named coinsured, and if for any reason, title to the accommodation is not

held in trust, the association shall be named as a coinsured as the agent for each of the time-share interest owners.

(2) In a time-share estate offering, the association shall be named as a coinsured if it has title to the property or as a coinsured as agent for each of the time-share interests owners if title is held by the owners as tenants in common.

(3) If, after control of the governing body of the association has passed to the owners other than the developer, and the association amends the time-share instrument to reduce the percentage below 80 percent, the failure of the association to maintain coverage at 80 percent of replacement value shall not be grounds for denial of a public report.

(b) Liability insurance against death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the accommodations of the time-share plan.

(1) The amounts of the insurance shall be determined by the association, but shall not be less than five hundred thousand dollars ($500,000) to one million dollars ($1,000,000) for personal injury and one hundred thousand dollars ($100,000) for property damage.

(2) The liability insurance policy shall provide for all of the following:

(A) All time-share interest owners as a class are named as additional insureds in a policy issued to the association.

(B) The waiver by the insurer of its right to subrogation under the policy against any time-share interest owner or member of his or her household.

(C) No act or omission by a time-share interest owner, unless acting within the scope of his or her authority on behalf of the association, shall void the policy or operate as a condition to recovery under the policy by any other person.

Transfer of Property Rights

11254. (a) In a time-share plan in which the fee or a long-term leasehold interest in all or some of the accommodations and in appurtenant real and personal property is to be transferred to the association or to a corporate trustee under a trust agreement, the conveyance shall be made prior to the closing of the escrow for the first sale of a time-share interest in the accommodation.

(b) The developer may reserve easements in the real property conveyed for purposes reasonably related to the conduct of commercial activities in the time-share property, if the developer covenants to use the easements in a manner that will minimize any adverse impact on the use and enjoyment of the accommodation by any time-share interest owner occupying it.

Conveyance of Interests

11255. (a) The department shall require that each of the accommodations in a time-share plan offering time-share use interests be conveyed to a trustee or an association acceptable to the commissioner prior to the closing of the escrow for the first sale of a time-share use interest that entitles the purchaser to occupy the accommodation in question.

(b) If the accommodation in a time-share plan offering time-share use interests that is free and clear of blanket encumbrances, other than a lien of current real property taxes, is conveyed to a trustee or an association, the trust or association instruments shall include, but not be limited to, all of the following:

(1) Transfer of title to the accommodations to the trustee or association.

(2) If the time-share use interests are conveyed to a trust, the association as a party to the trust or an express third-party beneficiary of the trust.

(3) Notice to the department of the intention of the trustee to resign, if applicable.

(4) Continuance of the trustee in that capacity until a successor trustee acceptable to the department assumes the position, if applicable.

(5) Prohibition against any amendments of the trust or association instruments adversely affecting the interests or rights of time-share interest owners without the prior approval of the association.

(6) Instructions for the distribution of condemnation or insurance proceeds by the trustee or the association.

(c) The department may require that each of the accommodations in a time-share plan offering time-share estate interests that is subject to a blanket encumbrance be conveyed to a trustee acceptable to the department prior to the closing of the escrow for the first sale of a time-share estate which entitles the purchaser to occupy the accommodation in question.

(d) If an accommodation in the time-share plan is conveyed to a trustee pursuant to subdivision (c), the trust instrument shall include all of the following provisions in addition to those set forth in subdivision (b):

(1) The deposit into trust, and the retention for the duration of the trust, of nondelinquent installment sales contracts or promissory notes of time-share interests purchases having an aggregate principal balance owing not ordinarily less than 150 percent of the difference between the aggregate principal balance owing under blanket encumbrances against the accommodation and the amount of money, or its equivalent, in the trust and available at any time to be applied to the reduction of the principal balance of the blanket encumbrances.

(A) The trust instrument shall further provide that if the 150 percent requirement has not been met within six months after execution of the trust instrument by the developer, the trustee shall thereafter retain in the trust, or apply to debt service on the blanket encumbrance, the entire amount of all installment payments received on contracts or promissory notes until the 150 percent requirement has been met.

(B) For purposes of this regulation, a contract or promissory note is deemed delinquent when an installment payment is more than 60 days past due.

(C) If the developer for purposes of satisfying the requirements of this subdivision proposes to deposit installment sales contracts or promissory notes of obligor other than purchasers of interests in the time-share plan into the trust, the developer shall have the burden of establishing the liquidated value of the notes and contracts to the satisfaction of the department.

(2) The deposit into trust, and the retention for the duration of the trust, of funds in an amount at all times sufficient to pay the total of three successive monthly installments of debt service on the blanket encumbrance.

(A) If installments of debt service on a blanket encumbrance that is fully amortized are due less frequently than monthly, the funds retained in the trust shall be sufficient to pay all installments becoming due within the next succeeding six months, or, if no installments are due within the next succeeding six months the next installment due.

(B) If a blanket encumbrance against the trust property is an interest-only loan, contains a balloon payment provision, or is otherwise not fully amortized under the terms for repayment, the trust instrument shall require that the developer make monthly payments into the trust sufficient to pay debt service installments as they become due and to create a sinking fund to extinguish the debt at its maturity.

(3) Payment by the trustee of debt service on the blanket encumbrance, property taxes, or assessments on insurance premiums, either as the entity having primary responsibilities for the payments or the entity secondarily responsible if the person with primary

responsibility fails to make the payments in a timely manner.

(4) The deposit or investment by the trustee of funds constituting a part of the trust corpus in interest bearing accounts, treasury bills, certificates of deposit, or similar investments.

(e) In the case of a time-share plan offering time-share use interests that have been conveyed to a trustee, the trust for the accommodation shall be irrevocable during the time that any time-share interest owner has a right to the occupancy of an accommodation.

(f) In the case of a time-share plan offering time-share use interests that have been conveyed to an association, the association shall not be dissolved or terminated during the time that any time-share interest owner has the right to occupancy of an accommodation.

(g) In a time-share plan offering time-share estate interests, the trust for an accommodation shall be irrevocable until the extinguishment of all blanket monetary encumbrances against the accommodation.

Contract

11256. (a) The contract proposed to be used by a developer applying for a public report for the sale or lease of time-share interests shall provide that if the escrow for sale or lease of a time-share interest does not close on or before the date set forth in the contract, or a later closing date mutually agreed to by the developer and the prospective purchaser or lessee, within 15 days after the closing date set forth in the contract or an extended closing date mutually agreed to by the developer and the prospective purchaser or lessee, the developer shall, except as provided in subdivisions (c) to (h), inclusive, order all of the money remitted by the prospective purchaser or lessee under the terms of the contract for acquisition of the time-share interest (purchase money) to be refunded to the prospective purchaser or lessee. Any extension of the closing of escrow shall be in writing and shall clearly and conspicuously disclose that the purchaser is not obligated to extend the closing of escrow.

(b) The contract may provide for disbursements or charges to be made against purchase money for payments to third parties for credit reports, escrow services, preliminary title reports, appraisals, and loan processing services by the parties if the contract includes the following:

(1) Specific enumeration of all of the disbursements or charges that may be made against purchase money.

(2) The developer's estimate of the total amount of the disbursements and charges.

(c) Any contractual provision that calls for disbursement or a charge against purchase money based upon the prospective purchaser's or lessee's alleged failure to complete the purchase of the time-share interest shall conform with Sections 1675, 1676, 1677, and 1678 of the Civil Code.

(d) Except for a disbursement made following substantial compliance with the procedures set forth in subdivision (f) or pursuant to a written agreement of the parties that either cancels the contract or is executed after the final closing date specified by the parties, a disbursement or charge against purchase money as liquidated damages may be done only pursuant to a determination by a court of law, or by an arbitrator if the parties have so provided by contract, that the developer is entitled to a disbursement or charge against purchase money as liquidated damages.

(e) A contractual provision for a determination by arbitration that the developer is entitled to a disbursement or charge against purchase money as liquidated damages shall require that the arbitration be conducted in accordance with procedures that are equivalent in substance to the Commercial Arbitration Rules of the American Arbitration Association, that any arbitration include every cause of action that has arisen between the prospective purchaser or lessee and the developer under the contract, and that the developer remit the fee to initiate arbitration with the costs of the arbitration ultimately to be borne as determined by the arbitrator.

(f) The contract of sale may include a procedure under which purchase money may be disbursed by the escrowholder to the developer as liquidated damages upon the prospective purchaser's or lessee's failure to timely give the escrowholder the prospective purchaser's or lessee's written objection to disbursement of purchase money as liquidated damages. This procedure shall contain at least the following elements:

(1) The developer shall give written notice, in the manner prescribed by Section 116.340 of the Code of Civil Procedure for service in a small claims action, to the escrowholder and to the prospective purchaser or lessee that the prospective purchaser or lessee is in default under the contract that the developer is demanding that the escrowholder remit _____ dollars ($____) from the purchase money to the developer as liquidated damages unless, within 20 days, the prospective purchaser or lessee gives the escrowholder the prospective purchaser's or lessee's written objection to the disbursement of purchase money as liquidated damages.

(2) The prospective purchaser or lessee shall have a period of 20 days from the date of receipt of the developer's 20-day notice and demand in which to give the escrowholder the prospective purchaser or lessee written objection to the disbursement of purchase money as liquidated damages.

(g) The contract may not make the prospective purchaser's or lessee's failure to timely give the escrowholder the aforesaid written objection a waiver of any cause of action the prospective purchaser or lessee may have against the developer under the contract unless the waiver is conditioned upon service of the developer's 20-day notice and demand in a manner prescribed by Section 116.340 of the Code of Civil Procedure for service in a small claims action.

(h) If the developer has had the use of purchase money pending consummation of the sale or lease transaction under authorization by the department pursuant to Section 11243, the developer shall immediately upon alleging the default of the prospective purchaser or lessee, transmit to the escrowholder, funds equal to all of the purchase money paid by the prospective purchaser or lessee.

Article 4. Management and Governance

Requirements

11265. (a) For single site time-share plans and component sites of a specific time-share interest multisite time-share plan, the following requirements apply:

(1) Except as provided in paragraph (2), regular assessments to defray the expenses of maintaining the time-share property and operating the time-share plan shall be levied against each time-share interest owner according to the ratio that the number of time-share interests owned by a time-share interest owner assessed bears to the total number of time-share interests subject to assessments. Regular assessments levied by the association shall not exceed the amount necessary to defray the estimated expenses for which the assessments are levied.

(2) The assessment against each owner in the time-share plan may be determined according to a formula or schedule under which assessments against each time-share interest owner are equitably apportioned in accordance with operational and maintenance costs attributable to each time-share interest owner.

(3) A special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments except in the case where the special assessment is levied against a time-share interest owner for the purpose of reimbursing the association for costs incurred in bringing the time-share interest owner into compliance with provisions of the governing instruments for the time-share plan.

(4) All time-share interests in the time-share plan for which a public report has been issued including those time-share interests held by the developer of the time-share plan

are interests subject to the payment of regular and special assessments.

(5) The governing body of the association may be authorized by the governing instruments to impose, without the vote or written assent of the association, a regular annual assessment per time-share interest that is as much as 20 percent greater than the regular annual assessment for the immediately preceding fiscal year. An annual assessment for each time-share interest that is more than 20 percent greater than the regular assessment per time-share interest for the immediately preceding fiscal year may not be levied without the vote or written assent of a majority of the voting power of the association residing in members other than the developer. An increase in the annual assessment attributable to an increase in real property taxes against accommodations of the time-share property shall be excluded in determining whether the annual assessment is more than 20 percent greater than the regular assessment per interest for the preceding fiscal year.

(6) Except as provided in this section, special assessments against time-share interest owners in a time-share plan may not be imposed without the vote or written assent of a majority of the voting power of the association residing in members other than the developer. The governing body of the association may be authorized by the governing instruments to impose special assessments without the vote or written assent of the association as follows:

(A) Special assessments against all time-share interest owners in the time-share plan, other than a special assessment to restore or rebuild because of damage or destruction to an accommodation, which in the aggregate in any fiscal year do not exceed 5 percent of the budgeted gross expenses of the association for that fiscal year.

(B) A special assessment for the repair or rebuilding of an accommodation that does not exceed 10 percent of the budgeted gross expenses of the association for the fiscal year in which the assessment is levied.

(C) Special assessments against a time-share interest owner or owners for the purpose of reimbursing the association for costs incurred in bringing the time-share interest owner into compliance with provisions of the governing instruments for the time-share plan.

(7) Regular assessments against all of the time-share interests in an accommodation of the time-share plan shall commence on the same date. Regular assessments shall commence on the first day of the month following the closing of the escrow of the first sale of a time-share interest in the time-share plan, but may be delayed to the date of commencement of time-share interest owners' occupancy rights in the accommodation or to a date that is not more than six months later than the date of closing of the first sale involving a right to use the accommodation, whichever occurs earlier in time.

(b) For single site time-share plans and component sites of a multisite time-share plan located outside of the state the time-share instruments shall include the subject matter set forth in paragraphs (1) to (4), inclusive, of subdivision (a). The time-share instruments shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between the affirmative standards of the laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the time-share instruments provide for the matters contained in paragraphs (1) to (4), inclusive, of subdivision (a), the time-share instruments shall be deemed to be in compliance with the requirements of paragraphs (1) to (4), inclusive, of subdivision (a) and this subdivision and the developer shall not be required to make revisions in order to comply with paragraphs (1) to (4), inclusive, of subdivision (a) and this subdivision. If the

maximum increase in annual assessments for a time-share plan located outside of this state is greater than the 20 percent set forth in paragraph (5) of subdivision (a), the public report shall include the following disclosure in conspicuous 14-point type:

YOUR ANNUAL ASSESSMENTS ARE NOT SUBJECT TO THE CALIFORNIA LIMITATION OF A 20% ANNUAL INCREASE WITHOUT THE VOTE OF THE OWNERS OTHER THAN THE DEVELOPER. YOUR ASSESSMENT MAY BE INCREASED BY AS MUCH AS ____% PER YEAR.

(c) For nonspecific time-share interest multisite time-share plans the following requirements apply:

(1) Except as provided in paragraph (2), regular assessments to defray the expenses of maintaining and operating the multisite time-share plan shall be levied against each time-share interest owner according to the ratio that the number of time-share interests owned by a time-share interest owner assessed bears to the total number of time-share interests subject to assessments.

(2) The assessment against each time-share interest owner in the multisite time-share plan may be determined according to a formula or schedule under which assessments against each time-share interest owner are equitably apportioned in accordance with operational and maintenance costs attributable to each time-share interest owner.

(3) A special assessment shall be levied upon the same basis as that prescribed for the levying of regular assessments except in the case where the special assessment is levied against a time-share interest owner for the purpose of reimbursing the association for costs incurred in bringing the time-share interest owner into compliance with provisions of the governing instruments for the time-share plan.

(4) All time-share interests in the multisite time-share plan for which a public report has been issued including those time-share interests held by the developer of the multisite time-share plan are interests subject to the payment of regular and special assessments.

Delinquent Assessments – Late Charges

11265.1. (a) Regular and special assessments levied pursuant to the time-share instrument are delinquent 30 days after they become due, unless the time-share instrument provides a longer time period, in which case the longer time period shall apply. If an assessment is delinquent, the association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorneys' fees.

(2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars ($10), whichever is greater, unless the time-share instrument specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the governing instrument.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorneys' fees, at an annual interest rate not to exceed 12 percent, commencing 30 days after the assessment becomes due, unless the time-share instrument specifies the recovery of interest at a lower rate, in which case, the lower rate of interest shall apply.

(b) Regular assessments imposed or collected to perform the obligations of an association under the governing documents of this title shall be exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this subdivision. This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by the owners of the association, constituting a quorum, casting a

majority of the votes at a meeting or election of the association, or to any state tax lien, or to any lien for labor or materials supplied to the common area.

(c) The association shall provide notice by first-class mail to the owners of the time-share interests of any increase in the regular or special assessments of the association, not less than 30 days nor more than 60 days prior to the increased assessment becoming due.

(d) Associations are hereby exempted from interest rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

Amendment of Declaration or Other Document
11266. (a) An amendment of a provision of the declaration or other document establishing the time-share plan may not be adopted without the vote or written assent of at least 25 percent of the voting power of the association residing in members other than the developer.

(b) An amendment of the articles of incorporation or association may not be enacted without the vote or written assent of at least 25 percent of the governing body and 25 percent of the voting power of the association residing in members other than the developer.

(c) An amendment of the bylaws of the association may not be enacted without the vote or written assent of at least 10 percent of the voting power of the association residing in members other than the developer.

(d) An amendment to the rules and regulations of the association may not be enacted without the vote or written assent of at least a majority of the governing body of the association.

(e) The percentage of the voting power necessary to amend a specific clause or provision in the time-share instrument, articles, or bylaws shall not be less than the prescribed percentage of affirmative votes or written assents required for action to be taken under that clause.

(f) In addition to the restrictions upon the enactment of amendments of the governing instruments set forth in this section, the governing instruments may include provisions consistent with subdivision (c) of Section 11269 whereby the vote of the developer must be given effect in the amendatory process.

(g) For a single site time-share plan or a component site of a specific time-share interest time-share plan or a nonspecific time-share interest multisite time-share plan located outside this state, that is being offered in this state, the public report shall include the following disclosure in conspicuous 14-point type:

THE DECLARATION OR OTHER DOCUMENT ESTABLISHING THIS TIME-SHARE PLAN MAY BE AMENDED BY A VOTE OF ____% OF THE MEMBERS OF THE ASSOCIATION. THE BYLAWS OF THE ASSOCIATION MAY BE AMENDED BY A VOTE OF ____% OF THE MEMBERS.

Employment of Managing Entity
11267. (a) The time-share instruments shall require the employment of a managing entity for the time-share plan or component site pursuant to a written management agreement that shall include all of the following provisions:

(1) Delegation of authority to the managing entity to carry out the duties and obligations of the association or the developer to the time-share interest owners.

(2) Authority of the managing entity to employ subagents, if applicable.

(3) A term of not more than five years with automatic renewals for successive three-year periods after expiration of the first term unless the association by the vote or written assent of a majority of the voting power residing in members other than the developer determines not to renew the contract and gives appropriate notice of that determination. However, in those time-share plans where the association is controlled by owners other than the developer, the management agreement shall not be subject to the term limitations set forth in this section, and any longer term shall not be grounds for denial of a public report, unless the longer term of the management contract

is the result of the developer exercising control.

(4) Termination for cause at any time by the governing body of the association. If the single site time-share plan or the component site of a multisite time-share plan is located within the state, then that termination provision shall include a provision for arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association if requested by or on behalf of the managing entity.

(5) Not less than 90 days' written notice to the association of the intention of the managing entity to resign.

(6) Enumeration of the powers and duties of the managing entity in the operation of time-share plan and the maintenance of the accommodations comprising the time-share plan.

(7) Compensation to be paid to the managing entity.

(8) Records to be maintained by the managing entity.

(9) A requirement that the managing entity provide a policy for fidelity insurance or bond for the activities of the managing entity, payable to the association, which shall be in an amount no less than the sum of the largest amount of funds expected to be held or controlled by the managing entity at any time during the year, pursuant to the budget. The commissioner may provide a reduction in the insurance policy or bond amounts required by this paragraph.

(10) Errors and omissions insurance coverage for the managing entity, if available.

(11) Delineation of the authority of the managing entity and persons authorized by the managing entity to enter into accommodations of the time-share plan for the purpose of cleaning, maid service, maintenance and repair including emergency repairs, and for the purpose of abating a nuisance or dangerous, unlawful, or prohibited activity being conducted in the accommodation.

(12) Description of the duties of the managing entity, including, but not limited to, the following:

(A) Collection of all assessments as provided in the time-share instruments.

(B) Maintenance of all books and records concerning the time-share plan.

(C) Scheduling occupancy of accommodations, when purchasers are not entitled to use specific time-share periods, so that all purchasers will be provided the opportunity for use and possession of the accommodations of the time-share plan, that they have purchased.

(D) Providing for the annual meeting of the association of owners.

(E) Performing any other functions and duties related to the maintenance of the accommodations or that are required by the time-share instrument.

(b) Any written management agreement in existence as of the effective date of this chapter shall not be subject to the term limitations set forth above.

(c) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the time-share instruments shall include the subject matter set forth in subdivision (a). The time-share instruments shall be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the time-share instruments provide for the matters contained in subdivision (a), the time-share instruments shall be deemed to be in compliance with the requirements of subdivision (a) and the developer shall not be required to make revisions in order to comply with subdivision (a) and this subdivision.

Regular Meetings of Members

11268. (a) Unless impracticable because of the number of members of the association, their places of residence in relation to each other, the international nature of the offering, or other factors, provision shall be made for regular meetings of members of the association of time-share interest owners. Ordinarily regular meetings of members shall be scheduled not less frequently than once each calendar year at a time and place to be fixed by the bylaws or by resolution of the governing body. The first meeting of the association shall be scheduled not later than one year after the closing of the escrow for the first sale of a time-share interest in the time-share plan or completion of construction, whichever shall first occur.

(b) Provision shall be made for special meetings of the association to be promptly called by the governing body upon either of the following:

(1) The vote of a majority of the governing body.

(2) Receipt of a written request signed by members representing at least 5 percent of the voting power of the association residing in members other than the developer.

(c) Meetings of the association shall be held at a suitable location that is readily accessible at reasonable cost to the largest possible number of members.

(d) Written notice of regular and special meetings shall be given to members by first-class mail. This notice shall be given not less than 14 days and not more than 90 days before the scheduled date of the meeting. The notice, whether for a regular or special meeting shall specify the place, day, and hour of the meeting and a brief statement of the matters which the governing body intends to present, or believes that others will present, for action by the members.

(e) (1) The bylaws of the association shall establish the quorum for a meeting of members at not less than 5 percent nor more than 331/3 percent, of the voting power of the association residing in members other than the developer, represented in person or by proxy.

(2) In the absence of a quorum as prescribed by the bylaws, no business shall be conducted and the presiding officer shall adjourn the meeting sine die.

(3) If less than one-third of the total voting power of the association is in attendance, in person or by proxy, at a regular or special meeting of the association, only those matters of business, the general nature of which was given in the notice of the meeting may be voted upon by the members.

(f) Any action that may be taken at any regular or special meeting of members may be taken without a meeting if the following requirements are met:

(1) A written ballot is distributed to every member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal, and providing a reasonable time for the members to return the ballot to the association.

(2) The number of votes cast by ballot within the specified time period equals or exceeds the quorum required to be present at a meeting authorizing the action.

(3) The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

(4) The written ballot distributed to members of the association affords an opportunity for the member to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the association and further provides that the vote of the members shall be cast in accordance with the choice specified.

(g) The bylaws of the association may provide that governing body members may be elected by written ballot.

(h) A form of proxy may be distributed to each member to afford him or her the opportunity to vote in absentia at a meeting of members of the association provided that it meets the requirements for a written ballot set forth in paragraph (4) of subdivision (f) and includes the name or names of members who expect to be in attendance in person at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent member's vote as specified in the form of proxy.

Vote

11269. (a) A member of an association including associations that provide for unequal assessments against members, shall be entitled to one vote for each time-share interest owned.

(b) An association may have two classes of members for voting purposes according to the following provisions:

(1) Each time-share interest owner other than the developer of the time-share plan shall be a class A member. If a time-share interest is owned by more than one person, each time-share interest owner shall be a class A member, but only one vote may be cast for each interest.

(2) The developer shall be the class B member and shall have one vote for each time-share interest owned by him or her which has been authorized to be offered for sale by the issuance of a public report.

(3) Class B membership shall be automatically converted to class A membership, and class B membership shall thereafter cease to exist, when the total outstanding votes held by the class B member falls below 20 percent of the total voting power of the association.

(c) Except as otherwise expressly provided, no regulation which requires the approval of a prescribed percentage of the voting power residing in members other than the developer or a prescribed percentage of the voting power of class A members, for action to be taken by the association, is intended to preclude the developers from casting votes attributable to the time-share interests which he or she owns. Governing instruments may specify the following with respect to approval of action by the membership of the association other than an action to enforce an obligation of the developer:

(1) In those associations in which class A and class B memberships exist, the vote or written assent of a prescribed percentage of the class A voting power and the vote or written assent of the class B member.

(2) In those associations in which a single class of voting membership exists, either as originally established or after the conversion of the class B membership to class A memberships, the vote or written assent of a prescribed percentage of the total voting power of the association and the vote or written assent of a prescribed percentage of the voting power of members other than the developer.

Directors

11270. (a) The governing body shall consist of three directors for an association that does not contemplate more than 100 members and either five or seven directors for an association that contemplates more than 100 members.

(b) (1) The first governing body shall consist of directors appointed by the developer. These directors shall serve until the first meeting of the association at which time an election of all of the directors for the association shall be conducted.

(2) A special procedure shall be established by the governing instruments to assure that at the first election of the governing body, and at all times thereafter, at least one of the incumbent directors has been elected solely by the votes of members other than the developer.

(3) A director who has been elected to office solely by the votes of the members of the association other than the developer may be removed from the governing body prior to the expiration of his or her term of office only by a vote of a prescribed percentage of the voting power residing in members other than the developer.

(c) The terms of office of governing body members may be staggered provided that no person may serve a term of more than three years without standing for reelection.

(d) For board of director members serving at the appointment of the developer, the developer may change the designated board member without the need of any further consent by the association. However, the term of the applicable director's seat on the governing body shall not be affected by that change.

Meeting Time, Place, Notice

11271. (a) Regular meetings of the governing body of the association shall be held as prescribed in the bylaws, but not less frequently than annually.

(b) (1) Regular and special meetings of the governing body shall be held in or near the location of the time-share plan unless a meeting at another location would significantly reduce the cost to the association or the inconvenience to directors.

(2) If the time and place of the regular meeting of the governing body is not fixed by the governing instruments, notice of the time and place of meeting shall be communicated in writing, including by facsimile, electronic mail, or other form of written or electronic communication, to directors not less than 14 days prior to the meeting. However, that notice of a meeting is not required to be given to any governing body member who has signed a waiver of notice or a written consent to the holding of the meeting.

(c) (1) A special meeting of the governing body may be called by written notice signed by any two members of the governing body.

(2) The notice of a special meeting shall specify the time and place of the meeting and the nature of any special business to be considered.

(3) Notice of a special meeting shall be communicated in writing, including by facsimile, electronic mail, or other form of written or electronic communication, to directors not less than 14 days prior to the meeting. However, notice of the meeting is not required to be given to any governing body member who signed a waiver of notice or a written consent to the holding of the meeting.

(d) (1) Regular and special meetings of the governing body shall be open to all members of the association provided that members who are not on the governing body may not participate in any deliberations or discussions unless expressly so authorized by the governing body.

(2) The governing body may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

(e) A bare majority of the total members of authorized members of the governing body shall constitute a quorum for the conduct of business.

(f) The governing instruments for the time-share plan shall provide for reimbursement by the association for transportation expenses incurred and reasonable per diem payments to governing body members for attendance at regular and special meetings of the governing body.

Information Available to all Owners

11272. (a) The following information concerning the time-share plan shall be made available to all time-share interest owners in the time-share plan:

(1) A proposed budget for each fiscal year consisting of the information required by Section 11240 shall be distributed not less than 15 days prior to the beginning of the fiscal year to which the budget applies.

(2) An audit of the financial statements of the association by an independent certified public accountant shall be performed each

year and shall be made available upon request by a time-share owner 120 days after the close of the fiscal year. The audited financial statements shall be included in a report that includes all of the following:

(A) A balance sheet as of the end of the fiscal year.

(B) An operating (income) statement for the fiscal year.

(C) A statement of the net changes in the financial position of the time-share plan during the fiscal year.

(D) For any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars ($75,000), a copy of the review of the annual report prepared in accordance with generally accepted accounting principles.

(E) A list of the names and methods of contacting the members of the governing body of the association.

(3) A list of the orders of business to be considered at the annual meeting of members of the association shall be distributed not less than 14 days prior to the meeting date. This list shall include the name, address, and a brief biographical sketch if available of each member of the association who is a candidate for election to the governing body.

(b) In lieu of the distribution of the budget and report required by subdivision (a), the governing body may elect to distribute a summary of the budget and report to all time-share interest owners along with a written notice that the budget and report is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any time-share interest owner requests that a copy of the budget and report required by subdivision (a) be provided to the time-share interest owner, the association shall provide the copy to the time-share interest owner by facsimile, electronic mail, or first-class United States mail at the expense of the association and delivered within 10 days. The written notice that is distributed to each of the time-share interest owners shall be in conspicuous 14-point type on the front page of the summary of the budget and report.

(c) Delivery of the information specified in subdivision (a) may be combined where appropriate.

(d) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the association shall be subject to the provisions set forth in this section. The association must be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the association provides for the dissemination of information provided for in this section, the association shall be deemed to be in compliance with the requirements of this section and neither the developer nor the association shall be required to make revisions to the time-share instruments or budget in order to comply with this section.

Records Availability, Inspection and Copying

11273. (a) The books of account, minutes of members and governing body meetings, and all other records of the time-share plan maintained by the association or the managing entity shall be made available for inspection and copying by any member, or by his or her duly appointed representative, at any reasonable time for a purpose reasonably related to membership in the association.

(b) The records shall be made available for inspection at the office where the records are maintained. Upon receipt of an authenticated written request from a member along with the fee prescribed by the governing body to defray the costs of reproduction, the managing entity or other custodian of records of the association or the time-share plan shall prepare and transmit to the member a copy of any and all records requested.

(c) The governing body shall establish reasonable rules with respect to all of the following:

(1) Notice to be given to the managing entity or other custodian of the records by the member desiring to make the inspection or to obtain copies.

(2) Hours and days of the week when a personal inspection of the records may be made.

(3) Payment of the cost of reproducing copies of records requested by a member.

(d) Every governing body member shall have the absolute right at any time to inspect all books, records, and documents of the association and all real and personal properties owned and controlled by the association.

(e) The association shall maintain among its records a complete list of the names and addresses of all owners of time-share interests in the time-share plan. The association shall update this list no less frequently than every six months. Unless otherwise provided in the time-share instruments, the association may not publish this owner's list or provide a copy of it to any time-share interest owner or to any third party or use or sell the list for commercial purposes.

(f) For single site time-share plans and component sites of a multisite time-share plan located outside of the state, the association shall be subject to the provisions set forth in this section. The association must be in compliance with the applicable laws of the state or jurisdiction in which the time-share property or component site is located, and if a conflict exists between laws of the situs state and the requirements set forth in this section, the law of the situs state shall control. If the association and the time-share instruments provide for the matters contained in this section, the association shall be deemed to be in compliance with the requirements of this section and neither the developer nor the association shall be required to make revisions to the time-share instruments in order to comply with the section.

Penalties, Forfeiture of Time-Share Interest

11274. (a) The association shall not be authorized to cause the absolute forfeiture of a time-share interest owner's right, title, or interest in the time-share plan on account of the time-share interest owner's failure to comply with provisions of the time-share instrument or the rules and regulations for the time-share plan except pursuant to either of the following:

(1) The judgment of a court or the decision of an arbitrator as provided in the time-share instrument.

(2) A foreclosure or sale under a power of sale for the failure of a time-share interest owner to pay assessments duly levied by the association.

(b) The time-share instrument may authorize the governing body of the association, or the managing entity acting on behalf of the governing body, to suspend a time-share interest owner's right to the occupancy of an accommodation, and all related rights and privileges as a time-share interest owner of a time-share interest in the time-share plan, during the period of time that the time-share interest owner is delinquent in the payment of regular or special assessments or other charges duly levied by the association. The time-share interest owner shall be given written notice of the suspension of his or her rights and privileges immediately after the decision to suspend has been made.

(c) The time-share instrument may authorize the association to impose a monetary penalty to suspend a time-share interest owner's right to use an accommodation or other facility that is part of the time-share plan or to take other disciplinary action that is appropriate, short of the forfeiture of the time-share interest owner's right, title, and interest in the time-share plan, for violations of the provisions of the time-share instrument and of the rules and regulations for operation of the time-share plan by the time-share interest owner, his or her guests or persons under his or her control, including, but not limited to, all of the following:

(1) Failure to vacate an accommodation upon expiration of the time-share interest owner's use period.

(2) Damage to an accommodation or any other real or personal property that is part of the time-share plan.

(3) Permitting a time-share interest to be subject to a lien, other than the lien of nondelinquent real property taxes or assessments, claim, or charge that could result in the sale of time-share interests of other time-share interest owners.

(4) Creating a disturbance that interferes with the use and enjoyment of facilities of the time-share plan by other time-share interest owners.

(d) Before disciplinary action authorized under subdivision (c) can be imposed by the association, the time-share interest owner against whom the action is proposed to be taken shall be given 30-days prior written notice and the opportunity to present a written or oral defense to the charges.

(1) The governing body of the association shall decide whether the time-share interest owner's defense shall be oral or written.

(2) The time-share interest owner shall be notified of the decision of the governing body of the association before disciplinary action is taken.

(e) The association may delegate to the managing entity, the power and authority to carry out disciplinary actions duly imposed by the governing body.

(f) For single site time-share plans and component sites of specific time-share interest multisite time-share plans and nonspecific time-share interest multisite time-share plans located outside this state, and offered for sale in this state, the public report shall contain the following disclosure in conspicuous 14-point type:

THIS TIME SHARE PLAN MAY NOT BE SUBJECT TO THE SAME PROTECTIONS AGAINST FORFEITURE AND FORECLOSURE AS PROVIDED BY CALIFORNIA LAW. YOU SHOULD BECOME FAMILIAR WITH THE PROCEDURES PROVIDED BY THE LAWS OF THE STATE IN WHICH THE TIME-SHARE PLAN IS LOCATED.

Dispute Resolution

11275. (a) Any contractual provision or other provision in the time-share instruments implemented after July 1, 2005, setting forth terms, conditions, and procedures for resolution of a dispute or claim between a time-share interest owner and a developer, or any provision in the time-share instruments implemented after July 1, 2005, setting forth terms, conditions, and procedures for resolution of a dispute of a claim between an association and the developer, shall, at a minimum, provide that the dispute or claim resolution process, proceeding, hearing, or trial be conducted in accordance with the following rules:

(1) For the developer to advance the fees necessary to initiate the dispute or claim resolution process, with the costs and fees, including ongoing costs and fees, if any, to be paid as agreed by the parties and if they cannot agree then the costs and fees are to be paid as determined by the person or persons presiding at the dispute or claim resolution proceeding or hearing.

(2) For a neutral or impartial person to administer and preside over the claim or dispute resolution process.

(3) For the appointment or selection, as designation, or assignment of the person to administer and preside over the claim or dispute resolution process within a specific period of time, which in no event shall be more than 60 days from initiation of the claim or dispute resolution process or hearing. The person appointed, selected, designated, or assigned to preside may be challenged for bias.

(4) For the venue of the claim or dispute resolution process to be in the county where the time-share is located unless the parties agree to some other location.

(5) For the prompt and timely commencement of the claim or dispute resolution process. When the contract provisions provide for a specific type of claim or dispute resolution process, the process shall be deemed to be promptly and timely commenced if it is to be commenced in accordance with the rules applicable to that process. If the rules do not specify a date by which the proceeding or hearing is required to commence, then commencement shall be by a date agreed upon by the parties, and if they cannot agree, a date shall be determined by the person presiding over the dispute resolution process.

(6) For the claim or dispute resolution process to be conducted in accordance with rules and procedures that are reasonable and fair to the parties.

(7) For the prompt and timely conclusion of the claim or dispute resolution process, including the issuance of any decision or ruling following the proceeding or hearing.

(8) For the person presiding at the claim or dispute resolution process to be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the proceeding or hearing. The parties may authorize the limitation or prohibition of punitive damages.

(b) A copy of the rules applicable to the claim or dispute resolution process shall be submitted as part of the application for a public report.

(c) If the claim or dispute resolution process provides or allows for a judicial remedy in accordance with the laws of this state, it shall be presumed that the proceeding or hearing satisfies the provisions of subdivision (a).

Article 5. Powers, Investigation, and Enforcement

Regulation By State

11280. (a) Except as specifically provided in this section, the regulation of time-share plans and exchange programs is an exclusive power and function of the state. A unit of local government may not regulate time-share plans or exchange programs.

(b) Notwithstanding subdivision (a), no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, or building code or other real estate use law, ordinance, or regulation.

Commissioner's Authority

11281. The commissioner may adopt, repeal, or amend forms and regulations that are necessary to effectuate the intent of the Legislature in carrying out this chapter. These forms and regulations and any order, permit, decision, demand, or requirement issued by the commissioner shall be in writing and adopted pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

Investigation

11282. The commissioner may investigate the actions or qualifications of any person or persons holding or claiming to hold a public report under this chapter.

Desist and Refrain Orders

11283. (a) Whenever the commissioner determines from available evidence that a person has done any of the following, the commissioner may order the person to desist and refrain from those acts and omissions or from the further sale or lease of interests in the time-share plan until the condition has been corrected:

(1) The person has violated or caused the violation of any provision of this chapter or the regulations pertaining thereto.

(2) The person has violated or caused a violation of Section 17537, 17537.1, 17537.2, or 17539.1, in advertising or promoting the sale of time-share interests.

(3) The person has failed to fulfill representations or assurances with respect to the time-share plan or the time-share offering upon which the department relied in issuing a public report.

(4) The person has failed to inform the department of material changes that have

occurred in the time-share or time-share offering that have caused the public report to be misleading or inaccurate or which would have caused the department to deny a public report if the conditions had existed at the time of issuance.

(b) Upon receipt of such an order, the person or persons to whom the order is directed shall immediately discontinue activities in accordance with the terms of the order.

(c) Any person to whom the order is directed may, within 30 days after service thereof upon him or her, file with the commissioner a written request for hearing to contest the order. The commissioner shall, after receipt of a request for hearing, assign the matter to the Office of Administrative Hearings to conduct a hearing for findings of fact and determinations of the issues set forth in the order. If the hearing is not commenced within 15 days after receipt of the request for hearing, or on the date to which continued with the agreement of the person requesting the hearing, or if the decision of the commissioner is not rendered within 30 days after completion of the hearing, the order shall be deemed to be vacated.

(d) Service and proof of service of an order issued by the commissioner pursuant to this section may be made in a manner and upon those persons as prescribed for the service of summons in Article 3 (commencing with Section 415.10), Article 4 (commencing with Section 416.10), and Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

Disciplinary Consent Orders

11284. Notwithstanding any other provisions of this chapter or of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the commissioner may negotiate agreements with registrants and applicants resulting in disciplinary consent orders. The consent order may provide for any form of discipline provided for in this chapter. The consent order shall provide that it is not entered into as a result of any coercion by the commissioner. The consent order shall be accepted by signature or rejected by the commissioner in a timely manner.

Action for Damages or Declaratory Relief

11285. An action for damages or for injunctive or declaratory relief for a violation of this chapter may be brought by any time-share interest owner or association against the developer, seller, or marketer of time-share interests, an escrow agent, or the managing entity. Relief under this section does not exclude other remedies provided by law.

Punishment for False Public Report

11286. (a) It shall be unlawful for any person to make, issue, publish, deliver, or transfer as true and genuine any public report that is forged, altered, false, or counterfeit, knowing it to be forged, altered, false, or counterfeit or to cause to be made or participate in the making, issuance, delivery, transfer, or publication of a public report with knowledge that it is forged, altered, false, or counterfeit.

(b) Any person who violates subdivision (a) is guilty of a public offense punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(c) The penalty provided by this section is not an exclusive penalty, and does not affect any other penalty, relief, or remedy provided by law.

Offenses Punishable by Fine and/or Imprisonment

11287. Any person who violates Section 11226, 11227, 11234, 11244, 11245, or 11283, is guilty of a public offense punishable by a fine not to exceed ten thousand dollars ($10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail not exceeding one year, or by both the fine and imprisonment.

11288. This chapter shall take effect on July 1, 2005.